Approved March 9, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on February 29, 19 88 in room 313-S of the Capitol.

All members were present except:
Representatives Peterson and Vancrum, who were excused

Committee staff present:
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:
Representative Mike O'Neal
Roger Endell, Secretary of Corrections
Steve Robinson, Ombudsman
Jim Clark, Kansas County and District Attorneys Association
Representative Eugene Shore
W. Robert Alderson, Southwest Kansas Royalty Owners Association
Larry Kepley, Southwest Kansas Irrigation Association, Ulysses
R. D. Randall, Petroleum, Inc., Wichita
Representative David Heinemann
Don Schnache, Kansas Independent Oil & Gas Association
Rebecca S. Rice, Amoco Corporation
Barney E. Sullivan, Eastern Kansas Oil & Gas Association, Inc., Chanute
Ronald E. Hein, Mesa Limited, Partnership

Hearing on H.B. 2898 - Allowing house arrest, including electronic monitoring & voice identification, as conditions of sentencing, probation or suspended sentences

Representative O'Neal testified this bill gives the courts and the Secretary of Corrections statutory authorization to utilize house arrest using electronic monitoring. The bill is based on Community Control by the Florida Department of Correction's Probation and Parole Services which was authorized by the Correctional Reform Act of 1983, (see Attachment I. He also distributed newspaper articles depicting the uses of electronic house arrest, (see Attachment II.

Roger Endell testified the Department of Corrections should be given as much latitude as possible in determing who should be eligible for this program. He stated there are approximately 120 corrections agencies that are currently operating monitoring systems in the United States. He listed Florida, Idaho, Kentucky, Michigan, New Jersey, Oregon, Utah, Colorado, Indiana, California, Virginia and Connecticut as states that are currently using this system. Michigan hopes to have approximately 2,000 offenders being supervised by electronic monitoring by the end of 1988. The costs per person ranges from $3.00 a day to $15.00 a day. This legislation would provide another tool for supervising offenders at a lower cost than is now required.

Steve Robinson testified the house arrest program allows the courts an alternative to incarceration while providing relative safety to the community at a very small cost to the state. He was concerned about who could be involved in the program. He expressed his support of this bill. He said it would help stem the growth of the inmate population and would be worth the cost.

Jim Clark stated the Kansas County and District Attorneys Association supports electronic monitoring. He approved of giving the Secretary of Corrections the authority to implement a house arrest program for inmates at the front end, however he objected giving the same authority at the back end. Using house arrest electronic monitoring as a part of parole would allow the Secretary of Corrections to circumvent the parole board.

There being no other conferees, the hearing was closed on H.B. 2898.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 29, 1988

Hearing on H.B. 2694 - Concerning oil & gas, relating to damages from drilling operations

Representative Shore testified H.B. 2694 is a surface damage law which would require operators in most cases to notify surface workers and tenants by certified mail of intention to drill before entering a drill site, and requires drilling site damages to be arranged for up front. He said this legislation was introduced because of increased difficulty with settlement for drilling site damages, (see Attachment ~~III~~).

W. Robert Alderson testified H.B. 2694 deals with damages to land caused by oil and gas operators. Five states, Oklahoma, Montana, South Dakota, North Dakota and West Virginia have enacted laws on this subject. H.B. 2694 is patterned after the Oklahoma statute. This bill would alter common law by shifting liability from the surface owner to the operator of the mineral estate, and it requires the operator to enter into negotiations with the surface owner and surface tenant prior to entering upon the land. He said this bill should be enacted in recognition of the existing expectations of mineral owners and surface owners alike and that its enactment can be accomplished within the parameters of state and federal constitutions, (see Attachment IV).

Larry Kepley testified in support of H.B. 2694.

R. D. Randall testified that passage of H.B. 2694 would be another deterrent to operators wishing to drill wells in Kansas. The effect would be long delays in commencement of wells, higher surface damage payments and increased litigation. He urged the Committee to report H.B. 2694 unfavorably, (see Attachment V).

Representative Heinemann testified in support of this bill, and about the increased problems in the areas of surface damage.

Don Schnache testified in opposition to H.B. 2694. He stated the primary problem with this bill is that it requires an inordinate amount of administrative detail prior to an operator entering a site to drill for oil or gas. He said Sections 2, 3, 4 and 5 contain provisions that are objectionable to all oil and gas operators in Kansas. The oil and gas industry is in no shape to accept extra duties and costs and continue to invest in drilling wells in Kansas, (see Attachment VI).

Rebecca S. Rice testified Amoco is opposed to this legislation not only because they feel it has a negative financial impact, but primarily because they feel that additional governmental interference in negotiating of contracts is unnecessary and counter-productive, (see Attachment VII).

Barney E. Sullivan testified this bill is unnecessary, creates extra expense and adds additional administrative burdens to an already overloaded and overworked judicial system. He urged the Committee not to recommend this bill, (see Attachment VIII).

Ronald E. Hein testified the provisions of H.B. 2694 will do more harm than good. It will provide for more lengthy litigation in the courts and ultimately more expense to everyone. He urged the Committee to report H.B. 2694 with the recommendation that it not be passed, (see Attachment IX).

Representative Douville requested the Committee consider taking action on:

H.B. 2895 - Prohibiting negligence suit by child against parent; by spouse against spouse

Representative Douville moved to report H.B. 2895 favorable for passage. Representative Bideau seconded. The motion passed.

Hearing on H.B. 3002 - Concerning the use of a facsimile signature by the clerks of the district courts

No one came forth to testify on this bill, and the public hearing was closed.

The Committee meeting adjourned at 5:45 p.m. The next meeting will be Tuesday, March 1, 1988, at 3:30 p.m. in room 313-S.

GUEST REGISTER

DATE Feb. 29, 1988

NAME	ORGANIZATION	ADDRESS
[redacted]		
Bob Alderson	Southwest Kansas Royalty Owners Assoc.	Topeka
Ron Pavelka	Kansas Advocacy & Protective Services	Mission
Douglas Phelps	Kansas Advocacy & Protective Services	Manhattan
John Struble		Manhattan
Steven A. Robinson	Ombudsman for Corrections	Topeka

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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: JUDICIARY
MEMBER: LABOR AND INDUSTRY
NATIONAL CONFERENCE OF STATE LEGISLATURES' COMMITTEE ON CRIMINAL JUSTICE

COMMUNITY CONTROL PROGRAM

OVERVIEW

Attachment I

THE CONCEPT OF COMMUNITY CONTROL

I. INTRODUCTION

The Correctional Reform Act of 1983 authorized the implementation of Community Control by the Florida Department of Correction's Probation and Parole Services as an alternative to imprisonment (Chapter 948 Florida Statutes).

Community Control is not intensive probation. It is a distinctively different type of program that is punishment oriented and allows selected offenders to serve their sentences confined to their homes under "house arrest" instead of in prison.

Community Control provides a safe means of punishing criminal offenders which helps address the problem of prison overcrowding without jeopardizing the safety of the community. Instead of the state providing support for the offender and his family, he supports himself and dependents.

Restitution, reparation and punishment are provided which help satisfy the victims of the crime as well as society.

Community Controlees are:

...Confined under "house arrest" to their residence except during regular employment, public service work, or participation in self-improvement activities approved by the Community Control Officers.

...Mandated to do public service work for governmental and non-profit agencies to make reparation to society.

...Required to pay monthly fees to the State to help offset costs to the taxpayers.

...Mandated to fill out "Daily Activity Logs" to account for their time and activities and to help build responsibility and accountability.

...Required to maintain regular and paid employment to support themselves and their families.

...Ordered to submit to urinalysis and/or breathalyzer tests at any time to detect drug or alcohol usage.

...Required to participate in self-improvement programs to enhance their chances of rehabilitation.

Community Control Officers:

...Caseloads are restricted to a maximum of 20 cases to each officer by statute.

...Officers work regularly on Saturdays and Sundays to provide surveillance and control.

...Telephone robots are being used in some locations to help the officer with surveillance.

...Portable radios carried by the officers are tuned to law enforcement frequencies to reduce danger to the officer and improve safety to the community.

...Regular contacts are made by the officer at the community controlee's residence and place of employment and other locations.

...Other court-ordered conditions are enforced which include submitting monthly reports, getting permission to change residence or employment, reporting to office as directed, and not using alcohol to excess.

...Various surveillance techniques are used to help insure that the controlees do not illegally leave their residence.

One of the purposes of community control is to develop responsibility and accountability on the part of the offender for his criminal activity. Performing public service or free labor for public agencies helps to indemnify the community for the misbehavior. At the same time, it helps in improving the offender's feeling of self-worth and accomplishments along with the realization that punishment is a consequence of violating the law.

Public service jobs include unskilled manual labor (56%), clerical (20%), skilled labor and professional work (17%), and miscellaneous (7%). Work is primarily done for governmental agencies (45.2%), non-profit social agencies (33.5%), educational (6.5%), medical (10%), and churches (4.8%).

Local Offender Advisory Councils are utilized to identify public service volunteer jobs for community controlees to comply with court orders. The councils also assist in identifying appropriate community resources which help involve the community controlees in active participation in self-improvement programs.

The community and state benefit:

...Punishment alternatives for the courts are provided without the cost of imprisonment in an institution.

...Costs are much less when comparing $2.86 for community control supervision to $27.65 per day for imprisonment in operating costs (1985-86 FY).

...Prison construction costs are reduced which are presently estimated at about $36,000 per bed (1985-86 FY).

...Community Controlees support themselves and family instead of being a burden to the state which frequently occurs during institutional imprisonment.

...Retribution and restitution to society is provided through public service work.

This Community Control Implementation and Training Manual has been designed to crystalize the philosophy of community control and procedures for implementation and program maintenance.

In addition to this manual a Community Resource Directory has been developed by each Probation and Parole Circuit Office to identify and provide descriptions of resources to be used in community control including public service and other innovations. Also, an Offender Advisory Council and Public Service Guide has been published to aid the development of these advisory councils in various circuits wishing to form them.

COMMUNITY CONTROL II

PROJECT NARRATIVE

COMMUNITY CONTROL II

MODEL PROJECT

I. INTRODUCTION AND BACKGROUND

Prisons and jails continue to fill with offenders who might not need the increased control provided by incarceration, but because of a lack of available alternative punishment sanctions are incarcerated for the protection of the community.

Probation caseloads continue to escalate. Currently, the caseloads are well above 100 per officer level throughout Florida, with safety to the community suffering. This is further confirmed by the increasing rate of probation revocations during the past two years.

The recent study completed in California by the Rand Corporation cite the lack of suitable prison alternatives as the main cause of overburdened probation systems and steeply increasing prison populations. The report concluded that a diversionary alternative somewhere between the two extremes was necessary to provide increased control to a group of offenders who may not need the custody of prison, but are not suitable for probation.

As an alternative to incarceration, Community Control was created by the Legislature and implemented by the Department of Corrections in October 1983. Over the past three years, over 12,000 offenders have been diverted from county jails and prisons, with no heinous crimes committed by the community controlees during that time. This program remains very successful in providing an additional diversionary alternative for the courts while, at the same time, not substantially increasing the risk to the community.

A natural extension of the Community Control Program is Community Control II/Electronic Surveillance. It will introduce electronic monitoring to a select group of offenders to be sentenced to community control with the requirement to wear a bracelet which, along with a telephone receiver and a computer, detects the presence of the offender in his residence. The controlee is under "house arrest" except when at the approved place of employment or performing public service work or other basic necessities which then require prior approval from the community control officer.

II. PURPOSE OF THE PILOT PROJECT

The purpose of the implementation of the Community Control II pilot project is to reduce the number of probation/community control revocations and other offenders currently sentenced to prison. This can be accomplished by offering the judges a diversionary

alternative which provides 24 hours per day continuous electronic surveillance at the offender's place of residence.

A. Goal

The goal of the pilot project is to demonstrate that Community Control II/Electronic Surveillance is an effective diversionary alternative to prison for offenders needing more surveillance than regular community control and/or probation provides. Community control provides certainty of punishment by assuring confinement at home at a reduced cost to the taxpayers when compared to imprisonment, but without an appreciable reduction to the safety of the community.

B. Objectives

The following specific objectives will be measured to determine the success of the project when compared to a similar group of community control cases without electronic surveillance:

1. The number of diversions from prison based on prison commitments in comparable circuits, or based on comparable commitments to prison in prior months.

2. Types of offenders diverted to measure any increased risk to the community in conjunction with the number of revocations reported.

3. Measure the number of revocations sentenced to prison.

4. Determine the rate of offender compliance with the conditions of supervision.

5. Track the number of officer incident reports to gauge safety factor.

6. Review the number and frequency of contacts.

Two major objective areas are to be measured as a result of this project:

1. Does the Community Control II/Electronic Surveillance program provide the same levels of safety as before the implementation of the project?

2. Is the program a legitimate diversionary alternative for the judges in the pilot project area?

III. METHODOLOGY AND IMPLEMENTATION

An agreement will be negotiated with a vendor who is willing to provide sufficient equipment to conduct a project encompassing 40

offenders. The agreement will have the vendor provide a host computer, 40 bracelets/anklets, and 40 receivers.

Since many judges and other criminal justice officials in the Tampa, Hillsborough County area have already expressed interest in an electronic surveillance concept, it is proposed to undertake the project in that area for a period of approximately 11 months.

An experimental and control group would be established to help measure the results in relation to the stated objectives. These two groups would be established from positions and offenders already in the Hillsborough County area and would measure the following objectives:

- Officer and offender performance as they relate to the overall objectives of the pilot project.

- The diversionary impact of the program as measured by the specific objectives of the program.

- Risk to the community as measured by the violation rates of the offenders under supervision.

IV. SPECIFIC OBJECTIVES

A. The number of diversions based on prison commitments in comparable months or comparable circuits in prior months.

This measurable objective is relevant to help determine what effect the availability of Community Control II/Electronic Surveillance has on the number of prison commitments sent to the Department. If the objective of reducing commitments to prison is met, the percentage of prison commitments from probation and community control violators and other selected offenders in Hillsborough County should trend downward during the duration of the pilot project.

B. Types of offenders diverted to measure any increased risk to the community in conjunction with the number of revocations reported.

To help track the type of offender sentenced to the Community Control II/Electronic Surveillance program, staff will complete the Sentencing Guidelines scoresheets on all Community Control II cases to show the types of offenders in the program. A higher point total should be registered by offenders in each crime category referred to the Community Control II Program since it would reflect an offender who needs a greater degree of control.

Additionally, the number and types of violations will be tracked to help show if cases are more likely to be revoked in the Community Control II Program.

C. Number of revocations to prison.

The revocations in the Community Control II Program should be sentenced to prison and for longer terms than ordinary community control cases, since the program has more difficult offenders under supervision. Any number of revocations not resentenced to prison as a result of any violation, probably should be considered inappropriate as to the matter of diversion.

D. Compliance with conditions of supervision for the offender.

Stricter supervision as implied by the Community Control II Electronic Surveillance Program should result in a higher degree of compliance by the offender with certain conditions of supervision. This would be consistent with results achieved in the Workhour Pilot Project which showed that if offenders were afforded closer supervision and more officer time, they accepted responsibility and provided more accountability as a result of the increased presence of the officer in their term of supervision.

E. Number of officer incident reports filed to gauge the effect of the supervision program on officer safety.

If these offenders being sentenced to Community Control II/Electronic Surveillance are indeed diversions from prison and much more likely to be recommitted without increased supervision and control then the risk to staff in the program increases and makes the program potentially more dangerous.

F. Number and frequency of contacts and compliance by the officers with the established contact standards.

If offenders are required by the court to remain confined to their residence except for pre-approved situations, then contacts should be more readily made and less time required by the officers during field monitoring. This should enable the officers to more closely meet the required contact standards and increase officer efficiency.

G. Officer hours required to complete the necessary weekly duties for any given work week are reduced.

The number of workhours should be reduced to lower levels than regular Community Control since these monitoring devices are supposed to be a supervision aide to the officer. Measurement of actual officer workhours completed during an average work week should clearly be reduced if the above premise on work reduction is true.

V. OPERATION

A. Offender eligibility

1. Target populations

a. Offenders sentenced to no more than 7½ years Florida State Prison (FSP) under Sentencing Guidelines.

b. Probation violators who at the time of revocation score thirty (30) months, but no more than 7½ years FSP on sentencing guidelines.

c. Community Control I violators that at the time of the revocation score between 2½ - 7½ years FSP on the sentencing guidelines.

d. Community Control I violators who have demonstrated the need for enhanced surveillance.

2. Other eligibility requirements

a. No significant history of violent behavior in either present or past offense histories, or in mental health episodes.

b. Has a history of reasonable employment stability and the promise of that at program onset.

c. Has no history of significant substance abuse.

d. Has or can procure by past history, a stable residential situation.

e. Must have, or be willing to procure, private line telephone service, concurrent with program onset.

f. Must be a resident within the physical boundaries of the greater Tampa area.

1. All conditions of Community Control I, including special conditions imposed by the Court, shall be applicable to all offenders on Community Control II.

2. Offenders placed in Community Control II must agree to electronic monitoring and must sign the Community Control II Diversion Agreement Form. (See attachment A)

3. After successfully serving a minimum of six (6) months in Community Control II or serving at lease one-half of the Community Control II sentence, the supervising Correctional Probation Officer, with the approval of his immediate supervisor, may recommend to the Correctional Probation Administrator that an offender be returned to the sentencing Court with a recommendation that the offender be placed in Community Control I for the remainder of the sentence.

COMMUNITY CONTROL II

In Florida the Community Control Program is augmented by Community Control II. This enhanced version of Community Control has increase sanctions imposed upon the offender as well as electronic monitoring of the offender. The electronic monitoring is used to monitor the curfew/house arrest provision of the Order placing the offender under supervision.

In Florida, three different electronic monitoring models are used.

The first model is the pager/telephone model. In this model, the offender is given a telephone pager also known as a beeper. The Probation Officer can then have immediate contact with the offender at any given time. The process is simple in that the Probation Officer beeps the offender and the offender then calls the Probation Officer back. The offender gives his/her phone number and the call is verified by re calling. The Probation Officer can then monitor the location of the offender at any given time.

The second model is the verifier. This model is a passive system which is controlled by a personal computer. In this model the computer at random times calls the the offender and the offender must then place a verifier wristlet into a transmitter. A signal is returned to the host computer.

For security purposes the wristlet is attached to the offender by a high density plastic band and riveted together. Weekly the devise and band are checked by the Probation Officer to note any signs of tampering.

The third and last model is the active model. This model works with wristlets and anklets also. This model is active in that it does not require the offender to do anything.

This model uses the wristlet/anklet attached by the high density band.

This model uses a host computer and transmitter. Should an offender stray 150 feet or more away from the transmitter the transmitter will then signal the host computer that a violation has occurred.

In both the passive and active models the host computer retains the information on the hard disk drive and has the ability of printing the results in any data base form the user requests.

The cost basis for an active system run 95,000 for the host computer, supporting software and 40 anklets/wristlets and 40 transmitters.

STATE OF KANSAS

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TOPEKA

HOUSE OF
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COMMITTEE ON
CRIMINAL JUSTICE

Topeka Capital
Feb., 1988

Landlord starts house arrest

NEW YORK (AP) — Angry tenants and a banner reading "Welcome You Reptile" greeted a landlord Friday when he reported to one of his buildings to serve a 15-day sentence of house arrest for not correcting housing violations.

Morris Gross, 77, who lives in a luxury high-rise in the Brighton Beach section, will be confined to a fifth-floor apartment in a building where tenants complain of bugs and rodents, lack of heat and hot water, and leaky ceilings.

His movements will be monitored by an electronic ankle bracelet to make sure he serves his sentence.

A judge convicted Gross of criminal and civil contempt in December after the city Department of Housing Preservation and Development brought action against him for not complying with a court order to correct housing violations.

The judge gave him the choice of either paying $169,000 in fines for 420 violations or serving 15 days of house arrest and spending part of the fines, $137,900, to repair the 113-unit building in Brooklyn.

Asked why Gross chose house arrest, his attorney, Stanley Kopilow, said Gross "wanted to show the judge and the community that this is not as bad as portrayed in the press."

Gross made no comment to the group of angry tenants who shouted at him when he walked into the lobby Friday morning. The landlord, whose meals will be catered, will have a private security guard with him in the apartment during his sentence.

Hutchinson News
Feb., 1988

Monitors put repeat drunks on the line

ANNAPOLIS, Md. — Repeat drunken drivers convicted in a new program are being allowed to keep their jobs, but as soon as the whistle blows they must go home, stay home and stay sober. Big brother will be watching, and calling.

Anne Arundel County has invested $15,000 in 30 video monitoring systems, which are installed in offenders' homes and linked by telephone lines to a master control in the county jail.

Under the program launched Jan. 26, offenders are not watched all the time, but they never know when a jail officer will call and ask them to step before the camera.

"A lot of people say I got off easy, but you're stopped in your tracks at the front door," said one of the first four men sentenced under the program, a three-time offender who agreed to be interviewed on condition his name not be used. "It's not exactly a slap on the wrist, but it's better than sitting in jail."

For this offender, the hardest part of the program is turning over $336 a month — one-fourth of his salary — to the county during his 90-day sentence. "It's a big dent in our pocket," said his wife.

An operator at the the jail dials each offender once, and often twice, a night and instructs him to turn on the video equipment and stand in front of the camera.

The county also has purchased hand-held breath analyzers to make sure the offender is complying with a judge's no-drinking stipulation. The equipment displays alcohol levels in bright red numerals that can be read over the TV monitor.

House detainees also are required to turn over one-quarter of their take-home pay to the county. If an offender's home doesn't have an adequate telephone jack, he has to pay for one.

Violation of any condition brings a jail sentence.

Associated Press photo

Ralph Thomas of the Anne Arundel County Sheriff's Department works with a monitoring system that allows jailers to check on people under house arrest.

Attachment II

Eugene L. Shore

HOUSE JUDICIARY COMMITTEE, REP. BOB WUNCH CHAIRMAN: Testimony of Representative Eugene L. Shore

Proponent for HB 2694.

Mr. Chairman and Members of the Committee:

House Bill 2694 is a surface damage law which would require operators in most cases to notify surface owners and tenants by certified mail of intention to drill before entering a drillsite. Exceptions would include instances of out of state resident surface owners, non-resident surface tenants, unknown heirs, imperfect titles, and surface owners or tenants that can't be located with reasonable diligence.

The notice to surface owners is required to show proposed location and the appropriate date drilling will commence. The operator must attempt to negotiate a surface damage settlement within 5 days after the letter is delivered and before entering the site with heavy equipment.

If no agreement is reached or the operator is unable to contact all parties, he may ask a district court to appoint appraisers who will decide on amount and method of payment for damages. Once the petition is filled the operator may enter the site to drill.

House Bill 2694 would require drilling site damages to be arranged for up front just as all other drilling costs are, whether it be the drilling rig, pits, or crew. It does not in any way attempt to alter any contract or agreement between landowner and mineral owner. It deals only with timing and the process rather than dollar amounts or what is or is not damage.

This legislation was introduced because of increased difficulty with settlement for drilling site damages. The problem has been more visable because of infill drilling which accounted for about 319 new wells during 1987 in my district alone. The farm crisis has also contributed to the problem by causing more and more land to be owned by elderly persons who do not reside on the land, thus are not directly affected by the drilling site damages. This in some instances leaves the tenant to absorb the damage and not be reimbursed. I want to place emphasis on the fact that this bill requires nothing that a reputable operator is not already doing, treating surface damage as a drilling cost and co-operating

Attachment III

with the surface owner and tenant. In fact it provides for a reasonable approach to settling damages for all parties involved whether it be surface owner, tenant or operator. Several states have surface damage law which is much more demanding of the operator. House Bill 2694 is similar to Oklahoma law which has been on the books since 1982, and appears to work very well. I have conferred with surface owners, mineral owners, royalty owners, and legislators from Oklahoma and all agree their law is working very well. I have removed the section most objected to by Oklahoma operators, that being a bonding requirement. The bond I believe could be viewed as punitive, and in many instances difficult to obtain. This legislation is intended to be fair and equitable to all parties involved.

You could say oil and gas production is a production or a show.

The surface owner provides the stage,

The mineral owner provides the product,

The operator and the driller put on the show, and reap the profits

If they can't afford the stage, they shouldn't try to produce the show.

This legislation gives the surface owner and tenant a chance to take care of what is already his.

Thank you for your attention. I'd be happy to stand for questions.

MEMORANDUM

TO: HOUSE JUDICIARY COMMITTEE

FROM: W. ROBERT ALDERSON ON BEHALF OF SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

RE: 1988 HOUSE BILL NO. 2694 - - SURFACE DAMAGES ACT

DATE: FEBRUARY 29, 1988

1988 House Bill No. 2694 deals with damages to land caused by oil and gas operators. Five states (Oklahoma, Montana, South Dakota, North Dakota and West Virginia) have enacted laws on this subject, and HB 2694 is patterned after the Oklahoma statute.

HB 2694 represents a departure from the common law. Real property has at least two separate estates, including the surface estate and the mineral estate. Under the common law of Kansas, the oil or gas lessee or owner of the mineral estate is entitled to reasonable use of the surface which is necessary or convenient for exploration and development of its interest. The mineral owner has an implied easement for such purpose, and the surface owner is not entitled to any compensation for damages sustained from the mineral estate owner's reasonable use of the surface, unless the parties expressly agree otherwise. See Trotter v. Wells Petroleum Corp., 732 P.2d 797, 11 Kan. App. 2d 679 (1987). This common law principle is based on the rationale that it is necessary to imply reasonable use of the surface; otherwise, the owner of the mineral estate would be without the means to remove the minerals.

HB 2694 would alter the common law, by shifting liability from the surface owner to the operator of the mineral estate, and it requires the operator to enter into negotiations with the surface owner and surface tenant prior to entering upon the land. If agreement cannot be reached, appraisers are appointed to recommend a settlement figure. The bill does not deprive the mineral owner of its right to use the surface, but makes it agree upon damages before drilling may commence.

This alteration of common law raises two constitutional issues. The first is whether the bill would violate the contract clause of the U.S. Constitution, which provides that no state shall pass a law which impairs the obligation of contracts. In this regard, the U.S. Supreme Court has held that a state's police power is a part of the state's sovereign authority and must be incorporated by implication into contracts as a part of existing state law. Manigault v. Springs, 199 U.S. 473, 481-83 (1905).

Attachment IV

This means that every contract entered into recognizes that a state may use its police powers to protect the "health, safety, morals or general welfare" of its citizens even if it would change an existing contract. Penn Central Transp. Co. v. New York, 438 V.S. 104, 125 (1978).

The second issue is whether requiring the operator of a mineral estate to compensate for surface damages is a partial taking of the operator's implied surface easement. If this is a taking within the contemplation of the 14th Amendment to the U.S. Constitution, the state may only do so if it is for the public benefit and the state must pay the operator just compensation. On the other hand, it is is a valid exercise of police power, no compensation is necessary.

In dealing with mineral and surface estates, the U.S. Supreme Court has stated that property rights are subject to regulation through the state's police power, but if the state's action reaches a certain magnitude it must be through the exercise of the power of eminent domain with the requirement of compensation. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413 (1922). To help make the distinction between eminent domain and police power the U.S. Supreme Court has said: "At least where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must be viewed in its entirety." A mere decrease in value was not enough, because the property could be used for a profit. Andrus v. Allard, 444 U.S. 51, 65-66 (1979). Applying this to the proposed legislation, although the mineral estate owner will have to pay additional costs, it is not prevented from profiting from the use of his estate.

Like the Oklahoma statute, HB 2694 does not specifically enumerate any public purposes. Other states (Montana, North Dakota, South Dakota and West Virginia) have specifically stated the purpose of their laws is to protect individuals engaged in agricultural production, since the economies of these states depend upon agriculture. It seems that this purpose should also apply to Kansas. Other broad public purposes which might be considered include encouraging efficient land use, assuring fairness in dealings between surface owners and mineral owners and eliminating the uncertainty in the law as to what exactly constitutes reasonable use of the surface.

Two Oklahoma cases have dealt with the constitutionality of the act and have upheld it. The North Dakota act also has been upheld in Murphy v. Amoco, 759 F.2d 552 (8th Cir. 1984). The first Oklahoma case is Davis Oil Company v. Cloud, 57 O.B.J. 2885 (November 18, 1986). This case held that the Oklahoma Surface Damages Act was constitutional and did not impair vested contractual or property rights of mineral owners. The court recognized that there was a property right in the mineral owner to go upon the surface estate for the purpose of developing the minerals, but there was no property right that allowed a mineral owner reasonable use of the surface in developing the minerals. Reasonable and necessary use was construed to be a standard of liability or defense which the legislature was empowered to abolish or modify. The court found the Oklahoma act

reasonably balanced the competing interests of the surface and mineral owners and furnished a mechanism where actual damages to the surface arising from the development of minerals could be determined.

This decision was supported and reiterated in Santa Fe Minerals, Inc. v. Simpson, 735 P.2d 1026 (Okl. App. 1987). The court held that instructions that the "reasonable and necessary" standard should be applied in assessing damages to the surface was erroneous and the Surface Damages Act had taken the place of the common law.

We believe these Oklahoma cases to be instructive, since HB 2694 is patterned substantially after the Oklahoma law considered in these cases. Thus, there is ample authority to support a conclusion that, if HB 2694 is enacted, the application of its requirements to existing oil and gas leases is constitutionally valid.

Finally, we would note that the current practice of the major operators in the Hugoton Field is to compensate the surface owner for damages to the surface, and such compensation is not merely limited to damages to growing crops. Normally, after the well is drilled, companies are offering damages to surface owners which, generally fall within the following ranges of compensation: $1,500 to $3,000 for pasture land; $2,000 to $4,000 for cultivated dry land; and $3,000 to $5,000 for irrigated land. Thus, HB 2694 is not requiring anything different from the prevailing practice for most of the major companies.

Such practice may have legal implications, as well. As one commentator has suggested, if an enactment such as HB 2694 is predicated on the correct assumption that those engaged in the extractive industries expect to and do pay for costs associated with the use of the surface, the constitutional concerns are diminished. "[I]f the mineral owners have no genuine expectation of free surface use then no expectation interest exists that is entitled to due process protection." Polston, "Surface Rights of Mineral Owners - - What Happens When Judges Make Law and Nobody Listens," 63 N.D. Law Review 41, 58-59 (1987).

It is respectfully submitted that this is the case in Kansas, and that HB 2694 should be enacted in recognition of the existing expectations of mineral owners and surface owners alike and that its enactment can be accomplished within the parameters of our state and federal constitutions.

TO: House Judiciary Committee
BY: R. D. Randall, Petroleum, Inc., Wichita, Ks.
RE: Opposition to H.B. #2694 February 29, 1988

STATEMENT

Mr. Chairman and Members of the Committee: I am Dick Randall, General Counsel for Petroleum, Inc., a Kansas based independent oil and gas producer. I am also Chairman of the KIOGA Legislative Committee. We strongly oppose H.B. 2694 being considered by this committee.

Petroleum, Inc. is a Kansas based independent oil and gas producer operating in Kansas and several other states. We currently own and operate about 300 producing wells in Kansas. We have been participating in the drilling of about 50 test wells in Kansas each year. We also drill wells in several other states, including Oklahoma and North Dakota. Those two states have oil and gas surface damage laws similar to H.B. 2694.

Since 1948, Petroleum, Inc. has drilled over 2,600 wells in Kansas. All surface damages for those 2,600 wells have been settled voluntarily, without a single lawsuit, under terms of the oil and gas leases. You can understand from this record why Petroleum, Inc. strongly believes passage of H.B. 2694 would be detrimental to it and the Kansas oil and gas industry.

H.B. 2694 would apply to all oil and gas wells drilled in Kansas, including wells drilled on existing oil and gas leases. This is clearly an interference with private contracts for such existing leases. I will outline the effect of this proposed legislation as follows:

Section 2 - Requires written notice to surface owner and tenant prior to operator moving on lease.
Requires operator to begin damage negotiations within 5 days.

Section 3 - Written contract to be signed prior to moving equipment on lease.
If disagreement, operator must petition District Court for appointment of appraisers prior to entry on lease.
Three appraisers shall determine damages and file report within 30 days.

Section 4 - Either party may appeal appraisers' damage finding to the District Court for jury trial.

Section 5 - Court may award treble damages if operator knowingly moves equipment on lease before notice or obtaining signed agreement.

It is obvious that fair damage settlements can be made only after the drilling and clean up operations are complete. Only then can the extent of actual damages be seen and correctly valued. The effect of similar surface damage bills in other states has been to radically increase the amount of damages paid by operators. Since actual damages cannot be known in advance, landowners naturally seek maximum settlements to cover the worst case senario.

Unfortunately, must costly litigation has resulted from this type of surface damage law in Oklahoma and North Dakota. In a recent Oklahoma case, a District Court jury awarded $14,000 damages for a redrilling operation. The operator

Attachment V

had already paid $6,000 damages for the same well location a year earlier. Operators' legal fees exceeded $10,000 in that case.

In a North Dakota case, the jury awarded $9,000 initial damages, plus $500 per year annual damages for a waterflood injection well. The well requires a surface area about 20' square on barren sheep pasture with no permanent access road. The total cost of this case to the operator, including attorneys fees was $38,000.

It is no secret that oil and gas drilling activity in Kansas is at its lowest point since World War II. Passage of H.B. 2694 would be another deterrent to operators wishing to drill wells in Kansas. The effect would be long delays in commencement of wells, higher surface damage payments and increased litigation. We urge you to report H.B. 2694 unfavorably!

* * * * * *

KIOGA
KANSAS INDEPENDENT OIL & GAS ASSOCIATION
500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297

February 29, 1988

TO: House Judiciary Committee

RE: HB 2694

HB 2694 is intended to provide that before entering upon a site for oil or gas drilling, an operator must give to the surface owner a written notice of intent to drill and must negotiate with the surface owner for the payment of site damages. KIOGA is opposed to this bill for many reasons.

The operative provision of HB 2694 are Section 2, 3, 4, and 5. Each of these sections contain provisions that are objectionable to all oil and gas operators in Kansas. If passed, each section of HB 2694 would place an administrative burden on oil and gas operators and could result in a nightmare of pre-drilling difficulties.

The Bill

Section 2 of HB 2694 would require an operator to give to a surface owner and any surface tenant a written notice of intent to drill containing a designation of the proposed location and the approximate date that drilling is to commence. Notices are to be given by certified mail, although "constructive notice" can be given if the whereabouts of a surface owner or surface tenant cannot be ascertained. Section 2 further provides that within five days of the date of delivery of the notice of intent to drill, it is the duty of the operator and the surface owner to enter into good faith negotiations to determine surface damages.

Section 3 would require the parties to agree to surface damages and enter into a written contract before the operator can enter a drilling site with heavy equipment. If, however, an agreement is not reached, the operator must petition the district court in the county in which the drilling site is located for appointment of appraisers to make recommendations to the parties and the court concerning the amount of surface damages, if any. Once the operator has petitioned for the appointment of appraisers, the operator may enter the site to drill.

In the event that appraisers have to be selected, the operator will select one appraiser, the surface owner will select another, and the two selected appraisers will choose a third appraiser for appointment by the court. The court is to select the third appraiser if the two appraisers selected by the parties

Attachment VI

cannot agree on the third appraiser. Under subsection (c) of Section 3 the appraisers are to inspect the real property and consider the surface damages that the owner has sustained or will sustain by reason of entry upon the land and the drilling or maintenance of oil or gas production on the real property. The appraisers are required to file a written report within thirty days of the date of their appointment with the clerk of the district court. The appraisers are required to make an evaluation and determine the amount of compensation to be paid by the operator to the surface owner and the manner in which the amount shall be paid. The operator and the surface owner are to share equally in the payment of the appraisers' fees and court costs.

If the appraisers' results are unacceptable to either party, the aggrieved party can file exceptions or demand a jury trial to have damages calculated. In the event that a court orders a new appraisal, the operator will have a continuing right of entry on the real property subject to the continuance of a bond. (Nowhere in the legislation, however, is a bond discussed or required.)

Section 4 of HB 2694 provides that any aggrieved party may appeal from the decision of the court on exceptions to the report of the appraisers or the verdict entered in a jury trial. An appeal will not serve to delay drilling operations on a site if the operator has deposited the amount of the appraisers' or jury award with the clerk of the district court.

Section 5 provides that upon presentation of evidence that the operator willfully and knowingly entered upon the premises for the purpose of commencing the drilling of a well before giving notice of such entry or without the agreement of the surface owner, the court, in a separate action, may award treble damages. The issue of noncompliance is to be a fact question, determinable without jury and a de novo issue in the event of appeal.

Any damages collected pursuant to the act do not preclude the surface owner or surface tenant from collecting additional damages caused by the operator at a subsequent date.

Discussion

The primary problem with HB 2694 is that it requires an inordinate amount of administrative detail prior to an operator entering a site to drill for oil or gas. In fact, an operator, under HB 2694, is required to give notice to a surface owner, enter into negotiations to set surface damages, and may be required to hire appraisers and actually litigate site damages at the beginning of a drilling project. These requirements will significantly add to drilling costs and discourage exploration by small operators.

Further, this bill assesses damages up-front and does not give the operator the opportunity to clean up a site or repair site damages on their own. Thus, the bill creates an additional windfall for land owners and will discourage operators from cleaning up a site on their own by taking away all incentive to do so.

Going still further, in the event that an aggrieved party appeals from the decision of the court or the jury verdict, the operator is required to deposit with the clerk of the district court the entire amount of the award of the appraisers' or the jury verdict. This has the effect of requiring the operator to pay a considerable amount of money up-front before a return on the drilling is realized.

Finally, the treble damages provision places a considerable burden on the operator to make sure that all the provisions of law are followed. If not, the operator may be subject to treble damages as a result of still another trial.

In summary, HB 2694 creates a tremendous number of problems for oil and gas operators with little or no benefits to the industry. We think the normal oil and gas lease sufficiently provides for the payment of damages. The lease is a recorded legal instrument and the landowner is entitled to damages under the lease--an agreement that can be enforced in every district court in Kansas.

Our industry has operated for years without those extraordinary remedies provided in HB 2694. Our industry is in no shape to accept extra duties and costs to continue to invest in drilling wells in Kansas. We urge you to report HB 2694 unfavorably!

Donald P. Schnacke

TESTIMONY TO THE
HOUSE JUDICIARY COMMITTEE
BY REBECCA S. RICE
ON BEHALF OF THE AMOCO CORPORATION
HOUSE BILL 2694
FEBRUARY 29, 1988

Mr. Chairman, and members of the committee:

My name is Rebecca Rice and I am legislative counsel for Amoco Corporation.

Amoco is opposed to HB 2694 due to the fact that it would unduly restrict the ability of two parties to a contract to negotiate. You have heard the opposition arguments before me with which Amoco concurs. In addition, we would like to note that similar legislation has been passed in Oklahoma where it has been found that this type of legislation does not necessarily work to the benefit of anyone but most especially the surface owners. Amoco Production Company's experience in Oklahoma with similar legislation is that the mandate acts as a ceiling rather than a floor price.

Amoco Production Company's normal practice in the State of Kansas is to negotiate with a surface owner on surface damages. Under this type of legislation, appraisers will be utilized who will use lease language to appraise damages which will very seldom result in a greater sum to the land owner. The additional expense to Amoco Production will not be in the form of additional damage settlements to landowners but will come in the form of a greater number of preparation days before drilling.

In most instances, the strict language of the contract requires Amoco Production to only pay for actual damages to growing crops. If HB 2694 is passed, it is our belief that the Kansas experience will be similar to the Oklahoma experience which is that the settlement will be based on a strict reading of the written contract and negotiations will cease. It is Amoco Production's experience that non-negotiation does not foster good will and that neither side feels good about the settlement offer.

Amoco is opposed to this legislation not only because they feel it has a negative financial impact but primarily because they feel that additional governmental interference in negotiating of contracts is unnecessary and counter-productive.

Thank you for allowing me to testify on this House bill. I would stand for any questions.

Attachment VII

Eastern Kansas Oil & Gas Association, Inc.
15 N. Lincoln • Box 355 • Phone 431-1020
Chanute, Kansas 66720

Barney E. Sullivan
Executive Director

February 29, 1988

TO: Mr. Chairman and Members of the Committee

RE: House Bill No. 2694

This bill is not one that EASTERN KANSAS OIL & GAS ASSOCIATION can support as it is detrimental to the industry and the surface owner and/or tenant.

This creates delays and unnecessary stumbling blocks for our operator and potentially so for the landowner/tenant. As an example, the operator must drill or lose a lease and the landowner is on vacation. Then the provision is the operator must hire a lawyer and petition the court to assign appraisers to effectively arbitrate a dispute which isn't there. Much added expense that our industry doesn't need and most landowner/tenants(farmers)in a similarly distressed industry certainly don't deserve or need.

Few appraisers can appraise damages that have yet to occur. An example here is an appraiser can project damage done to a wet field and for whatever reason the drilling is delayed and the land is dry upon entry - damages would have been dramatically overstated. Again, a greater expense for the operator - in this case, a windfall for the landowner. Expenses inflated by a lawyer's fees and appraisal fees, court costs and the damages themselves.

I personally reviewed thirty eight (38)currently utilized oil and gas lease forms, as published by the Kansas Blueprint Company, and have found that all, save one, have the following terminology. "When requested by the lessor, the lessee shall bury his pipelines below plow depth and lessee shall pay for damages caused by its operations to growing crops on said land".

We, as operator/lessee, will bury the pipeline at our expense in itself creating damages and that any damage to a growing crop will be compensated - this will include a road that provides ingress and egress to the producing well.

I find every well drilled creates damages and should that well be successfully completed will create further damages. There are very few controversies that go so far as to require legal arbitration.

(continued next page)

Attachment VIII

Re: House Bill No. 2694 February 29, 1988

In short, this type of punitive legislation is already contemplated in the printed forms and should this not be adequate for either party that format may certainly be amended. This bill is unnecessary, creates much extra expense and adds additional administrative burdens to our already overloaded and overworked judicial system.

Thank you for the opportunity to voice our opposition to this bill.

I urge you to vote no after consideration of House Bill No. 2694.

Sincerely,

EASTERN KANSAS OIL & GAS ASSOCIATION, INC.

Barney E. Sullivan

Barney E. Sullivan
Executive Director

BES:je

Attachment

F 8—(Producers) 1-43 **B** **OIL AND GAS LEAS.** © KANSAS BLUE PRINT 264-9344 793 1650 South Broadway • Wic... NC ...s 67211

AGREEMENT, Made and entered into_____, 19____, by and between:

_____

_____

_____

_____

_____Party of the first part, hereinafter called lessor (whether one or more) and

_____Party of the second part, hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of_____DOLLARS, cash in hand paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto said lessee, for the sole and only purpose of mining and operating for oil and gas, and laying pipe lines, and building tanks, power stations and structures thereon to produce, save and take care of said products, all that certain tract of land, "together with any reversionary rights therein," situated in the County of_____ State of _____, described as follows, to-wit:

_____

_____

_____

_____

of Section_____ Township_____ Range_____and containing_____acres more or less.

It is agreed that this lease shall remain in full force for a term of_____years from this date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee, or the premises are being developed or operated.

In consideration of the premises the said lessee covenants and agrees:

1st. To deliver to the credit of lessor, free of cost, in the pipe line to which he may connect his wells, the equal one-eighth (⅛) part of all oil produced and saved from the leased premises.

2nd. The lessee shall pay to lessor for gas produced from any oil well and used by the lessee for the manufacture of gasoline or any other product as royalty ⅛ of the market value of such gas at the mouth of the well; if said gas is sold by the lessee, then as royalty ⅛ of the proceeds of the sale thereof at the mouth of the well. The lessee shall pay lessor as royalty ⅛ of the proceeds from the sale of gas as such at the mouth of the well where gas only is found and where such gas is not sold or used, lessee shall pay or tender annually at the end of each yearly period during which such gas is not sold or used as royalty, an amount equal to the delay rental provided in the next succeeding paragraph hereof, and while said royalty is so paid or tendered this lease shall be held as a producing lease under the above term paragraph hereof; the lessor to have gas free of charge from any gas well on the leased premises for stoves and inside lights in the principal dwelling house on said land by making his own connections with the well, the use of such gas to be at the lessor's sole risk and expense.

If no well be commenced on said land on or before_____19____, this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor, or to the lessor's credit in The_____Bank at _____or its successors, which shall continue as the depository regardless of changes in the ownership of said land, the sum of_____DOLLARS, which shall operate as a rental and cover the privilege of deferring the commencement of a well for twelve months from said date. In like manner and upon like payments or tenders the commencement of a well may be further deferred for like periods or the same number of months successively. All such payments or tenders of rental may be made by check or draft of lessee or any assignee thereof, mailed or delivered on or before the rental paying date either direct to lessor or assigns or to said depository bank. And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred. Lessee may at any time execute and deliver to Lessor, or place of record, a release or releases covering any portion or portions of the above described premises and thereby surrender this lease as to such portion or portions and be relieved of all obligations as to the acreage surrendered, and thereafter the rentals payable hereunder shall be reduced in the proportion that the acreage covered hereon is reduced by said release or releases.

Should the first well drilled on the above described land be a dry hole, then, and in that event, if a second well is not commenced on said land within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payment of rentals in the same amount and in the same manner as herein before provided. And it is agreed that upon the resumption of the payment of rentals, as above provided, that the last preceding paragraph hereof, governing the payment rentals and the effect thereof, shall continue in force just as though there had been no interruption in the rental payments.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid the lessor only in the proportion which his interest bears to the whole and undivided fee. However, such rental shall be increased at the next succeeding rental anniversary after any reversion occurs to cover the interest so acquired.

Lessee shall have the right to use, free of cost, gas, oil, and water produced on said land for its operation thereon, except water from wells of lessor.

When requested by lessor, lessee shall bury his pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall pay for damages caused by its operations to growing crops on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the lessee shall commence to drill a well within the term of this lease or any extension thereof, the lessee shall have the right to drill such well to completion with reasonable diligence and dispatch, and if oil or gas, or either of them, be found in paying quantities, this lease shall continue and be in force with the like effect as if such well had been completed within the term of years herein first mentioned.

If the estate of either party hereto is transferred, and the privilege of transferring in whole or in part is expressly allowed, or if the rights hereunder of either party hereto are vested by descent or devise, the covenants hereof shall extend to and be binding on the heirs, devises, executors, administrators, successors, or assigns, but no change in the ownership of said land or of any right hereunder shall be binding on the lessee until after lessee has been furnished with the original or a certified copy thereof of any transfer by lessor or with a certified copy of the will of lessor together with a transcript of the probate thereof or, in the event lessor dies intestate and his estate is being administered, with a transcript of the administration proceedings or, in the event of the death of lessor and no administration being had on the estate, with an instrument satisfactory to lessee executed by lessor's heirs authorizing payment or deposit or tender for deposit to their credit as hereinbefore provided, at least thirty days before said rentals and royalties are payable or due, and it is hereby agreed in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said lands upon which the said lessee or any assignee thereof shall make due payments of said rentals. In case lessee assigns this lease, in whole or in part, lessee shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment. If the leased premises are now or hereafter owned in severalty or in separate tracts, the premises, nevertheless, may be developed and operated as an entirety, and the royalties shall be paid to each separate owner in the proportion that the acreage owned by him bears to the entire leased area. There shall be no obligation on the part of the lessee to offset wells on separate tracts into which the land covered by this lease may hereafter be divided by sale, devise, or otherwise, or to furnish separate measuring or receiving tanks for the oil produced from such separate tracts.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof and may reimburse itself from any rental or royalties accruing hereunder.

The terms, covenants, and conditions hereof shall run with said land and herewith and shall be binding upon the parties hereto, their heirs, administrators, devisees, executors, successors and assigns; however, all express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor lessee held liable for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation.

_____

_____

_____

Whereof witness our hands as of the day and year first above written.

_____ _____(SEAL)

_____ _____(SEAL)

_____ _____(SEAL)

_____ _____(SEAL)

_____ _____(SEAL)

_____ _____(SEAL)

STATE OF_____
COUNTY OF_____ } ss. ACKNOWLEDGMENT FOR INDIVIDUAL (Kans., Okla., and Colo.)

Before me, the undersigned, a Notary Public, within and for said county and state, on this_____ day of_____, 19____, personally appeared_____ and_____,

to me personally known to be the identical person__who executed the within and foregoing instrument and acknowledged to me that_____executed the same as_____free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My commission expires_____ _____
Notary Public.

STATE OF_____
COUNTY OF_____ } ss. ACKNOWLEDGMENT FOR INDIVIDUAL (Kans., Okla., and Colo.)

Before me, the undersigned, a Notary Public, within and for said county and state, on this_____ day of_____, 19____, personally appeared_____ and_____,

to me personally known to be the identical person__who executed the within and foregoing instrument and acknowledged to me that_____executed the same as_____free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My commission expires_____ _____
Notary Public.

STATE OF_____
COUNTY OF_____ } ss. ACKNOWLEDGMENT FOR CORPORATION

On this_____day of_____, A. D., 19____, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared_____, to me personally known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its_____President and acknowledged to me that_____executed the same as_____free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My commission expires_____ _____
Notary Public.

No._____

OIL AND GAS LEASE

FROM

TO

Date_____, 19____

Section_____ Twp_____ Rge_____

No. of Acres_____ Term_____

County_____

STATE OF_____ } ss:
County of_____

This instrument was filed for record on the _____ day of_____ 19____ at_____ o'clock___M., and duly recorded in Book_____ Page_____ of the records of this office.

Register of Deeds.

By_____

When recorded, return to_____

THE KANSAS BLUE PRINT CO.
1650 SOUTH BROADWAY WICHITA, KANSAS
REPRODUCTION SERVICES UP-TO-DATE OIL MAPS

NOTE: When signature by mark in Kansas, said mark to be witnessed by at least one person and also acknowledged. For acknowledgment by mark, use regular Kansas acknowledgment.

STATE OF_____
COUNTY OF_____ } ss. ACKNOWLEDGMENT FOR INDIVIDUAL (Kans., Okla., and Colo.)

Before me, the undersigned, a Notary Public, within and for said county and state, on this_____ day of_____, 19____, personally appeared_____ and_____,

to me personally known to be the identical person__who executed the within and foregoing instrument and acknowledged to me that_____executed the same as_____free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My commission expires_____ _____
Notary Public.

TESTIMONY TO THE
HOUSE JUDICIARY COMMITTEE
BY RONALD R. HEIN
ON BEHALF OF THE MESA LIMITED PARTNERSHIP
HOUSE BILL 2694
FEBRUARY 29, 1988

Mr. Chairman, members of the Committee:

My name is Ron Hein, and I am legislative counsel for Mesa Limited Partnership. I appreciate the opportunity to speak today in opposition to HB 2694.

I can well understand the motives behind the introduction of this legislation, as I am certain that there have been some drilling companies in the past which have not been responsible for properly remediating damages caused by drilling operations. However, this legislation does not just provide a remedy against the unprofessional drillers. It sets out a cumbersome, expensive, and disruptive procedure which also operates against responsible producers such as Mesa who do properly remediate and negotiate damages.

The problem with this legislation is that it also subjects the good drilling company to abuse and damages by unscrupulous landowners. In short, there are horror stories to be told on both sides.

The provisions of HB 2694 will do more harm than good, will provide for more lengthy litigation in our courts, more clogged dockets, and, ultimately, more expense to everyone. In addition, since a right to trial by jury is provided for in the act, and since there are already significant cases required by law to have priority when being heard by the district courts, this act will cause months if not years of delay between the filing of intents to drill and the actual drilling.

To require such procedures when an adequate remedy at law already exists is totally inappropriate. This bill will have the effect of punishing many people in order to protect a few. This entire concept flys in the face of our basic American judicial system in many respects, including the concept of prior restraint, the concept of prejudgment attachment, ex post facto interference with contractural rights, and several other traditional legal doctrines.

Mesa Limited Partnership complies with voluntary standards with regards to payment of damages for drilling and makes every effort to properly compensate and remediate and negotiate at all times.

In short, we would urge the committee to report HB 2694 with the recommendation that it be not passed.

Thank you again for permitting us to testify, and I would be happy to yield for any questions.

Attachment IX