Approved: 3-25-98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 18, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Powell (excused)
Representative Adkins (excused)
Representative Wilk (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Representative Krehbiel
Bernie Nordling, Southwest Kansas Royalty Owners Association
Kenneth Glenn
Jack Black, Attorney from Pratt, Kansas
Mark Betzen
Lee Thompson-written testimony only
George Barbee
Jeff Kennedy, Attorney, Northern Natural Gas Company
Ron Gaches, Pete McGill and Associates
Jay Henderson, Williams Company
Jack Glaves, Attorney, Southwest Gas Storage

Others attending: See attached list

The Chair called the meeting to order.

**HB 2522** **Condemnation: underground storage of natural gas; requirements; interest taken; compensation**

The Chair called on Representative Krehbeil to testify.

Representative Krehbeil testified in support of **HB 2522**. Representative Krehbeil stated that the purpose of **HB 2522** is to review the eminent domain procedure as it relates to the condemnation of underground gas storage reservoirs and to amend current law where appropriate to assure the protection of private property rights. Representative Krehbeil referred to his written testimony and discussed the seven specific things to be accomplished with **HB 2522**. Representative Krehbeil discussed the issues leading to the 1993 legislation and he discussed the problems resulting from that legislation.

Representative Krehbeil referred to Exhibit 1, showing the location of facilities for Northern Natural Gas Company. Exhibit 2 lists underground storage fields in Kansas that are currently used that do not exist in productive gas fields. Representative Krehbeil stated that Exhibit 3 shows the Cunningham field, once a large producer of natural gas whose fields cross county lines. Exhibit 4 is a close-up map of the Cunningham field showing the use of surface for underground storage. Exhibit 5 shows a cross section of the underground composition of the Cunningham field. (Attachment 1)

Representative Krehbeil referred to written testimony of Lee Thompson, Attorney with Triplett, Woolf & Garretson, LLC which discusses the lack of clarity concerning retroactive application of K.S.A. 55-1210. Mr. Thompson also discusses whether subsection ( c) of K.S.A. 55-1210 should be read apart from subsections (a) and (b). (Attachment 2)

Jack Black, Attorney, Pratt, Kansas testified in support of **HB 2522**. The conferee stated that he had

recently been involved in litigation and is currently involved in an appeal of litigation which arose out of the changes made in Article 12 of Chapter 55 in 1993. The 1993 legislation was an attempt to remedy problems perceived by the gas storage companies when their gas migrated from their storage formations. The conferee stated that a number of inequalities have been encountered by the landowners due to the 1993 legislation. The conferee discussed the practice of using the same rules of condemnation for land values in gas storage as are used for highways. The conferee discussed negotiations with natural gas companies which were fair and then negotiations with companies where the owner is not fairly compensated and does not have the funds to fight the condemnation action. The conferee discussed the amount of pressure use to extract natural gas by some companies and suggested that underground formations could be cracked due to excessive pressure. The conferee discussed the amount of surface land that some companies take as being excessive. The conferee suggested that the legislature should consider ways to convert the salt water around the storage fields into fresh water. (Attachment 3)

Kenneth Glenn testified in support of **HB 2522**. The conferee discussed his case with Northern Natural Gas Company. The conferee stated that he was offered an $5 per acre lease. The conferee stated that the lease would give Northern Natural Gas Company wide-open use of surface land. The conferee stated that if he wanted to build a pond, or corral or any other improvement on his property, he would have to negotiate with Northern Natural Gas Company.

Mark Betzen testified in support of **HB 2522**. The conferee stated that he operates an irrigated farm and his concern is for maintaining pure water. The conferee discussed the salt water flushing process used by underground gas storage facilities. The conferee stated that the rights of the landowners need to be considered.

Bernie Nordling, Southwest Kansas Royalty Owners Association, testified in support of **HB 2522**. The conferee stated that he is a practicing attorney from Hugoton. The conferee related information on the background of the Southwest Kansas Royalty Owners Association. The conferee discussed the background of **HB 2522**. The conferee stated that **HB 2522** was introduced to solve some of the problems created by **SB 168** passed during the 1993 legislative session. The conferee noted that a correction of the statute number should be made in his written testimony. The statute cited should be K.S.A. 55-1210 instead of K.S.A. 12-1210. The conferee related further information regarding the history and case history relating to underground storage issues. The conferee stated that the rights of the lessor and the obligation of the lessee should be considered. (Attachment 4)

Conferee Nordling and the Committee members discussed issues concerning Missouri and Oklahoma statutes, and the Anderson case. Discussion regarding the definition of the interest taken followed. Conferee Black described the Simpson formation. Questions regarding eminent domain and the criteria used to appraise property were raised and discussed.

George Barbee introduced Jeff Kennedy, Attorney, Northern Natural Gas Company. Conferee Kennedy testified in opposition to **HB 2522**. The conferee stated that **HB 2522** would make significant changes to current law with the deletion of the definition of "native gas," and with the addition of a definition of "suitable for underground storage of natural gas." The Conferee Kennedy stated that the biggest problem with this bill is with the certification process to find that gas can not escape from a particular formation. The conferee stated that there is no way to make that determination. The conferee stated the distinction, as defined by the legislature in 1951, between native and non-native gas is significant. The conferee stated that this bill will delete all reference to "native gas" (Attachment 5)

The Committee members and conferee discussed issues concerning Northern Natural Gas Company and payments in Kingman and Pratt counties. The Committee members and conferee discussed both vertical and lateral migration of natural gas. Issues concerning who should be protected when there is drilling activity along the edge of a storage field were discussed.

Ron Gaches, Pete McGill and Associates, introduced Jay Henderson, Williams Company. Conferee Henderson addressed his Company's concerns regarding **HB 2522**. The conferee stated that this bill will be detrimental to the citizens of Kansas and that this bill might discourage natural gas companies from further investment in the state. The conferee stated that the current law is fair. The conferee stated that this bill will move the title of natural gas away from the storage facilities. The conferee stated that this bill will encourage drilling around the boundaries of storage fields. The conferee stated that this bill sets forth an unreasonable standard for certification that the natural gas will not migrate. The conferee stated that there is a limited number of storage sites in Kansas. The conferee discussed the interstate pipeline system and working gas inventory. (Attachment 6)

The Committee members and conferee discussed how the difference between native and stored gas was

determined. There was discussion of the language referring to suitability of the reservoir and that the condemnation process proceeds the determination of suitability. The Committee members and conferee Henderson discussed gas migration and surface rights as well as the amount of compensation paid to landowners. The Committee discussed with the conferee the monitoring of the pressure used in the gas storage process. Conferee Henderson stated that the Natural Gas Companies must comply with FREC regulations.

Jack Glaves, Attorney, Southwest Gas Storage, testified in opposition to **HB 2522**. The conferee related information to the Committee on situations prior to the 1993 legislation. The conferee stated that **HB 2522** would revert Kansas law back to pre-1993 laws and have an effect on eminent domain laws. The conferee stated that this bill will change the methodology of determining damages because it changes the way damages are measured. The conferee discussed the problem of appraising the land to be used for storage. The conferee discussed the Kansas eminent domain and seizure act. (Attachment 7)

Conferee Glaves stated that on page 3, line 29 of the bill, the statute reference should be K.S.A. 55-1204 instead of K.S.A. 16-1204.

Conferee Glaves suggested that a comprehensive study been done on **HB 2522**.

The Chair closed the hearing on **SB 2522**.

The Chair adjourned the meeting at 5:50 p.m.

The next meeting is scheduled for February 18, 1998.

# HOUSE JUDICIARY COMMITTEE
# GUEST LIST

DATE: 2-18-98

| NAME | REPRESENTING |
|---|---|
| John V. BLACK | Self. |
| Kenneth Glena | SELF |
| MARK BETZEN | SELF |
| KEITH R LANDIS | CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS |
| Jay Allen | Williams |
| Jay Henderson | " |
| Debbie Beaver | " |
| Jeff Kennedy | Northern Natural |
| Doug Smith | SWKROA |
| Ron Gaches | McGill & Asso - Williams Co. |
| Mary Hillis | SRS-CFS |
| Shannon Mangiameli | SRS CFS |
| Steve Luthye | Mid Continent Market Center |
| Carne Reecht | Brad Smoot |
| Susan anderson | Heim + Weir |
| Heather Randall | Whitney-Lawson, PA |
| Sharon Ann Brown | KS Govt Consult. |
| SARAH KOCHBIGL | Self |
| | ACLU |
| Kathy Porter | OJA |
| | KTLA |

# HOUSE JUDICIARY COMMITTEE
# GUEST LIST

DATE: 2-18-98

| NAME | REPRESENTING |
|---|---|
| John Linegar | Southwest Kansas Royalty Owners Association |
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STATE OF KANSAS

ROBERT E. KREHBIEL
REPRESENTATIVE, 101ST DISTRICT
RENO COUNTY
P.O. BOX 7
PRETTY PRAIRIE, KANSAS 67570
(316) 459-6464
STATE CAPITOL, ROOM 272-W
TOPEKA, KANSAS 66612-1504
(913) 296-7647

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
INSURANCE
JUDICIARY
TAXATION

# Bullet Points of What H. B. 2522 Does

- Returns to the Rule of Capture as expressed in Union Gas Company v. Carnahan.

- Requires payment of rental value for the unauthorized past use of a reservoir that has been filled with leaking gas. This must be done before condemnation is permitted or the value will be determined in condemnation.

- Requires itemization of the interests being condemned for clarity in valuation.

- Limits the interest which can be condemned to a leasehold interest.

- Clarifies the meaning of the term "suitable" for gas storage purposes so it is clear that communication between reservoirs cannot be deemed "suitable"for gas storage.

- Requires an independent study by the K. C. C. at the expense of the gas storage operator to assure an impartial an unbiased determination.

- Allows condemnation proceeding to occur in one County where the proposed storage system exists in more than one County.

House Judiciary
2-18-98
Attachment 1

# HOUSE JUDICIARY COMMITTEE

TESTIMONY OF
ROBERT E. KREHBIEL
ON
H. B. 2522

February 18, 1998

## PURPOSE OF H. B. 2522

The power of eminent domain may be delegated by the legislature to private corporations which discharge a public duty, or are designed to promote the public convenience. The legislature of this state has delegated that power to various entities including railroad companies, public utility companies and other public service companies.

Private property cannot, however, be taken without "just compensation". When the legislature authorizes corporate entities to exercise the power of eminent domain it must assure that the rights of Kansas property owners are adequately protected.

The purpose of H. B. 2522 is to review the eminent domain procedure as it relates to the condemnation of underground gas storage reservoirs and to amend current law where appropriate to assure the protection of private property rights.

## BACKGROUND

Storing natural gas in depleted underground reservoirs which were once productive of natural gas has become a well accepted practice in the natural gas industry. Issues relating to the underground storage of natural gas are not, however, the focus of most lawyers' practices. Therefore, I thought it might be necessary to briefly discuss the physical facts which lead to the legal issues.

Attached to my testimony are several exhibits, taken from a K. C. C. Docket , which simplify the explanation of facts. The first exhibit depicts an entire gas transportation system beginning with production in West Texas through consumption in the major population centers of the Northeast. Natural gas is transported by pipeline buried in the ground. There is no other economically viable method of transporting natural gas. The power of eminent domain is often utilized in the acquisition of pipeline right of way.

With the discovery of natural gas in abundance in the Hugoton Field natural gas soon proved to be the fuel of choice for residential heating purposes. Natural gas is clean, cheap and environmentally friendly. It quickly replaced coal and oil as the primary fuel for residential heating. Soon the major population centers of the U. S. became dependent upon a plentiful and reliable supply of natural gas to meet their home heating needs.

Above ground storage of natural gas was impossible so natural gas was simply left in the reservoir where it was found until needed. Gas wells were shut in or production was greatly curtailed during warm summer months with low consumer demand, and they were opened to full blow during cold winter days to meet high consumer demand. There were times, however, when demand exceeded the deliverablility of the wells on the system and the potential for human hardship existed.

Thus a public interest existed in obtaining economical gas storage which could accumulate gas during off peak periods of demand for delivery during peak periods of demand. Underground gas storage meets this need. The problem of meeting peak consumer demand for natural gas could only be solved by the use of underground storage of gas. Depleted oil and gas fields were being effectively converted into vast storage containers. However, suitable formations for underground storage of natural gas do not exist in all states. A formation must possess a high degree of porosity in order to accommodate large quantities of gas and must also possess a high degree of permeability to allow the gas to be injected and withdrawn rapidly. In addition to these requirements, the formation must be sufficiently sealed geologically to prevent migration of the injected gas.

Kansas has proven to be a significant provider of underground gas storage formations. There are twenty underground gas storage fields in Kansas currently in use. The second exhibit attached to my testimony, which is a memorandum from Jim Hemmen on staff with the K. C. C., will show you where those gas storage fields are located. They are located in most parts of Kansas, including Johnson, Jefferson, and Leavenworth Counties as well as the more prolific producing areas of Southwest Kansas.

The third exhibit is an example of an old gas producing field on the Kingman-Pratt County line which has been converted to a gas storage field. The fourth exhibit is a land map of this same field which illustrates the surface boundaries of the storage field, the well locations, of which there are about 74 wells including 52 injection/withdrawal wells, the pipelines connecting the system together and the compressor station. The final exhibit is a well log illustrating a porous and permeable section of the upper Viola Formation about 4100 feet beneath the surface, an impermeable Kinderhook shale on top of the Viola formation, and an impermeable Simpson Shale at the base of the Viola formation. This formation, within the parameters of the surface boundaries, constitutes a gas storage field which was determined by the K. C. C. to be suitable for gas storage.

## STATUTORY HISTORY

With the underground storage of natural gas there developed many legal problems involving the interrelationship between a gas company or a storage operator and the owners of land or mineral interests included within the storage reservoirs. Some of the most significant problems relate to the acquisition of rights to the underground formation and title to the injected gas.

In the case of Strain v. Cities Service Gas Co., 148 Kan. 393, 83 P2d 124(1938), Cities Service Gas Company had acquired gas storage lease agreements from all but one of the landowners of the depleted South Welda Gas Field consisting of 4,000 acres. J. Phillip Strain refused to lease his land and Cities proceeded to condemnation. Strain sought an injunction to prevent the taking. The Court held that "the statute granting gas companies the right to condemn land for pipeline purposes was not intended by the legislature to be so broad as to authorize a natural gas public utility to condemn the entire subsurface of adjoining lands for the underground storage of gas."

Thus the power of eminent domain did not apply to the underground storage of natural gas and gas companies were forced to negotiate private gas storage agreements with the appropriate land owners. There was nothing to change the law of Kansas in this regard until 1951 when the legislature enacted what is now K. S. A. 55-1201 through 1205 relating to the underground

storage of natural gas. These statutes create the power of eminent domain for any natural gas public utility and are attached to my testimony for your reference. These statutes recognize the public interest and welfare in utilizing underground gas storage and require, as a condition precedent to exercising the power of eminent domain, that any natural gas public utility desiring to exercise the power of eminent domain obtain a certificate from the K. C. C. setting out their findings that 1) that the underground stratum or formation sought to be acquired is suitable for the underground storage of natural gas and that its use for such purposes is in the public interest; and, 2) the amount of recoverable oil and native gas, if any, remaining therein. Once a certificate is obtained from the K. C. C. the natural gas public utility can utilize the condemnation procedure set out in K. S. A. 26-501 through 516, the same statutes ordinarily used for highway condemnation and other common condemnation purposes.

No cases were reported under these statutes for many years. It was not until stored natural gas was discovered in areas not certificated by the K. C. C. that economically significant issues reached the Supreme Court for consideration. Leaking underground gas storage systems raised serious questions of title to the gas and damages to adjoining lands.

The first significant case to reach the Kansas Supreme Court was Anderson v. Beech Aircraft Corp., 237 Kan. 336, 699 P2d 1023 (1985). This action pertains to the Stalnaker gas reservoir underlying the Beech Aircraft Corporation's land as well as the adjoining farm owned by Lowell L. and Aileen R. Anderson. In years past native gas was produced from the Stalnaker reservoir and after a substantial depletion thereof Beech Aircraft Corporation bought gas from interstate pipelines and injected it through wells located on Beech's property into the Stalnaker reservoir where it was stored for later use by Beech in its plant. The Anderson's leased their farm for oil and gas to Avanti Petroleum which drilled a well into the Stalnaker reservoir on the Anderson farm. Avanti was producing both native gas and gas previously injected for storage by Beech in the Stalnaker reservoir. Anderson brought an action to quiet title, to recover damages for slander of title and trespass, and for an accounting. The basic dispute was over the ownership of non-native gas injected by Beech for gas storage and which the plaintiff now seeks to produce. The Court recognized the Rule of Capture holding that natural gas in the ground is part of the real estate until it is actually produced and severed, at which point it becomes personalty. The Kansas Court cited a Kentucky case which analogized oil and gas to wild animals to animals ferae naturae. It noted that ownership in birds and wild animals becomes vested in the person capturing or reducing them to possession. However, when restored to the natural wild and free state, the dominion and individual proprietorship of any person over them is at an end and they resume their status as common property. The Kentucky Court concluded that the gas company could not be liable for trespass because the gas company no longer owns the gas.

The Kansas Court, after analyzing K. S. A. 55-1201 through 1205 stated that " in order to carry out the legislative intent and to adopt a rule which will be fairest and most beneficial to the people of this state...the law of capture should be applied". "We are also convinced that by applying the law of capture, as traditionally followed in this state, the court would be carrying out the Kansas statutory scheme as set forth in K. S. A. 55-1201 et seq. Thus the plaintiff in Beech could keep the gas which it was producing but could not recover damages resulting from trespass and slander of title. The defendant, Beech Aircraft, lost its ownership of the stored gas after injecting it into the reservoir in this case.

The Court in Anderson went on to say that "in the event the legislature should determine that

it would be in the best interests of the people of Kansas to adopt different legal principles to regulate the storage of gas, that is a matter for future legislative action."

But before legislative action occurred a second case of significance arose, Union Gas Company v. Carnahan, 245 Kan. 80, (1986). In this case Union Gas had acquired the abandoned wells in a depleted gas field and had obtained gas storage leases from area landowners. A subsurface geological reservoir known as the "Squirrel" sandstone formation underlay lands in Montgomery County, Kansas. The reservoir was a prolific producer of natural gas in the early part of the century but became depleted by the 1940's. The Squirrel formation became a gas storage reservoir known as the North Liberty Gas Storage Field. Union began injecting gas for storage in the field in 1952. The Squirrel formation proved to be well suited for natural gas storage, as it effectively accepted 4 billion cubic feet of gas with market value of $10 million.

But the boundaries of the Squirrel sandstone formation were not sufficiently defined. In 1954 Harold DeTars purchased land close to the north boundary of the field. For the next 13 years Union unsuccessfully attempted to obtain a storage lease on the DeTar's land because they were concerned some of its injected gas was migrating there. As gas was injected into the center of the storage field it pushed gas to the perimeter of the reservoir. In this case it was pushing gas under the DeTar's land and was re-pressuring old wells which had been drilled many years earlier.

The decision in Anderson v. Beech created an opportunity for DeTars to produce injected gas from the re-pressured wells. DeTars leased his land to an oil operator named Carnahan and they completed two wells in the Squirrel sandstone formation with the obvious intention of tapping the gas storage reservoir. But the trial court refused to grant a temporary injunction against further production from the DeTar wells holding that Union had an adequate remedy at law through condemnation pursuant to K. S. A. 55-1201 et seq. Thus on March 11, 1986, Union finally decided to exercise its right as a natural gas public utility to condemn the DeTar subsurface to which its injected gas had migrated. On January 13, 1986, the K. C. C. issued Union a Certificate permitting Union to proceed to condemnation of the DeTar land.

But the Court continued to apply the Rule of Capture with respect to gas produced from the DeTar's land prior to January 13, 1986. The Court stated that "K. S. A. 55-1201 through 1205 was enacted in 1951 and was available to Union in 1952 when it first began using the Squirrel sandstone formation for underground storage. Union chose not to use this remedy and thus placed itself under the rule of Anderson. It is not entitled to recover for any of its gas produced by the DeTars prior to January 13, 1986, the date of the Commission's certificate."

With respect to gas produced after January 13, 1986, the Court stated that " since Union established itself as a public utility and was authorized to store gas underground by the Commission certificate issued January 13, 1986, it thereafter acquired a changed status. Its operation was given official sanction and its gas was identified. Thereafter it became an exception to the Rule of Capture expressed in Anderson." Thus the Court allowed Union to set-off the value of the gas taken after January 13, 1986, against the amount of the award in condemnation to DeTars, but continued to apply the Rule of Capture to gas taken by DeTars prior to January 13, 1986.

The decision in the Union Gas case was not satisfactory to some gas storage operators. When a similar case of gas escaping from a storage unit arose in Elk County, the operator approached the legislature with a bill which became law and is now found at K. S. A. 55-1210. The effective date of this statute was July 1, 1993. This statute is also attached to my testimony for

your reference. The purpose of the statute is to abolish the Rule of Capture as it applies to natural gas reduced to possession and then injected into underground reservoirs for gas storage, no matter whether the reservoir has been certificated by the K. C. C. as suitable for gas storage. 55-1210(a) states that "all natural gas which has previously been reduced to possession, and which is subsequently injected into underground storage fields, sands, reservoirs and facilities, whether such storage rights were acquired by eminent domain or otherwise, shall at all times be the property of the injector "...and (c) provides that where " natural gas has migrated to adjoining property or to a stratum..which has not been condemned or purchased...the injector shall not lose title to or possession of such gas if such injector can prove by a preponderance of the evidence that such gas was originally injected into the underground storage." Clearly the new statute changed the law in the Union Gas case which applied the Rule of Capture to any gas produced prior to certification by the K. C. C. but the next question was whether it applied to gas taken prior to July 1, 1993, the effective date of the statute, from an area not certificated by the K. C. C.. That is the problem described in letter dated February 12, 1998, from Lee Thompson, addressed to the Committee for your consideration.

With the exception of the situation cited by Lee Thompson the new section at K. S. A. 55-1210 eliminated most problems relating to title to injected storage gas in favor of the operators of natural gas storage systems. It did, however, create a whole new series of problems for landowners whose property rights are being condemned and raises serious constitutional questions as well as questions of fairness and just compensation. The purpose of H. B. 2522 is to address those issues.

The trade-off in K. S. A. 55-1210 was to allow the injector to retain title to the injected gas but required him to pay damages for allowing it to leak form the defined storage unit. K. S. A. 55-1210 simply provides that the "owner of the stratum and the owner of the surface shall be entitled to such compensation, including compensation for use of or damage to the surface or substratum, as is provided by law." That language sounded fair to the Energy Committee which heard this bill in 1993 and the equities of retaining title to storage gas in the party who had borne the cost of first reducing it to possession seemed fair as well. My own experience with independent oil and gas operators has been that they are extraordinarily protective and respectful of the private property rights of individual landowners and this bill would solve those problems. That did not, however, prove to be the case. The primary shortcoming of this statute was that it did not provide (for damages)by law. While the law was drafted as a result of apparent intentional invasions of gas storage systems by adjoining operators the equities appeared to fall clearly with the storage gas operators. But more recent cases of leaking storage gas are the result of innocent exploration operations discovering that gas has either migrated beyond the boundaries of the gas storage system or has leaked out of the formation it was supposed to be in to a completely new and un-certificated formation. The exploration efforts are then lost to condemnation and the landowner will discover that his land has been used for gas storage for many years without compensation. The equities of this situation are considerably different than in the case of the intentional taking.

## ISSUES ADDRESSED BY H. B. 2522

Gas public utilities, now without fear of losing title to gas which might leak from its storage system, can access adjoining lands, claim title to gas produced and condemn the acreage. The

gas public utility will then be allowed to set off any award in condemnation against any gas recovered by the landowner or landowner's lessee. But what of the adjoining landowner's rights? The Rule of Capture has been eliminated. He no longer owns the oil and gas which migrates beneath his property. He cannot reduce it to possession and claim it as his own. Can he now sue for trespass? If the gas storage company has been utilizing his property for many years, charging customers for its use, can the landowner recover for the rental value of the storage space? The exploratory value of his acreage is greatly reduced by the trespassing gas, his right to the exclusive possession and quiet enjoyment of his land has been eliminated by underground trespassing gas and the right to the use of his surface to the exclusion of all others is overrun by pipelines, compressor stations, injection wells and drilling equipment. If the trespass has gone on for many years the gas utility has enjoyed the free use of storage space, a use for which it charges its consumers, without compensation to the landowner. In addition, circulating storage gas will often flush valuable condensates from the reservoir walls, property belonging to the landowner. Will the landowner be awarded just compensation for the loss of all of these property rights? Not in condemnation. At least one district court ruled that landowners could not recover for past damages in the condemnation proceeding. They would have to bring a separate lawsuit in district court for trespass.

These issues are addressed in H. B. 2522:

1. In 1973 a natural gas public utility files an application with the K. C. C. to prove that the Viola Formation underlying certain lands in Kingman and Pratt Counties is suitable for the storage of natural gas. The public utility's expert witnesses will tell the K. C. C. that the Viola formation is a separate and distinct reservoir and not in communication with any other. In the absence of any evidence presented to the contrary the K. C. C. will authorize the public utility to proceed with the injection of natural gas for storage purposes.

Twenty years later a landowner within the storage area will lease his ground to an oil operator to drill into all formations except the Viola Formation. The oil operator then drills into the Simpson Formation and completes a gas well. The gas storage operator then claims, contrary to what it told the K. C. C. twenty years earlier, that the Simpson was actually in communication with the Viola Formation and the gas which the oil operator had discovered was actually gas which had been injected into the Viola Formation. The storage operator wants all the gas back that is presently in the Simpson Formation and all the gas that the oil and gas producer had produced from it. The gas storage operator will prove with a preponderance of the evidence that the gas in the Viola was injected gas. The cost of expert witnesses to meet that burden of proof will exceed $500,000. In most situations the landowner will not be financially capable of defending his interests.

In addition data relevant to the Simpson formation will have been polluted after twenty years of circulating gas. Injecting and withdrawing gas from a reservoir acts as a secondary recovery method. Additional condensate will be stripped from the reservoir and collected at the surface. The owner of the Simpson formation will not be paid for his interest. In some cases the recovery will represent several million dollars worth of condensate and the storage operator will simply keep this revenue.

It will also be scientifically impossible to determine what caused communication between the Viola and Simpson formations. Fracture and acid treatments by the storage operator may have

cause the communication or there may be some areas of limited porosity in the barrier shales. But it will be impossible to determine with any degree of certainty.

H. B. 2522 will resolve these problems. Landowner's will be entitled to the gas in place at the time the K. C. C. certifies that the reservoir is suitable for gas storage. This will assure that the gas storage operator will be certain that the proposed storage reservoir does not leak and assure that an independent study will be accomplished. H. B. 2522 does this. It will return to the Rule of Capture set forth in the Union Gas v. Carnahan.

2. The Statute at 55-1210 purports to trade off title to the gas for "damages provided by law". The problem with this language is that the statute did not go on to provide by law. Instead a landowner is left to defend a condemnation action with a court that is unwilling to consider damages resulting from the past value of the use of storage space or trespass. The landowner must then sue in district court based on common law trespass and unjust enrichment. Counsel for the gas public will promptly remove the case to federal district court which, when coupled with the extraordinary costs of expert witnesses necessary to prove these complex issues will leave most landowners without a remedy. The practical aspects of K. S. A. 55-1210 is to allow the gas public utility to use the threat of condemnation as a hammer to acquire the bulk of the acreage trespassed upon from passive landowners for minimal compensation. The landowners who do not settle will be condemned without having been paid damages and they will have to bring a separate lawsuit to attempt to recover those damages. A few landowners who are financially capable will do this. The rest will accept the award in condemnation. This reselts in awards in three different amounts for landowners in the same area. This is not acceptable procedure and breeds contempt for the law and lawyers. H. B 2522 resolves this. It simply requires that settling damages for past use and trespass be a condition precedent to condemnation and if it cannot be negotiated it becomes a part of the condemnation award.

3. In addition H. B 2522 clarifies the meaning of the term "suitable" as it applies to a gas storage reservoir. It should be made clear that suitable does not simply mean that if you put gas in a reservoir you can get it back out. It should be clear that the injection of gas should not pollute adjoining reservoirs in the area. H. B. 2522 clarifies this by defining suitable to mean a separate and distinct stratum or formation from which natural gas cannot escape.

4. Where the storage area exists in more than one county condemnation proceedings should proceed in the county where the majority of the land is located. When two groups of appraisers determine values substantially different awards will result for landowners in the same area. This fosters disrespect for the appraisal process and for the procedure of the Court. H. B. 2522 will make this minor change in current law.

5. A question common to the general area of the law of eminent domain is what type of interest in the realty does the condemnor receive? This question has particular relevance to condemnation for underground storage of natural gas because the statutes are silent upon this point. H. B 2522 will define the interest to be condemned as a leasehold interest and not a fee interest. This will allow the landowner to retain title to any condensates flushed from his underground reservoir on a leasehold basis and assure that large volumes of condensate are not simply handed to the gas storage operator without compensation. In one Kansas storage field

over 100,000 barrels of condensate was flushed from the storage reservoir with the circulation of storage gas. This represents a value of $2 million, depending on the price of oil, a substantial property interest which may well escape valuation in condemnation proceedings. H. B. 2522 will allow the landowner to receive a lessor's share of this production.

6. The surface interests to be condemned should be delineated, defined and valued in condemnation. Allowing the condemnation of an open easement for surface uses would allow the gas storage operator to utilize whatever part of the surface he might choose. Such a right to an open easement is the power to totally consume the property and should be compensated with the payment of fair market value of the full fee interest. This will not likely be awarded in condemnation as the appraisers will simply be advised that only certain lines will be laid and only certain wells will be drilled when in fact, the operator is condemning the right to lay as many lines and drill as many wells as they might care to. Such a right, whether exercised or not, is tantamount to taking a fee interest. Condemnation should clearly define the interests being acquired and should not exceed the needs of the storage operator.

Thank you very much for the opportunity to address this important issue. I will try to answer any questions which you might have.

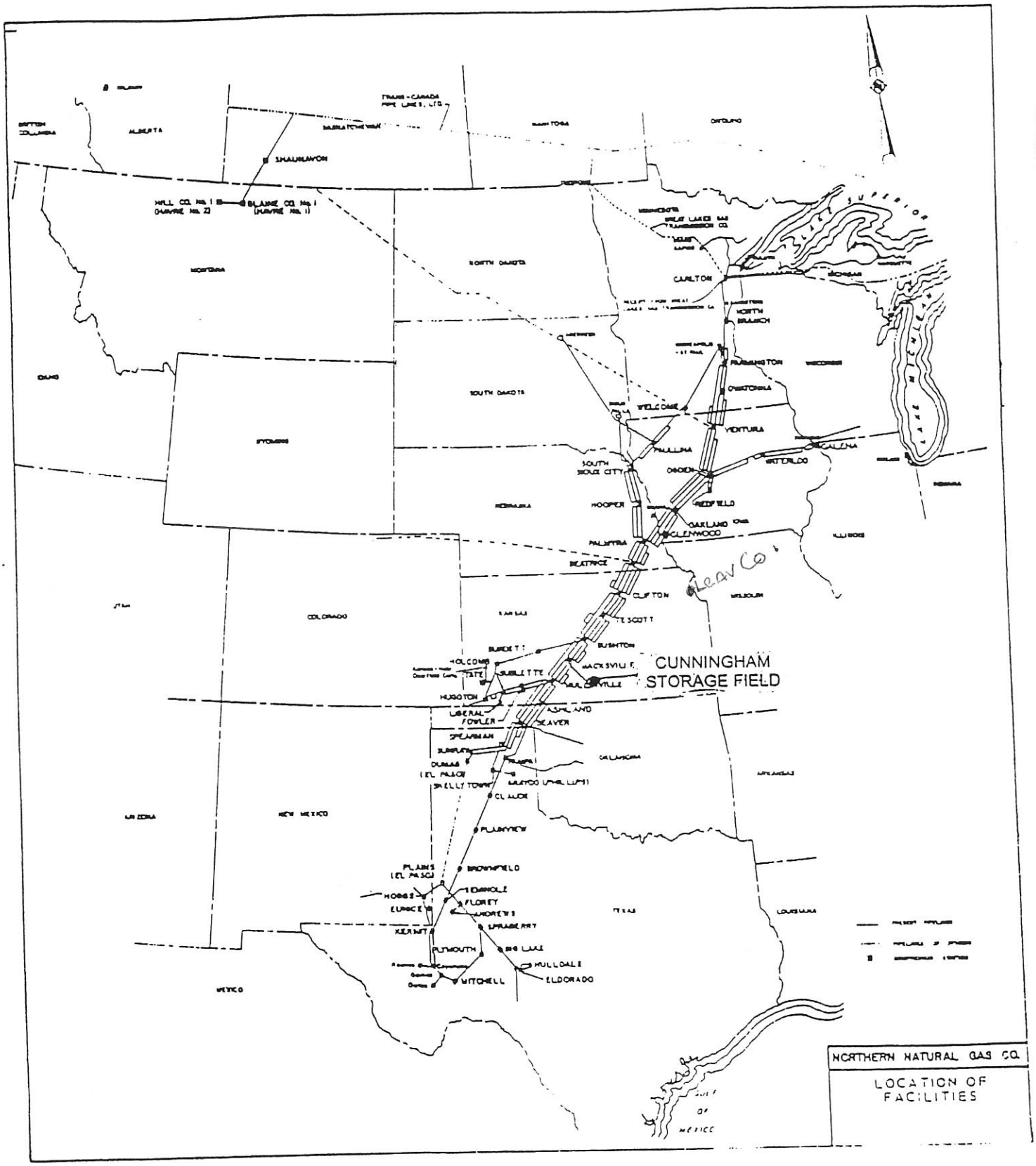



EXHIBIT JWR-A1
DOCKET # 190,406-C (C-27,265)

EXHIBIT 1

**MEMORANDUM**

DATE: January 3, 1997

TO: Theresa James - Adams & Malone

FROM: Jim Hemmen J. H.

RE: Underground Storage Fields In Kansas That Are Currently In Use

20 storage

Here is the information which you requested by telephone earlier today.

| Storage Field Name | County In Which Situated | Owner/ Operator | Approx. Year Put In Service |
|---|---|---|---|
| Adolf | Barton | Natural Gas Clearinghouse | 1964 |
| Cunningham | Pratt | Northern Natural | 1978 |
| Lyons | Rice | Northern Natural | 1971 |
| Boehm | Morton | Colorado Interstate Gas Company | 1979 |
| Richfield | Morton | Richfield Gas Storage System, Inc. | 1992 |
| Elk City | Elk | Williams Natural Gas Company | ~~N/A~~ 1958 |
| South Welda | Anderson | Williams Natural Gas Company | ~~N/A~~ 1937 |
| North Welda | Anderson | Williams Natural Gas Company | ~~N/A~~ 1934 |
| Colony-Welda | Anderson | Williams Natural Gas Company | ~~N/A~~ 1953 |

EXHIBIT 2

M.L. Korphage, Conservation Division Director
Conservation Division, Wichita State Office Building, 130 S. Market, Room 2078, Wichita, Kansas 67202-3802 (316) 337-6200

2
1-11

| Storage Field Name | County In Which Situated | Owner/ Operator | Approx. Year Put In Service |
|---|---|---|---|
| McLouth | Jefferson/ Leavenworth | Williams Natural Gas Company | ~~N/A~~ 1954 |
| Craig | Johnson | Williams Natural Gas Company | ~~N/A~~ 1931 |
| Alden | Rice | Williams Natural Gas Company | ~~N/A~~ 1960 |
| Konold, East | Pratt | Natural Gas Clearinghouse | 1991 |
| Buffalo | Wilson | United Cities Gas Storage Company | 1965 |
| Fredonia | Wilson | United Cities Gas Storage Company | N/A |
| Liberty | Montgomery | United Cities Gas Storage Company | 1963 |
| Liberty, South | Montgomery/ Labette | United Cities Gas Storage Company | 1963 |
| Yaggy | Reno | Western Resources Corp. | 1994 |
| Borchers | Meade | Southwest Gas Storage Company | 1974 |
| Brehm | Pratt | Western Resources Corp. | 1981 |

There are (I think) two inactive gas storage fields currently in existence.

Hope that this helps

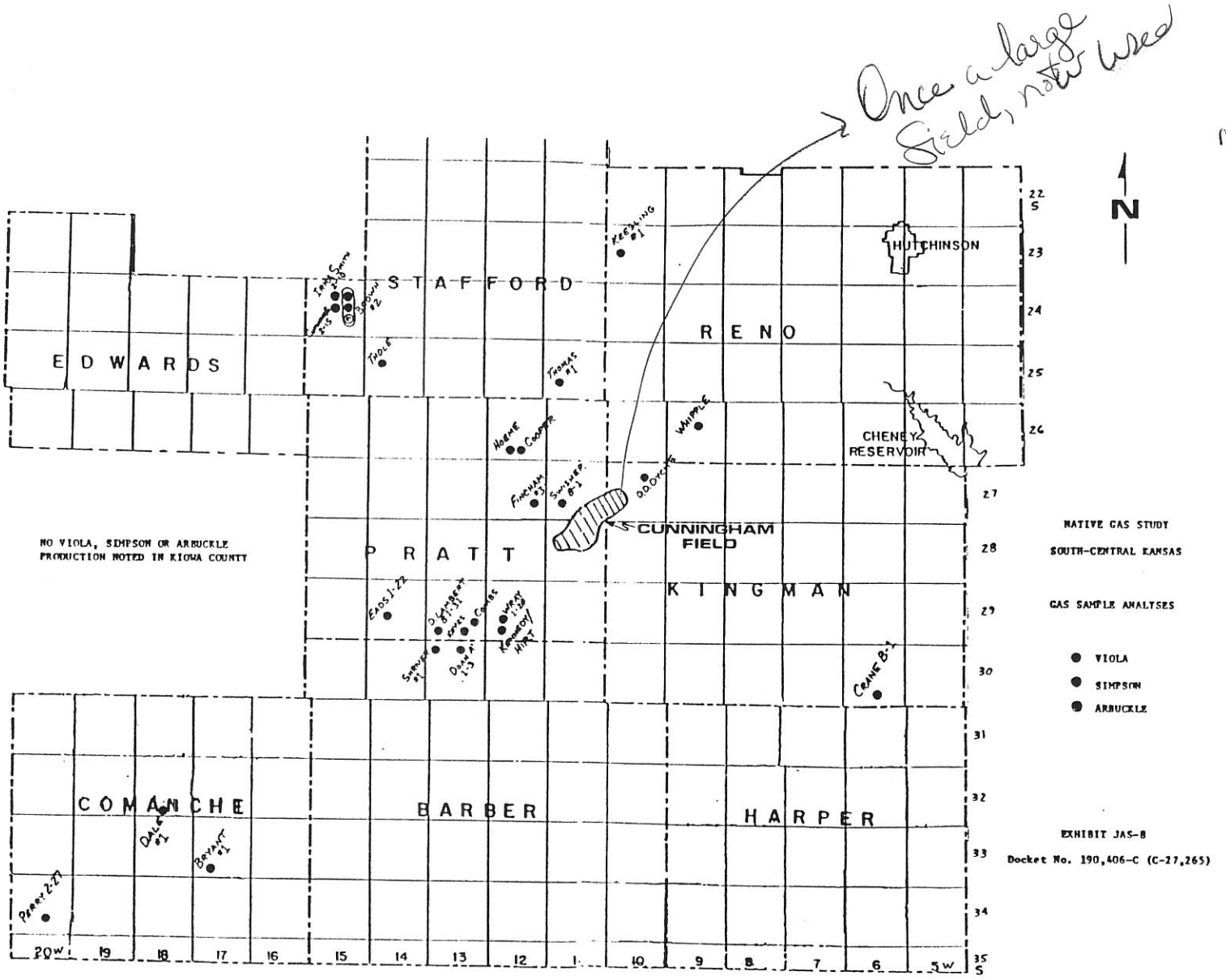
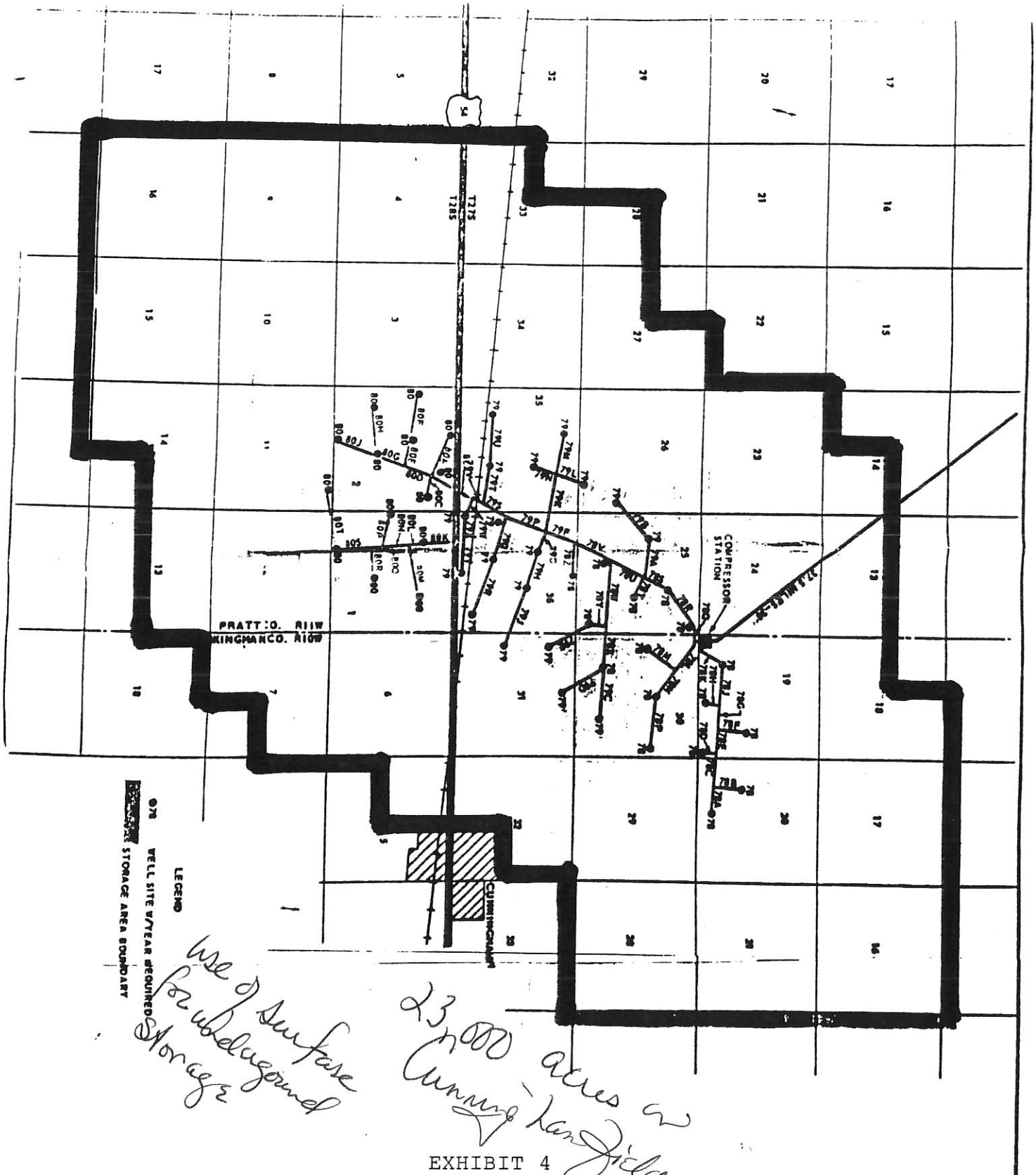



EXHIBIT 3

3 1-13




Use of surface for underground storage

23,000 acres in Cunningham field

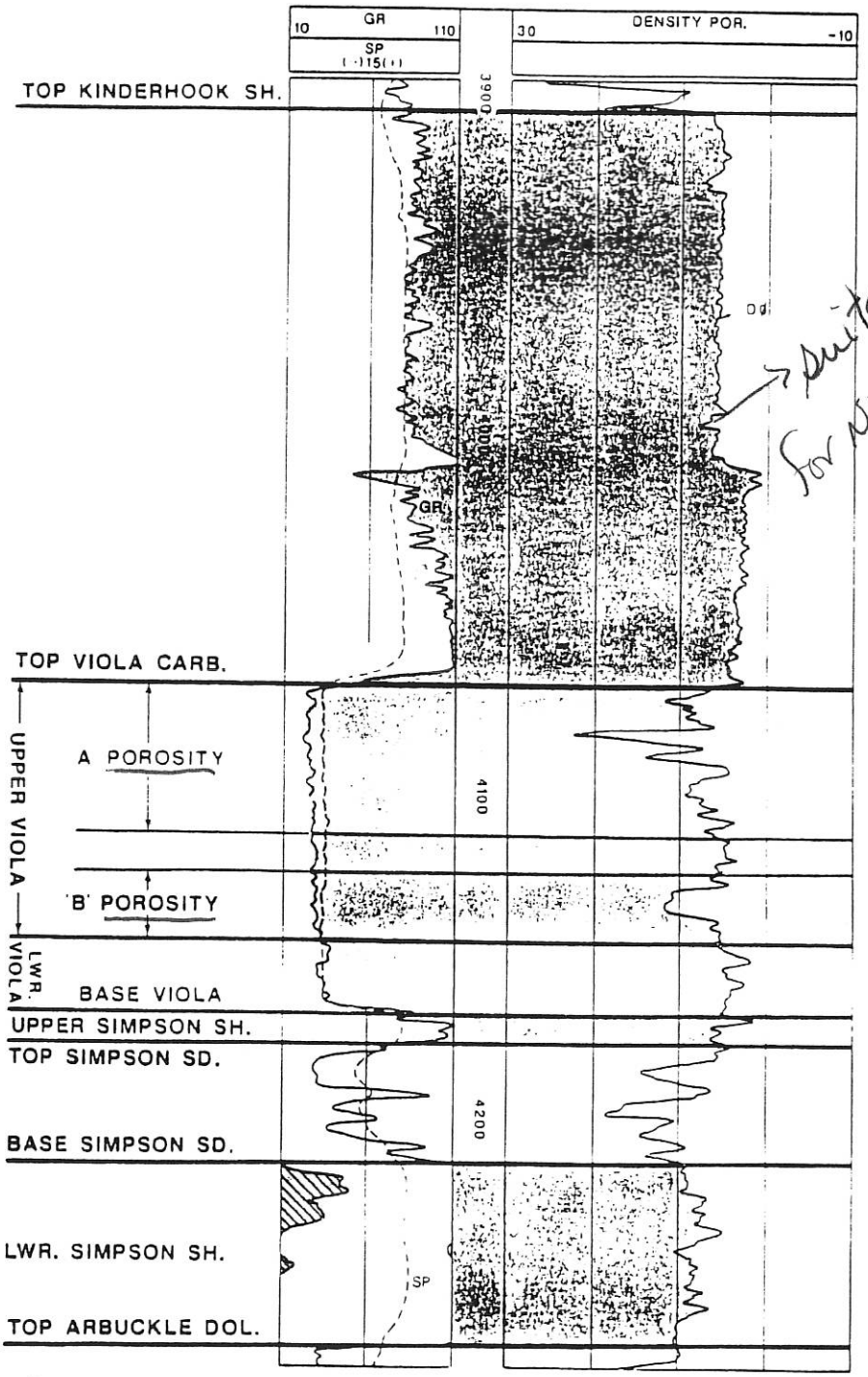
EXHIBIT 4

1-14

# COMPOSITE TYPE LOG

## CUNNINGHAM GAS STORAGE FIELD

KINGMAN AND PRATT COUNTIES, KANSAS




Suitable by KCC for NGV gas storage

*Depth scale is an approximation due to the composite nature of the type log.*

5

1-15

EXHIBIT 5

Amended Exhibit RRM-1
Docket No. 190, 406-C (C-27, 265)

possession of such container by any person other than the owner having his or her name, mark, initials, or other identifying device thereon, or a person authorized in writing by such owner shall and is hereby declared to be presumptive evidence of the unlawful use, filling or refilling, or trafficking in of such liquefied petroleum gas containers.

**History:** L. 1951, ch. 332, § 4; July 1.

**Law Review and Bar Journal References:**

1953-55 survey of law of evidence, Spencer A. Gard, 4 K.L.R. 272, 273 (1955).

**55-1105. Same; penalty.** Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than six (6) months or by both such fine and imprisonment in the discretion of the court.

**History:** L. 1951, ch. 332, § 5; July 1.

## Article 12.—UNDERGROUND STORAGE OF NATURAL GAS

**Law Review and Bar Journal References:**

Act prior to L. 1963, ch. 234 [see 26-501 to 26-516], mentioned in comment on condemnation of underground reservoirs for storage of natural gas, 11 K.L.R. 380, 381 (1963).

"The Rule of Capture Applied to the Underground Storage of Natural Gas—Anderson v. Beech Aircraft Corp.," Tanya J. Treadway, 34 K.L.R. 801, 805, 807, 813 (1986).

"Survey of Kansas Oil and Gas Law (1988-1992)," Phillip E. DeLaTorre, 41 K.L.R. 691, 717 (1993).

**55-1201. Definitions.** As used in this act

(a) "underground storage" shall mean storage in a subsurface stratum or formation of the earth;

(b) "natural gas" shall mean gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel;

(c) "native gas" shall mean gas which has not been previously withdrawn from the earth;

(d) "natural gas public utility" shall mean any person, firm or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within or through this state for ultimate public use;

(e) "commission" shall mean the state corporation commission.

**History:** L. 1951, ch. 268, § 1; June 30.

**Research and Practice Aids:**

Gas ⇨ 2.

C.J.S. Gas § 3 et seq.

**CASE ANNOTATIONS**

1. Intent of act allows condemnation for storage by public utility; defendant must contract for right to store. Anderson v. Beech Aircraft Corp., 237 K. 336, 347, 699 P.2d 1023 (1985).

2. "Date of taking" hereunder controlled by 26-507 which states interest appropriated vests upon payment of appraisers' award and costs. Union Gas System, Inc. v. Carnahan, 245 K. 80, 87, 774 P.2d 962 (1989).

3. Natural gas owned and stored for resale by public utilities determined tax-exempt inventory under Kan. Const., art. 11, § 1. Colorado Interstate Gas Co. v. Board of Morton County Comm'rs, 247 K. 654, 655, 802 P.2d 584 (1990).

4. Mentioned in discussion of denial of declaratory judgment for title to underground natural gas. Reese Exploration v. Williams Natural Gas, 983 F.2d 1514, 1516, 1523 (1992).

**55-1202. Public interest and welfare.** The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available our natural gas resources to the domestic, commercial and industrial consumers of this state, and which provides a better year-round market to the various gas fields, promotes the public interest and welfare of this state.

Therefore in the manner hereinafter provided the commission may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

**History:** L. 1951, ch. 268, § 2; June 30.

**Law Review and Bar Journal References:**

Condemnation of underground reservoirs for storage of natural gas, 11 K.L.R. 380 (1963).

**CASE ANNOTATIONS**

1. Natural gas owned and stored for resale by public utilities determined tax-exempt inventory under Kan. Const., art. 11, § 1. Colorado Interstate Gas Co. v. Board of Morton County Comm'rs, 247 K. 654, 662, 802 P.2d 584 (1990).

**55-1203. Appropriation of certain property.** Any natural gas public utility may appropriate for its use for the underground storage of natural gas any subsurface stratum or formation in any land which the commission shall have found to be suitable and in the public interest for the underground storage of natural gas, and in connection therewith may appropriate such other interests in property as may be required adequately to examine, prepare, maintain and operate such underground natural gas storage facilities. The right of appropriation hereby granted shall be without prejudice to the rights of the owner of said lands or of other rights or



1-16

interests therein to drill or bore through the underground stratum or formation so appropriated in such manner as shall comply with orders, rules and regulations of the commission issued for the purpose of protecting underground storage strata or formations against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof.

**History:** L. 1951, ch. 268, § 3; June 30.

**Law Review and Bar Journal References:**

Compared with the model act and condemnation statutes of other states in comment on condemnation of underground reservoirs for storage of natural gas, 11 K.L.R. 380, 383 (1963).

"The Rule of Capture Applied to the Underground Storage of Natural Gas—Anderson v. Beech Aircraft Corp.," Tanya J. Treadway, 34 K.L.R. 801, 805, 807, 813 (1986).

**55-1204. Underground storage of natural gas; certificate of commission; notice and hearing; assessment of costs; disposition of moneys.** (a) Any natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its petition in the district court, obtain from the commission a certificate setting out findings of the commission:

(1) That the underground stratum or formation sought to be acquired is suitable for the underground storage of natural gas and that its use for such purposes is in the public interest; and

(2) the amount of recoverable oil and native gas, if any, remaining therein.

(b) The commission shall issue no such certificate until after public hearing is had on application and upon reasonable notice to interested parties in accordance with the provisions of the Kansas administrative procedure act. Subject to the provisions of K.S.A. 55-143 and amendments thereto, the applicant shall be assessed an amount equal to all or any part of the costs of such proceedings and the applicant shall pay the amount so assessed.

(c) All provisions of K.S.A. 66-106, 66-118a, 66-118b, 66-118c, 66-118d, 66-118e, 66-118j and 66-118k or any amendments thereto shall be applicable to all proceedings of the commission under K.S.A. 55-1201 to 55-1206, inclusive, and acts amendatory thereof or supplemental thereto.

(d) The state corporation commission shall remit all moneys received by or for it for costs assessed under this section to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the conservation fee fund created by K.S.A. 55-143 and amendments thereto.

**History:** L. 1951, ch. 268, § 4; L. 1978, ch. 211, § 9; L. 1986, ch. 202, § 6; L. 1988, ch. 356, § 173; July 1, 1989.

**Law Review and Bar Journal References:**

Compared with condemnation statutes of other states in comment on condemnation of underground reservoirs for storage of natural gas, 11 K.L.R. 380, 381, 387 (1963).

"The Rule of Capture Applied to the Underground Storage of Natural Gas—Anderson v. Beech Aircraft Corp.," Tanya J. Treadway, 34 K.L.R. 801, 805, 807, 813 (1986).

CASE ANNOTATIONS

1. Natural gas utility exempted from rule of recapture only after receiving certificate hereunder. Union Gas System, Inc. v. Carnahan, 245 K. 80, 774 P.2d 962 (1989).

**55-1205. Eminent domain procedure.** Any natural gas public utility, having first obtained a certificate from the commission as hereinbefore provided, desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner provided in K.S.A. 26-501 to 26-516, inclusive. The petitioner shall file the certificate of the commission as a part of its petition and no order by the court granting said petition shall be entered without such certificate being filed therewith. The appraisers in awarding damages hereunder shall also take into consideration the amounts of recoverable oil and native gas remaining in the property sought to be appropriated and for such purposes shall receive as prima facie evidence of such amounts the findings of the commission with reference thereto.

**History:** L. 1951, ch. 268, § 5; L. 1963, ch. 234, § 79; Jan. 1, 1964.

**Law Review and Bar Journal References:**

Survey of law of oil and gas, William R. Scott, 12 K.L.R. 297, 303 (1963).

CASE ANNOTATIONS

1. Method of determining compensation for condemnation of underground gas storage reservoirs examined. Union Gas System, Inc. v. Carnahan, 245 K. 80, 91, 774 P.2d 962 (1989).

**55-1206.**

**History:** L. 1951, ch. 268, § 6; Repealed, L. 1963, ch. 234, § 103; Jan. 1, 1964.

**55-1207. Leasing of state-owned lands for underground storage of natural gas; con-**

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**History:** L. 19

**Research and Practice**
Mines and Minerals
C.J.S. Mines and Mir

**Law Review and Bar**
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"The Rule of Capture
of Natural Gas—Ander
J. Treadway, 34 K.L.R.

**55-1208. Ab**
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**ditions.** The director of the state department of administration, with the approval of the state finance council, may lease to a person, firm or corporation lands owned by the state of Kansas for the underground storage of natural gas by such person, firm or corporation. All such leases shall be on such terms and conditions as the director of the state department of administration, with the approval of the state finance council, shall prescribe: *Provided,* That every such lease shall be for a period of twenty (20) years and as long thereafter as said lands are actually used by the lessee or its assignees for the underground storage of natural gas. Every such lease shall describe the subsurface stratum or formation in said lands which is to be utilized for such storage. Any lease granted pursuant to the provisions of this section shall be without prejudice to the rights of the state as the owner of said lands, or any lessee of the oil and gas rights thereof, to develop other subsurface strata or formations so leased in such manner as will comply with existing or hereafter promulgated rules and regulations of the state corporation commission issued for the purpose of protecting underground gas storage stratum or formation as provided by K.S.A. 55-1203, or acts amendatory thereof or supplemental thereto.

All proceeds of such leases shall be paid into the state treasury and the state treasurer shall credit the same to the general fund of the state. *Provided,* That the proceeds of any such leases which shall be derived from the lease of lands which are held by the state of Kansas for the use and benefit of a state institution shall be kept by the state treasurer in a separate fund for the use and benefit of said state institution under rules and regulations adopted by the state agency having control and management of such state institution.

**History:** L. 1961, ch. 420, § 1; March 23.

**Research and Practice Aids:**
Mines and Minerals ⇐ 5.
C.J.S. Mines and Minerals §§ 128-130.

**Law Review and Bar Journal References:**
Compared with condemnation statutes of other states in comment on condemnation of underground reservoirs for storage of natural gas, 11 K.L.R. 380, 383 (1963).
"The Rule of Capture Applied to the Underground Storage of Natural Gas—Anderson v. Beech Aircraft Corp.," Tanya J. Treadway, 34 K.L.R. 801, 805, 807, 813 (1986).

**55-1208. Abandonment of underground natural gas storage facility; notification; hearings by corporation commission.** (a) When the owner of an underground natural gas storage facility has permanently abandoned the storage facility and that facility was certificated by the state corporation commission pursuant to K.S.A. 55-1201 *et seq.*, the owner shall file with the commission a notice of abandonment. If any such storage facility was certificated pursuant to federal authority, the owner shall file a copy of any federal abandonment authority with the commission. Unless such notice of abandonment authority has been filed with the commission, there shall be a presumption that the storage facility and all rights associated with it remain as certificated. In either case the owner shall file an instrument with the register of deeds office in the appropriate county or counties, stating that such storage has ceased and, except in cases in which the owner of the storage facility has purchased the fee, that the ownership of all property acquired by the owner, both mineral and surface, has reverted to those who owned the property at the time of the acquisition or their heirs, successors or assigns.

(b) The state corporation commission may conduct an administrative hearing pursuant to the Kansas administrative procedures act upon application for abandonment of an underground natural gas storage facility if such facility was certificated by the commission.

**History:** L. 1993, ch. 101, § 1; July 1.

**55-1209. Plat map of location of underground natural gas facility required.** The owner of an underground natural gas storage facility shall provide to the state corporation commission a plat map identifying the location of such facility and a description of the geological formation or formations to be used for storage.

**History:** L. 1993, ch. 101, § 2; July 1.

**55-1210. Property rights to injected natural gas established.** (a) All natural gas which has previously been reduced to possession, and which is subsequently injected into underground storage fields, sands, reservoirs and facilities, whether such storage rights were acquired by eminent domain or otherwise, shall at all times be the property of the injector, such injector's heirs, successors or assigns, whether owned by the injector or stored under contract.

(b) In no event shall such gas be subject to the right of the owner of the surface of such lands or of any mineral interest therein, under which such gas storage fields, sands, reservoirs and facilities lie, or of any person, other than the

injector, such injector's heirs, successors and assigns, to produce, take, reduce to possession, either by means of the law of capture or otherwise, waste, or otherwise interfere with or exercise any control over such gas. Nothing in this subsection shall be deemed to affect the right of the owner of the surface of such lands or of any mineral interest therein to drill or bore through the underground storage fields, sands, reservoirs and facilities in such a manner as will protect such fields, sand, reservoirs and facilities against pollution and the escape of the natural gas being stored.

(c) With regard to natural gas that has migrated to adjoining property or to a stratum, or portion thereof, which has not been condemned as allowed by law or otherwise purchased:

(1) The injector, such injector's heirs, successors and assigns shall not lose title to or possession of such gas if such injector, such injector's heirs, successors or assigns can prove by a preponderance of the evidence that such gas was originally injected into the underground storage.

(2) The injector, such injector's heirs, successors and assigns, shall have the right to conduct such tests on any existing wells on adjoining property, at such injector's sole risk and expense including, but not limited to, the value of any lost production of other than the injector's gas, as may be reasonable to determine ownership of such gas.

(3) The owner of the stratum and the owner of the surface shall be entitled to such compensation, including compensation for use of or damage to the surface or substratum, as is provided by law, and shall be entitled to recovery of all costs and expenses, including reasonable attorney fees, if litigation is necessary to enforce any rights under this subsection (c) and the injector does not prevail.

(d) The injector, such injector's heirs, successors and assigns shall have the right to compel compliance with this section by injunction or other appropriate relief by application to a court of competent jurisdiction.

**History:** L. 1993, ch. 102, § 1; July 1.

## Article 13.—UNITIZATION

**Law Review and Bar Journal References:**

Discussion of reservoir unitization criteria and mineral interest owners who can compel unitization, Ernest E. Smith, 16 K.L.R. 567 to 583 (1968).

Discussion of procedures for unitization order, Ernest E. Smith, 17 K.L.R. 133 to 146 (1969).

"Oil and Gas: The Corporation Commission's Role in Evaluating the Prudence of Operations in Statutory Unitization," Richard A. Forster, 24 W.L.J. 191 (1984).

**CASE ANNOTATIONS**

1. Compulsory unitization law construed in detail. Parkin v. Kansas Corporation Comm'n, 234 K. 994, 677 P.2d 991 (1984).

**55-1301. Additional powers and duties of the state corporation commission.** In addition to the jurisdiction, powers and duties conferred or imposed upon the state corporation commission, herein called "commission," by articles 6 and 7 of chapter 55 of the Kansas Statutes Annotated, with respect to the prevention of waste and the conservation of oil and gas and the protection of the correlative rights of persons entitled to share in the production thereof, the commission shall for said purposes have, and it shall be its duty to exercise, the further jurisdiction, powers and duties conferred or imposed upon it by this act.

**History:** L. 1967, ch. 299, § 1; July 1.

**Research and Practice Aids:**

Mines and Minerals ⇐ 92.78 et seq.
C.J.S. Mines and Minerals § 230.

**CASE ANNOTATIONS**

1. Act mentioned; inclusion of a 4/7 mineral interest in a unit under 55-701 et seq. not forced unitization of remaining interest. Mobil Oil Corp. v. Kansas Corporation Commission, 227 K. 594, 604, 610, 611, 612, 617, 608 P.2d 1325.

2. Compulsory unitization law (55-1301 through 55-1315) construed in detail. Parkin v. Kansas Corporation Comm'n, 234 K. 994, 677 P.2d 991 (1984).

3. Defeasible term mineral interest divided between unitized and excluded operations; nonproduction on excluded portion terminated interest thereon. Edmonston v. Home State Oil & Gas Corp., 629 F.Supp. 620, 621 (1986).

4. Cited; extension of term mineral interest covering several tracts where one tract unitized determined and certified (60-3201 et seq.). Edmonston v. Home Stake Oil & Gas Corp., 243 K. 376, 762 P.2d 176 (1988).

**55-1302. Definitions.** Except where the context otherwise requires, the terms used or defined in articles 6 and 7 of chapter 55 of the Kansas Statutes Annotated shall have the same meaning when used in this act. The term "pool" as herein used shall mean an underground accumulation of oil and gas in a single and separate natural reservoir characterized by a single pressure system so that production from one part of the pool affects the reservoir pressure throughout its extent. The term "oil and gas" shall mean crude oil, natural gas, casinghead gas, condensate, or any combination thereof. The term "waste," in addition to its meaning as used in articles 6 and 7 of chapter 55 of the Kansas Statutes

CASE ANNOTATIONS

1. Land of historical interest taken by state is for public use. State, ex rel., v. Kemp, 124 K. 716, 261 P. 556. Affirmed: 278 U.S. 192, 49 S.Ct. 160, 73 L.Ed. 259.

2. Cited in discussing various eminent domain statutes (dissenting opinion). Moore v. Kansas Turnpike Authority, 181 K. 841, 850, 317 P.2d 384.

**26-302.**

History: L. 1921, ch. 271, § 2; R. S. 1923, 26-302; Repealed, L. 1974, ch. 364, § 40; Jan. 13, 1975.

CASE ANNOTATIONS

1. Legislature declared land of historical interest; taken for public use. State, ex rel., v. Kemp, 124 K. 716, 261 P. 556. Affirmed: 278 U.S. 192, 49 S.Ct. 160, 73 L.Ed. 259.

**26-303, 26-304.**

History: L. 1921, ch. 271, §§ 3, 4; R.S. 1923, 26-303, 26-304; Repealed, L. 1963, ch. 234, § 103; Jan. 1, 1964.

**26-305, 26-306.**

History: L. 1921, ch. 271, §§ 5, 6; R. S. 1923, 26-305, 26-306; Repealed, L. 1974, ch. 364, § 40; Jan. 13, 1975.

## Article 4.—STONE QUARRIES

**26-401. Procedure for taking stones.** Whenever in the prosecution of any public works by the state, or in the erection of public buildings under the authority of the state, it shall be necessary to take any stone or stones from any stone quarry for the purpose of erecting such building, the same may be taken and appropriated in the same manner as is provided by K.S.A. 26-501 to 26-516, inclusive.

History: L. 1865, ch. 80, § 1; G.S. 1868, ch. 106, § 1; R.S. 1923, 26-401; L. 1963, ch. 234, § 75; Jan. 1, 1964.

Research and Practice Aids:
Eminent Domain ⇐ 45.
C.J.S. Eminent Domain § 65 et seq.

**26-402. Damages paid by contractor.** The contractor or contractors for such works shall in all cases pay the damages which shall be assessed.

History: L. 1865, ch. 80, § 2; Feb. 22; G.S. 1868, ch. 106, § 2; R.S. 1923, 26-402.

## Article 5.—PROCEDURE ACT

Cross References to Related Sections:
Constitutional provisions relating to right to exercise eminent domain by certain corporations, see Kan. Const., article 12, § 4.

Condemnation of lands under jurisdiction and control of state historical society, see 75-2714.

Law Review and Bar Journal References:
1963 act explored and analyzed, Marion Beatty, J.B.A.K. 125 (1963).

"Comments on Practice and Procedure in Eminent Domain," Raymond L. Spring, 35 J.B.A.K. 7 (1966).

"Railroad Right of Way: The Real Property Interest Kansas," Tim Pittman, 25 W.L.J. 327, 336 (1986).

"What is Eminent Domain and How Do You Do It?" Claire K. McKurdy and Nina M. Thompson, 61 J.K.B.A. No. 9, 26, 27 (1992). (Reprinted at 61 J.K.B.A. No. 10, 24 (1992)).

**26-501. Eminent domain procedure; venue.** (a) The procedure for exercising eminent domain as set forth in K.S.A. 26-501 to 26-516, inclusive, shall be followed in all proceedings. (b) The proceedings shall be brought by filing a verified petition in the district court of the county in which the real estate is situated, except if it be an entire tract situated in two (2) or more counties, the proceedings may be brought in any county in which any tract or parts thereof is situated.

History: L. 1963, ch. 234, § 1; Jan. 1, 1964.

Cross References to Related Sections:
Venue provisions of code of civil procedure, see ¶ (a) of 60-601.

Research and Practice Aids:
Eminent Domain ⇐ 173, 191(1).
C.J.S. Eminent Domain §§ 233, 251 et seq.

Law Review and Bar Journal References:
Survey of the law of damages, David Prager, 12 K.L.R. 204 (1963).

CASE ANNOTATIONS

1. Proceedings not judicial in nature until appeal is filed; injunction landowner's relief. Urban Renewal Agency v. Decker, 197 K. 157, 415 P.2d 373.

2. Public utility, in absence of bad faith, fraud or abuse of discretion, may determine amount of land needed to be taken for its lawful purposes. Shelor v. Western Power & Gas Co., 202 K. 428, 449 P.2d 591.

3. Failure of city to comply with statutory duties (13-1019, 13-1020) does not preclude aggrieved property owner from bringing inverse condemnation action on implied contract. Lux v. City of Topeka, 204 K. 179, 181, 183, 460 P.2d 541.

4. Eminent domain procedure prescribed under this and succeeding section; 68-413 merely designates interests which highway commission may acquire. State Highway Commission v. Moore, 204 K. 502, 504, 464 P.2d 188.

5. Tract of land having leasehold interest dismissed from condemnation proceeding; lessee's rights. State Highway Commission v. Bullard, 208 K. 558, 559, 560, 493 P.2d 196.

6. Eminent domain statute contains no specific provision for allowance of attorney fees and expenses of litigation, other than court costs. Gault v. Board of County Commissioners, 208 K. 578, 493 P.2d 238.

7. Statute contains no authority for allowance of attorney's fee. Schwartz v. Western Power & Gas Co., Inc., 208 K. 844, 847, 849, 494 P.2d 1113.



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Constitutionality of eminent domain procedure cannot be raised where question moot. Thompson v. Kansas Power & Light Co., 208 K. 869, 870, 494 P.2d 1092.

This and succeeding sections cited in construing section (12-811) concerning purchase of corporate utility plant upon expiration of franchise. City of Kiowa v. Central Telephone & Utilities Corporation, 213 K. 169, 172, 515 P.2d [illegible].

10. Action instituted hereunder; provision for attorney fees under 26-509 remedial; applied to actions pending. Sellers v. State Highway Commission, 214 K. 630, 631, [illegible] P.2d 341.

11. Act applied; injunction proceeding against electric utility; no abuse of discretion; trial court's findings reviewed and affirmed. Concerned Citizens, United, Inc. v. Kansas Power and Light Co., 215 K. 218, 226, 523 P.2d [illegible].

12. Proceeding in nature of inverse condemnation; landownership jury question; verdict upheld. Wittke v. Kusel, 215 K. 403, 524 P.2d 774.

13. Proceedings hereunder not forum for litigation of right of exercise of eminent domain or extent thereof. Kansas Gas & Electric Co. v. Winn, 227 K. 101, 103, [illegible], 605 P.2d 125.

14. Trial court did not abuse discretion in excluding evidence of specific value of leasehold interest but allowing evidence thereof as factor in arriving at value. City of Manhattan v. Kent, 228 K. 513, 618 P.2d 1180.

15. District court without jurisdiction to enlarge appeal period of 26-508. City of Kansas City v. Crestmoore Downs, Inc., 7 K.A.2d 515, 518, 644 P.2d 494 (1982).

16. Condemnor allowed reasonable discretion to determine necessity for taking of land for lawful corporate purposes. Steele v. Missouri Pacific R.R. Co., 232 K. 855, [illegible]56, 862, 659 P.2d 217 (1983).

17. Proceedings hereunder not forum for litigation over right to exercise eminent domain or extent thereof. In re Condemnation of Land for State Highway Purposes, 235 K. 676, 678, 680, 683 P.2d 247 (1984).

18. Condemnation proceeding does not provide forum for litigating right to exercise eminent domain or extent thereof. Murray v. Kansas Dept. of Transportation, 239 K. 25, 716 P.2d 540 (1986).

19. Dismissal without prejudice for procedural reasons followed immediately by new proceeding as not constituting abandonment (26-507) examined. Board of Osborne County Comm'rs v. Kulich, 245 K. 107, 774 P.2d 980 (1989).

20. Allocation of condemnation award between long-term lessee and landowners examined. City of Topeka v. Estate of Mays, 245 K. 546, 549, 781 P.2d 721 (1989).

**26-502. Contents of petition.** A petition shall include allegations of (1) the authority for and the purpose of the taking; (2) a description of each lot, parcel or tract of land and the nature of the interest to be taken; (3) insofar as their interests are to be taken (a) the name of any owner and all lienholders of record, and (b) the name of any party in possession. Such petition shall be verified by affidavit. Upon the filing of such petition the court by order shall fix the time when the same will be taken up. No defect in form which does not impair substantial rights of the parties shall invalidate any proceeding.

**History:** L. 1963, ch. 234, § 2; Jan. 1, 1964.

**Research and Practice Aids:**
Eminent Domain ⇐ 191(1) et seq.
C.J.S. Eminent Domain § 251 et seq.

CASE ANNOTATIONS

1. Compensation is based on full use condemned as described in condemner's petition and considered by appraisers. Diefenbach v. State Highway Commission, 195 K. 445, 407 P.2d 228.

2. Duty to ascertain parties; owners, lienholders of record and those in possession. Dotson v. State Highway Commission, 198 K. 671, 674, 675, 426 P.2d 138.

3. The only obligation as to parties insofar as the condemner is concerned is to name in the petition the owners and all lienholders of record and the name of any party in possession. Morgan v. City of Overland Park, 207 K. 188, 193, 483 P.2d 1079.

4. Act applied; injunction proceeding against electric utility; no abuse of discretion; trial court's findings reviewed and affirmed. Concerned Citizens, United, Inc. v. Kansas Power and Light Co., 215 K. 218, 226, 523 P.2d 755.

5. Compensation for actual rights acquired rather than rights actually used, taking through exercise of police power examined. Hudson v. City of Shawnee, 245 K. 221, 225, 777 P.2d 800 (1989).

6. Exercise of police power as noncompensable noted; closing all access as unreasonable determined. Hudson v. City of Shawnee, 246 K. 395, 400, 790 P.2d 933 (1990). (Modifying 245 K. 221, 777 P.2d 800 (1989)).

**26-503. Eminent domain procedure; notice.** The plaintiff shall cause to be published once in a newspaper of general circulation in the county where the lands are situated a notice of the proceeding at least nine (9) days in advance of the date fixed by the court for consideration of the petition and appointment of appraisers, and shall at least seven (7) days before such date mail to each interested party as named in K.S.A. 26-502 and whose address is known or can with reasonable diligence be ascertained a copy of such publication notice and petition insofar as it relates to his interest. No defect in any notice or in the service thereof shall invalidate any proceedings.

**History:** L. 1963, ch. 234, § 3; L. 1969, ch. 195, § 1; July 1.

**Research and Practice Aids:**
Eminent Domain ⇐ 180, 181.
C.J.S. Eminent Domain §§ 242, 243, 244.

**Law Review and Bar Journal References:**
Court delay, George S. Reynolds, 12 W.L.J. 16 (1972).
Survey of Kansas law on real and personal property (1965-1969), 18 K.L.R. 427, 436 (1970).

CASE ANNOTATIONS

1. Duty of condemner to ascertain parties. Dotson v. State Highway Commission, 198 K. 671, 674, 426 P.2d 138.



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2. Section complied with; condemnees bound by the notice. Unified School District v. Turk, 219 K. 655, 659, 660, 549 P.2d 882.

3. Where appraisers' report filed after date fixed by court, parties have 30 days thereafter to appeal. City of Shawnee v. Webb, 236 K. 504, 505, 507, 694 P.2d 896. (1985).

**26-504. Same; findings; order appointing appraisers; duties; appeals to supreme court, when.** If the judge finds from the petition: (1) the plaintiff has the power of eminent domain; and (2) the taking is necessary to the lawful corporate purposes of the plaintiff, he shall enter an order appointing three (3) disinterested householders of the county in which the petition is filed to view and appraise the value of the lots and parcels of land found to be necessary, and to determine the damages to the interested parties resulting from the taking. Such order shall also fix the time for the filing of the appraisers' report, and such time for filing shall not be later than twenty (20) days after the entry of such order: *Provided*, For good cause shown, the court may extend the time for filing by a subsequent order. The granting of an order determining that the plaintiff has the power of eminent domain and that the taking is necessary to the lawful corporate purposes of the plaintiff shall not be considered a final order for the purpose of appeal to the supreme court, but an order denying the petition shall be considered such a final order.

Appeals to the supreme court may be taken from any final order under the provisions of this act. Such appeals shall be prosecuted in like manner as other appeals and shall take precedence over other cases, except cases of a like character and other cases in which preference is granted by statute.

History: L. 1963, ch. 234, § 4; Jan. 1, 1964.

Research and Practice Aids:
Eminent Domain ⇐ 228, 234(5), 238(2).
C.J.S. Eminent Domain §§ 293, 303, 350.

CASE ANNOTATIONS

1. Determination of necessity and authority inquest only; injunction landowner's relief. Urban Renewal Agency v. Decker, 197 K. 157, 158, 415 P.2d 373.

2. Applied; dismissal of tract of land in proceeding did not impliedly authorize application of code of civil procedure. State Highway Commission v. Bullard, 208 K. 558, 560, 493 P.2d 196.

3. Allowance of attorney's fee requires clear statutory authority. Schwartz v. Western Power & Gas Co., Inc., 208 K. 844, 849, 850, 494 P.2d 1113.

4. Date fixed by judge for filing appraiser's report is date from which appeal time computed, regardless of when report is delivered. Urban Renewal Agency v. Reed, 211 K. 705, 706, 708, 508 P.2d 1227.

5. Act applied; injunction proceeding against electric utility; no abuse of discretion; trial court's findings reviewed and affirmed. Concerned Citizens, United, Inc. v. Kansas Power and Light Co., 215 K. 218, 226, 523 P.2d 755.

6. Court had no power to correct, modify or amend award following appeal or time for appeal. Unified School District v. Turk, 219 K. 655, 657, 658, 549 P.2d 882.

7. Determination that taking of land is necessary to lawful corporate purposes made by district court from allegations of petition. Steele v. Missouri Pacific R.R. Co., 232 K. 855, 857, 858, 863, 659 P.2d 217 (1983).

8. Condemner's rights acquired and compensation to landowner considered. Barcus v. City of Kansas City, 8 K.A.2d 506, 507, 661 P.2d 806 (1983).

9. Cited in holding 60-2102 does not provide for appeals in original eminent domain proceedings. In re Condemnation of Land for State Highway Purposes, 235 K. 676, 682, 683 P.2d 247 (1984).

10. Appeal of eminent domain proceedings under 60-2102(b); original proceeding in eminent domain not truly classed as litigation. Razook v. Kemp, 236 K. 156, 159, 690 P.2d 376 (1984).

11. Where appraisers' report filed after date fixed by court, parties have 30 days thereafter to appeal. City of Shawnee v. Webb, 236 K. 504, 505, 507, 694 P.2d 896 (1985).

12. Method of determining compensation for condemnation of underground gas storage reservoirs examined. Union Gas System, Inc. v. Carnahan, 245 K. 80, 85, 91, 774 P.2d 962 (1989).

13. City not permitted to complain about what it must pay for taking for a future intended use. Van Horn v. City of Kansas City, 249 K. 404, 405, 409, 819 P.2d 624 (1991).

**26-505. Same; appraisers' oath, instructions, reports and notification to condemner; notice to interested persons by condemner; fees and expenses.** After the appraisers are appointed they shall take an oath to faithfully discharge their duties as appraisers. The judge shall instruct them to the effect that they are officers of the court and not representatives of the plaintiff or any other party, that they are to receive their instructions only from the judge, and he shall instruct them as to the nature of their duties and authority, and as to the basis, manner and measure of ascertaining the value of the land taken and damages resulting therefrom. The instructions shall be in writing. Upon the completion of their work the appraisers shall file their report in the office of the clerk of the district court and the appraisers shall thereupon notify the condemner of such filing. The condemner shall, within three (3) days after receiving such notice, mail a written notice of the filing of such report to every person who owns any interest in any of the property being taken, if the address of such person is known, and shall file in the office of the clerk of the district court an affidavit showing proof of the mailing of such notice. The



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...s and expenses of the appraisers shall be ...etermined and allowed by the court.

History: L. 1963, ch. 234, § 5; L. 1968, ...138, § 1; July 1.

...search and Practice Aids:
...minent Domain ⇐ 229, 233, 234(5).
C.J.S. Eminent Domain §§ 277, 295, 303.

CASE ANNOTATIONS

1. Applied; dismissal of tract of land in proceeding did ... impliedly authorize application of code of civil procedure. State Highway Commission v. Bullard, 208 K. 558, ...80, 493 P.2d 196.

2. Allowance of attorney's fee requires clear statutory authority. Schwartz v. Western Power & Gas Co., Inc., ...8 K. 844, 850, 494 P.2d 1113.

3. Date fixed by judge for filing appraiser's report is ...te from which appeal time computed, regardless of when ...eport is delivered. Urban Renewal Agency v. Reed, 211 K. 705, 708, 709, 508 P.2d 1227.

4. Constructive notice provisions complied with; effect of actual notice. Unified School District v. Turk, 219 K. ...55, 659, 549 P.2d 882.

**26-506. Same; view of lands by appraisers.** (a) *Notice, time, place and manner of hearing.* The appraisers shall, after they have been sworn, and instructed by the judge, make their appraisal and assessment of damages, by actual view of the lands to be taken and of the tracts of which they are a part, and by hearing of oral or written testimony from the plaintiff and each interested party as named in K.S.A. 26-502. Such testimony shall be given at a public hearing held in the county where the action is pending at a time and place fixed by the appraisers. Notice of the hearing shall be mailed at least ten (10) days in advance thereof to the plaintiff and to each party named in the petition if their address is known or can with reasonable diligence be ascertained, and by one publication in a newspaper of general circulation in each county where the lands are situated at least ten (10) days in advance of the hearing. In case of failure to meet on the day designated in the notice, the appraisers may meet on the following day without further notice; but in case of failure to meet on either of said days, a new notice shall be required. A hearing begun pursuant to proper notice may be continued or adjourned from day to day and from place to place until the hearing with respect to all properties involved in the action has been concluded.

(b) *Form of notice.* The notice of hearing shall be in substantially the following form:

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS.

_____ *Plaintiff, vs.* _____ *Defendant,*

Notice is hereby given that the undersigned appraisers appointed by the court, will, in accordance with the provisions of this act, hold a public hearing on all matters pertaining to their appraisal of compensation and the assessment of damages for the taking of the lands or interests therein sought to be taken by the plaintiff in the above entitled matter covering the following described lands (description of lands). Such hearing will commence at ____ o'clock ___M. on the _____ day of _____, 19____ at _____, or on the following day without further notice, and may be continued thereafter from day to day or place to place until the same is concluded with respect to all properties involved in the action. Any party may present either oral or written testimony at such hearing.

You are further notified that the court has set the ___ day of _____, 19____, for the filing of the awards of these appraisers with the clerk of the court, and any party dissatisfied with the award may appeal therefrom as by law permitted within thirty days from the day of filing.

_____ _____ _____ *Appraisers.*

History: L. 1963, ch. 234, § 6; Jan. 1, 1964.

Research and Practice Aids:
Eminent Domain ⇐ 231, 232.
C.J.S. Eminent Domain §§ 279, 296, 298.

CASE ANNOTATIONS

1. Duty of condemner to ascertain parties. Dotson v. State Highway Commission, 198 K. 671, 674, 426 P.2d 138.

2. Date fixed by judge for filing appraiser's report is date from which appeal time computed, regardless of when report is delivered. Urban Renewal Agency v. Reed, 211 K. 705, 706, 708, 508 P.2d 1227.

3. Constructive notice provisions complied with; effect of actual notice. Unified School District v. Turk, 219 K. 655, 659, 549 P.2d 882.

**26-507. Same; payment of award and vesting of rights; abandonment.** (a) *Payment of award; vesting of rights.* If the plaintiff desires to continue with the proceeding as to particular tracts it shall, within thirty (30) days from the time the appraisers' report is filed pay to the clerk of the district court the amount of the appraisers' award as to those particular tracts and court costs accrued to date, including appraisers' fees. Such payment shall be without prejudice to plaintiff's right to appeal from the appraisers' award. Upon such payment being made the title, easement or interest appropriated in the land condemned shall thereupon immediately vest in the plaintiff, and it shall be entitled to the immediate possession of the land to the extent necessary for the purpose for which taken and consistent with the title, easement or interest condemned. The plaintiff shall be entitled to all the remedies provided by law for the securing of such possession.

(b) *Abandonment.* If the plaintiff does not make the payment prescribed in subsection (a) hereof for any of the tracts described in the



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petition, within thirty (30) days, from the time the appraisers' report is filed, the condemnation is abandoned as to those tracts, and judgment for costs, including the appraisers' fees together with judgment in favor of the defendant for his reasonable expenses incurred in defense of the action, shall be entered against the plaintiff. After such payment is made by the plaintiff to the clerk of the court, as provided in subsection (a) hereof, the proceedings as to those tracts for which payment has been made can only be abandoned by the mutual consent of the plaintiff and the parties interested in the award.

**History:** L. 1963, ch. 234, § 7; Jan. 1, 1964.

**Research and Practice Aids:**
Eminent Domain ⇐ 74, 76, 246(3).
C.J.S. Eminent Domain §§ 186 et seq., 336.

**Law Review and Bar Journal References:**
Survey of the law of damages, David Prager, 12 K.L.R. 204 (1963).

CASE ANNOTATIONS

1. Exercise of motion to dismiss; does not impliedly inject code of civil procedure into condemnation proceedings. State Highway Commission v. Bullard, 208 K. 558, 560, 561, 493 P.2d 196.

2. Referred to: court had no authority to modify or amend award after appeal or time for appeal. Unified School District v. Turk, 219 K. 655, 658, 549 P.2d 882.

3. Writ of assistance applied for hereunder by condemnor; condemnation proceeding not forum for litigation over right of exercise of eminent domain or extent thereof. Kansas Gas & Electric Co. v. Winn, 227 K. 101, 102, 107, 605 P.2d 125.

4. Dismissal of condemnation action by city after purchase of property by agreement with owner does not constitute abandonment permitting defendant lessee to recover reasonable expenses in defense of action. City of Westwood v. M & M Oil Co., 6 K.A.2d 48, 49, 626 P.2d 817.

5. If proceeding is dismissed by condemning authority prior to filing of appraiser's report, landowner not entitled to attorney fees and costs. In re Condemnation of Land by the City of Mission v. Bennett, 7 K.A.2d 621, 622, 624, 649 P.2d 406 (1982).

6. "Date of taking" under 55-1201 controlled by provisions herein. Union Gas System, Inc. v. Carnahan, 245 K. 80, 88, 774 P.2d 962 (1989).

7. Dismissal without prejudice for procedural reasons followed immediately by new proceeding does not constitute abandonment. Board of Osborne County Comm'rs v. Kulich, 245 K. 107, 110, 774 P.2d 980 (1989).

8. Defendant's attorney fees based on quantum meruit assessed against city when condemnation proceedings abandoned after appraisers filed reports. City of Wichita v. BG Products, Inc., 252 K. 367, 369, 845 P.2d 549 (1993).

**26-508. Appeal from award; notice to parties affected.** If the plaintiff, or any defendant, is dissatisfied with the award of the appraisers, he may, within thirty (30) days after the filing of the appraisers' report, appeal from the award by filing a written notice of appeal with the clerk of the district court. In the event any parties shall perfect an appeal, copies of such notice of appeal shall be mailed to all parties affected by such appeal, within three (3) days after the date of the perfection thereof. An appeal by the plaintiff or any defendant shall bring the issue of damages to all interest [interests] in the tract before the court for trial *de novo*. The appeal shall be docketed as a civil action and tried as any other civil action: *Provided, however,* The only issue to be determined therein shall be that of just compensation to be paid for the land or right therein taken at the time of the taking and for any other damages allowable by law.

**History:** L. 1963, ch. 234, § 8; L. 1968, ch. 138, § 2; July 1.

**Research and Practice Aids:**
Eminent Domain ⇐ 238(1).
C.J.S. Eminent Domain §§ 343, 346.

**Law Review and Bar Journal References:**
Survey of Kansas law on real and personal property (1965-1969), 18 K.L.R. 427, 436 (1970).
"Administrative Law: The Kansas Commission on Civil Rights—True De Novo Review Arrives," Samuel D. Ogelby, 16 W.L.J. 161, 163 (1976).
"Judicial Review of Administrative Action—Kansas Perspectives," David L. Ryan, 19 W.L.J. 423, 433 (1980).

CASE ANNOTATIONS

1. Considered in appeal from award. Diefenbach v. State Highway Commission, 195 K. 445, 450, 407 P.2d 228.

2. Appeal from award by one party raises issue of damages to all interests. Dotson v. State Highway Commission, 198 K. 671, 675, 426 P.2d 138.

3. The phrase "tried as any other civil action" applies to presentation of facts on appeal, not to formation of pleadings; eminent domain statute forms the issue and takes the place of pleadings. City of Wellington v. Miller, 200 K. 651, 652, 438 P.2d 53.

4. No dismissal without prejudice of appeal in condemnation proceeding; when one party appeals, other parties are in position of cross-appellants and appeal cannot be discussed over objection of any person having interest in the land. City of Wellington v. Miller, 200 K. 651, 652, 653, 438 P.2d 53.

5. Docketing of an appeal as a civil action not changed by amendment. State Highway Commission v. Lee, 207 K. 284, 290, 485 P.2d 310.

6. Limitation on appeal from award does not apply to determination of disputes as to distribution between co-owners. Urban Renewal Agency v. Naegele Outdoor Advertising Co., 208 K. 210, 212, 214, 215, 216, 491 P.2d 886.

7. Motion to dismiss as to certain tract of land; procedural; motion to intervene by leaseholder not allowed. State Highway Commission v. Bullard, 208 K. 558, 560, 493 P.2d 196.

8. Date fixed by judge for filing appraiser's report is date from which appeal time computed, regardless of when



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report is delivered. Urban Renewal Agency v. Reed, 211 K. 705, 706, 508 P.2d 1227.

9. Appeal hereunder; 26-509 construed; attorney fees allowed where action commenced on date section became effective. Fellers v. State Highway Commission, 214 K. 630, 631, 522 P.2d 341.

10. Court had no power to correct, modify or amend award following appeal or time for appeal. Unified School District v. Turk, 219 K. 655, 657, 549 P.2d 882.

11. Compensable damages for taking access to motel; parol evidence upheld. Kohn Enterprises, Inc. v. City of Overland Park, 221 K. 230, 233, 559 P.2d 771.

12. Method of establishing value of property upheld; no abuse of discretion in admission of testimony or evidence. Ellis v. City of Kansas City, 225 K. 168, 175, 589 P.2d 552.

13. Trial court did not abuse discretion in excluding evidence of specific value of leasehold interest but allowing evidence thereof as factor in arriving at value. City of Manhattan v. Kent, 228 K. 513, 516, 517, 519, 520, 618 P.2d 1180.

14. District court without jurisdiction to enlarge appeal period of this section. City of Kansas City v. Crestmoore Downs, Inc., 7 K.A.2d 515, 516, 517, 518, 644 P.2d 494 (1982).

15. Evidence of biological hazard of high-voltage utility line did not relate to determination of compensation. Meinhardt v. Kansas Power & Light Co., 8 K.A.2d 471, 472, 661 P.2d 820 (1983).

16. Proposed expert testimony concerning harmful biological effects of electricity from overhead power lines excluded. Meinhardt v. Kansas Power & Light Co., 8 K.A.2d 471, 472, 661 P.2d 820 (1983).

17. Court rulings prior to appeal providing trial de novo not res judicata to reconsideration of issues at de novo trial. U.S.D. No. 464 v. Porter, 234 K. 690, 692, 693, 676 P.2d 84 (1984).

18. Where appraisers' report filed after date fixed by court, parties have 30 days thereafter to appeal. City of Shawnee v. Webb, 236 K. 504, 505, 507, 694 P.2d 896 (1985).

19. Before compensation question submitted to jury, court must find that taking was by eminent domain. Small v. Kemp, 240 K. 113, 116, 727 P.2d 904 (1986).

20. Method of determining compensation for condemnation of underground gas storage reservoirs examined. Union Gas System, Inc. v. Carnahan, 245 K. 80, 86, 91, 774 P.2d 962 (1989).

21. Method of determining compensation for condemnation examined. Board of Sedgwick County Comm'rs v. Kiser Living Trust, 250 K. 84, 86, 91, 825 P.2d 130 (1992).

**26-509. Same; assignment for trial on appeal; attorney fees, when.** In an action on appeal the court shall assign the case for trial to a jury, or to a master in accordance with K.S.A. 60-253, or acts amendatory thereof or supplemental thereto. Whenever the plaintiff condemner shall appeal the award of court appointed appraisers, and the jury renders a verdict for the landowners in an amount greater than said appraisers' award, the court may allow as court costs an amount to be paid to the landowner's attorney as attorney fees.

History: L. 1963, ch. 234, § 9; L. 1969, ch. 196, § 1; L. 1972, ch. 148, § 1; July 1.

Revisor's Note:
Consideration of contingent fee contract in awarding attorney fees, see Kansas Benchbook, Kansas Judicial Council, p. 130.

Research and Practice Aids:
Eminent Domain ⇐ 238(6), 239.
C.J.S. Eminent Domain §§ 281, 360 et seq., 372.

Law Review and Bar Journal References:
"Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 549, 558 (1979).

CASE ANNOTATIONS

1. Right to court costs did not accrue until jury rendered verdict; provisions remedial; factors considered. City of Wichita v. Chapman, 214 K. 575, 576, 579, 583, 585, 587, 588, 521 P.2d 589.

2. Provisions of section providing for attorney fees remedial; application to actions pending when section became effective. Fellers v. State Highway Commission, 214 K. 630, 631, 632, 522 P.2d 341.

3. Mentioned; trial court erred in awarding attorney fees to landowners who were appealing parties. In re Central Kansas Electric Coop., Inc., 224 K. 308, 319, 582 P.2d 228.

4. Statute applicable only to condemnation appeals from appraisers' awards under 26-501 et seq.; legislature has not provided for attorney fees in inverse condemnation cases. Herman v. City of Wichita, 228 K. 63, 71, 72, 612 P.2d 588.

5. Cited in considering allowance of attorney fees under 59-1504. In re Estate of Robinson, 236 K. 431, 438, 439, 690 P.2d 383 (1984).

6. Award of attorney fees in land condemnation action discretionary and limited. U.S. v. 1,197.29 Acres of Land, 759 F.Supp. 728, 734 (1991).

7. Attorney fees may be awarded in a jury trial or bench trial. Board of Sedgwick County Comm'rs v. Kiser Living Trust, 250 K. 84, 86, 88, 91, 105, 107, 108, 825 P.2d 130 (1992).

**26-510. Appeal from award; notice; withdrawal of payment.** (a) The clerk of the district court shall notify the defendants within 15 days that the plaintiff has paid the amount of the appraisers' award pursuant to K.S.A. 26-507, and amendments thereto.

(b) The defendants may by order of the judge and without prejudice to their right of appeal withdraw the amount paid to the clerk of the court as their interests are determined by the appraisers' report.

History: L. 1963, ch. 234, § 10; L. 1989, ch. 112, § 1; July 1.

Research and Practice Aids:
Eminent Domain ⇐ 238(7).
C.J.S. Eminent Domain § 366 et seq.

**26-511. Interest on final judgment.** (a) If the compensation finally awarded on appeal exceeds the amount of money paid to the clerk of the court pursuant to K.S.A. 26-507, the judge shall enter judgment against the plaintiff for the amount of the deficiency, with interest. If the compensation finally awarded on appeal



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is less than the amount paid to the clerk of the court pursuant to K.S.A. 26-507, the judge shall enter judgment in favor of the plaintiff for the return of the difference, with interest.

(b) If the money paid to the clerk of the court under K.S.A. 26-507 is paid before July 1, 1982, the judgment shall bear interest as follows:

(1) On and after the date of the payment to the clerk and before July 1, 1982, at the rate of 6% per annum; and

(2) on and after July 1, 1982, and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.

(c) If the money paid to the clerk of the court under K.S.A. 26-507 is paid on or after July 1, 1982, the judgment shall bear interest, on and after the date of the payment to the clerk and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.

**History:** L. 1963, ch. 234, § 11; L. 1982, ch. 88, § 2; July 1.

**Research and Practice Aids:**
Eminent Domain ⇐ 238(7).
C.J.S. Eminent Domain § 366 et seq.

**CASE ANNOTATIONS**

1. Specific reference to interest on eminent domain judgments controls over general provision. Schwartz v. Western Power & Gas Co., Inc., 208 K. 844, 851, 494 P.2d 1113.

2. Special statute applicable only to condemnation appeals taken under eminent domain procedure act, 26-501 et seq. Herman v. City of Wichita, 228 K. 63, 68, 69, 612 P.2d 588.

3. Determination of rate of post-judgment interest. Meinhardt v. Kansas Power & Light Co., 8 K.A.2d 471, 473, 661 P.2d 820 (1983).

4. Applicability of 16-204 regarding postjudgment interest rate noted. Evans v. Provident Life & Accident Ins. Co., 15 K.A.2d 97, 112, 803 P.2d 1033 (1991).

**26-512. Same; making surveys and location.** The prospective condemner or its agents may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for actual damages thereto.

**History:** L. 1963, ch. 234, § 12; Jan. 1, 1964.

**Research and Practice Aids:**
Eminent Domain ⇐ 77.
C.J.S. Eminent Domain § 192.

**26-513. Same; compensation.** (a) *Necessity.* Private property shall not be taken or damaged for public use without just compensation.

(b) *Taking entire tract.* If the entire tract of land or interest therein is taken, the measure of compensation is the value of the property or interest at the time of the taking.

(c) *Partial taking.* If only a part of a tract of land or interest is taken, the compensation and measure of damages are the difference between the value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(d) *Factors to be considered.* In ascertaining the amount of compensation and damages as above defined, the following factors, without restriction because of enumeration, shall be given consideration if shown to exist but they are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section:

1. The most advantageous use to which the property is reasonably adaptable.

2. Access to the property remaining.

3. Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.

4. Productivity, convenience, use to be made of the property taken, or use of the property remaining.

5. View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.

6. Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.

7. Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.

8. Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that such loss affects the value of the property remaining.

9. Destruction of a legal nonconforming use.



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10. Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.

11. Proximity of new improvement to improvements remaining on condemnee's land.

12. Loss of or damage to growing crops.

13. That the property could be or had been adapted to a use which was profitably carried on.

14. Cost of new drains or loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.

15. Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

**History:** L. 1963, ch. 234, § 13; L. 1969, ch. 196, § 2; July 1.

**Research and Practice Aids:**

Eminent Domain ⇐ 69, 126(1).

C.J.S. Eminent Domain §§ 96, 136 et seq.

**Law Review and Bar Journal References:**

"The Eminent Domain Procedure Act," Marion Beatty, 32 J.B.A.K. 130 (1964).

"1969 Kansas Legislature—A Review of Enactment," Robert F. Bennett, 38 J.B.A.K. 89, 127 (1969).

Survey of Kansas law on real and personal property (1965-1969), 18 K.L.R. 427, 436 (1970).

Elimination of nonconforming uses; mobile homes in Kansas, Gerald E. Hertach, 20 K.L.R. 87, 107 (1971).

"Lateral Support—An Inversely Con-demnable Property Right," George A. Gaitas, 13W.L.J. 248, 249, 251 (1974).

**Attorney General's Opinions:**

Annexation of lands located in water districts; title to facilities; agreement; compensation. 85-166.

Condemnation in cities; authority to condemn property which includes burial plot. 86-46.

Eminent domain; procedure act; human remains; compensation. 88-73.

## CASE ANNOTATIONS

1. Doctrine of burden of proof not applicable to condemnation proceedings. City of Wichita v. Jennings, 199 K. 621, 626, 433 P.2d 351.

2. Subsection (c) considered; verdict of jury was "within the range" of the evidence. Kansas State Highway Commission v. Roepke, 200 K. 660, 663, 665, 666, 438 P.2d 122.

3. Compensation is necessary replacement in taking of property of one governmental agency by another. City of Wichita v. Unified School District No. 259, 201 K. 110, 439 P.2d 162.

4. Evidence establishing value of entire property before taking was properly taken. Humphries v. State Highway Commission, 201 K. 544, 546, 549, 442 P.2d 475.

5. No error in permitting landowner's witnesses to testify as to separate items of damage resulting from partial taking. Dibble v. State Highway Commission, 204 K. 111, 112, 460 P.2d 584.

6. Cost of removal by lessee of personalty from leased premises for reasonable distance is not compensable element of damage. City of Manhattan v. Eriksen, 204 K. 150, 153, 154, 155, 460 P.2d 522.

7. Applied; 68-413 does not provide procedure for exercising right of eminent domain, but merely designates interests which highway commission may acquire through such procedure. State Highway Commission v. Moore, 204 K. 502, 504, 464 P.2d 188.

8. Cost of removal by lessee of his personalty not an element of damage for which compensation is allowed. Phillips Petroleum Co. v. Bradley, 205 K. 242, 248, 468 P.2d 95.

9. Subsection (c) mentioned in determining rights of condemner in eminent domain proceeding (dissenting opinion). City of Bonner Springs v. Coleman, 206 K. 689, 700, 481 P.2d 950.

10. Legislature intent relating to just compensation and market value (dissenting opinion). State Highway Commission v. Lee, 207 K. 284, 313, 485 P.2d 310.

11. Where plaintiff establishes no "before" and "after" value, verdict not within range established by defendant cannot stand. City of Wichita v. May's Company, Inc., 212 K. 153, 155, 156, 510 P.2d 184.

12. Mentioned; no misconduct in awarding damages where jury added experts' estimated values and divided total obtained by number of experts. Hogue v. Kansas Power & Light Co., 212 K. 339, 345, 347, 510 P.2d 1308.

13. Mentioned; purchase of corporate utility on expiration of franchise is statutory contract right and value not determined under law of eminent domain. City of Kiowa v. Central Telephone & Utilities Corporation, 213 K. 169, 172, 515 P.2d 795.

14. Applied; unit rule method of valuation stated and applied; partial taking; award not based on improper evidence. Rostine v. City of Hutchinson, 219 K. 320, 323, 548 P.2d 756.

15. Compensable damages for taking access to motel; parol evidence upheld. Kohn Enterprises, Inc. v. City of Overland Park, 221 K. 230, 233, 559 P.2d 771.

16. Contention property damaged by factor specified in section; changing street to controlled access facility constituted taking private property for public use. Teachers Insurance & Annuity Ass'n of America v. City of Wichita, 221 K. 325, 329, 559 P.2d 347.

17. Subsection (c) applied; swine producing property did not qualify for "special use" determination of value. In re Central Kansas Electric Coop., Inc., 224 K. 308, 316, 317, 582 P.2d 228.

18. Method of establishing value of property upheld; no abuse of discretion in admission of testimony or evidence. Ellis v. City of Kansas City, 225 K. 168, 170, 171, 589 P.2d 552.

19. Subsections (a) and (b) mentioned; error to use the substitute facilities method of determining compensation in eminent domain proceedings against a church's property. Urban Renewal Agency of Wichita v. Gospel Mission Church, 4 K.A.2d 101, 103, 105, 603 P.2d 209.

20. On issue of value jury is not bound by expert opinion evidence; all evidence may be considered. Kansas Power & Light Co. v. Floersch, 4 K.A.2d 440, 608 P.2d 1023.

21. Condemnation proceeding not improper; comparable market values should be used where available. Consultation, Inc. v. City of Lawrence, 5 K.A.2d 486, 487, 619 P.2d 150.

22. Trial court did not abuse discretion in excluding evidence of specific value of leasehold interest but allowing



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evidence thereof as factor in arriving at value. City of Manhattan v. Kent, 228 K. 513, 517, 618 P.2d 1180.

23. Public fear of power lines held proper consideration in determination of market value. Willsey v. Kansas City Power and Light Co., 6 K.A.2d 599, 615, 631 P.2d 268 (1981).

24. Rights actually acquired by condemner is proper measure of compensation. Barcus v. City of Kansas City, 8 K.A.2d 506, 507, 661 P.2d 806 (1983).

25. Cited; mere plotting and planning in anticipation of a public improvement does not constitute a taking or damaging property. Lone Star Industries, Inc. v. Secretary, Dept. of Transp., 234 K. 121, 123, 671 P.2d 511 (1983).

26. Evidence of comparable sales and various factors herein not authorization to find "before" and "after" values outside range of opinion evidence. Mettee v. Kemp, 236 K. 781, 789, 696 P.2d 947 (1985).

27. Condemnation award does not preclude trespass action for earlier damages not included in award. Grainland Farms, Inc. v. Arkansas Louisiana Gas Co., 11 K.A.2d 402, 407, 722 P.2d 1125 (1986).

28. Method of determining compensatory damages where partial taking occurs reexamined and followed. Small v. Kemp, 240 K. 113, 116, 727 P.2d 904 (1986).

29. Rules for proportionate allocation of award among holders of separate interests in property (26-517) determined. City of Manhattan v. Signor, 244 K. 630, 633, 772 P.2d 753 (1989).

30. Method of determining compensation for condemnation of underground gas storage reservoirs examined. Union Gas System, Inc. v. Carnahan, 245 K. 80, 81, 91, 774 P.2d 962 (1989).

31. Compensation for actual rights acquired rather than rights actually used, taking through exercise of police power examined. Hudson v. City of Shawnee, 245 K. 221, 225, 777 P.2d 800 (1989).

32. Unconstitutional taking of property examined where court disallowed damages for unreasonable denial of rezoning request. Jack v. City of Olathe, 245 K. 458, 468, 781 P.2d 1069 (1989).

33. Allocation of condemnation award between long-term lessee and landowners examined. City of Topeka v. Estate of Mays, 245 K. 546, 550, 781 P.2d 721 (1989).

34. Exercise of police power as noncompensable noted; closing all access as unreasonable determined. Hudson v. City of Shawnee, 246 K. 395, 400, 790 P.2d 933 (1990). (Modifying 245 K. 221, 777 P.2d 800 (1989)).

35. City not permitted to complain about what it must pay for taking for a future intended use. Van Horn v. City of Kansas City, 249 K. 404, 407, 409, 819 P.2d 624 (1991).

36. County's experts should have been permitted to testify. Board of Sedgwick County Comm'rs v. Kiser Living Trust, 250 K. 84, 98, 825 P.2d 130 (1992).

**26-514. Fixing of benefit districts and levying of special tax assessments no part of eminent domain procedure.** In all cases where costs of the improvement are to be paid for, in whole or in part, by fixing benefit districts or by means of apportionment of benefits on all property benefited, the assessments shall be levied and collected as the statutes now authorize, or may hereafter authorize the assessment, levy and collection of the expense of public improvements, but such special assessments shall not be any part of the condemnation proceedings.

**History:** L. 1963, ch. 234, § 14; Jan. 1, 1964.

**Research and Practice Aids:**
Eminent Domain ⇐ 166.
C.J.S. Eminent Domain § 209.

**26-515. Same; proceedings pending prior to effective date of this act; invalidity of part.** All proceedings or actions under any power of eminent domain pending at the time of the effective date of this act shall be completed in conformity with the laws in effect prior to such date.

If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional.

**History:** L. 1963, ch. 234, § 15; Jan. 1, 1964.

**Research and Practice Aids:**
Eminent Domain ⇐ 167(1).
C.J.S. Eminent Domain § 210 et seq.

**26-516. Same; citation of act.** This act may be cited as the "eminent domain procedure act."

**History:** L. 1963, ch. 234, § 16; Jan. 1, 1964.

**26-517. Dispute among parties as to division of award or amount of judgment; determination by court.** In any action involving the condemnation of real property in which there is a dispute among the parties in interest as to the division of the amount of the appraisers' award or the amount of the final judgment, the district court shall, upon motion by any such party in interest, determine the final distribution of the amount of the appraisers' award or the amount of the final judgment.

**History:** L. 1969, ch. 196, § 3; July 1.

CASE ANNOTATIONS

1. Final distribution of appraiser's award where dispute arises among interested parties is judicial matter and appeal will lie. Urban Renewal Agency v. Naegele Outdoor Advertising Co., 208 K. 210, 212, 213, 214, 215, 216, 491 P.2d 886.

2. Trial court did not abuse discretion in excluding evidence of specific value of leasehold interest but allowing evidence thereof as factor in arriving at value. City of Manhattan v. Kent, 228 K. 513, 514, 517, 519, 618 P.2d 1180.

3. Cited in holding 60-2102 does not provide for appeals in original eminent domain proceedings. In re Condem-



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nation of Land for State Highway Purposes, 235 K. 676, 682, 683 P.2d 247 (1984).

4. Rules for proportionate allocation of award among holders of separate interests in property determined. City of Manhattan v. Signor, 244 K. 630, 631, 772 P.2d 753 (1989).

5. Allocation of condemnation award between long-term lessee and landowners examined. City of Topeka v. Estate of Mays, 245 K. 546, 550, 781 P.2d 721 (1989).



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February 12, 1998

Honorable Tim Carmody
Chairman, Judiciary Committee
Kansas State House of Representatives
115 S. State Capitol
Topeka, KS 66612

*RE: HB 2522*

Dear Chairman Carmody:

It is my understanding that your committee will be holding hearings in the next week on House Bill 2522, a bill to revise the law of Kansas, including K.S.A. 55-1210, with respect to the storage of natural gas. In the past several years I have represented clients involved in disputes resulting from the migration of natural gas, originally injected into storage facilities, beyond the boundaries of areas certificated by regulatory authorities. I have developed certain concerns about the current statutory framework which I would like to bring to your attention.

In the past, this law firm has represented pipeline companies, operators of gas storage facilities, lessee-operators of oil and gas properties, and landowner/royalty owners. **I have not been engaged to contact the committee on behalf of any client, however, and the thoughts and opinions in this letter are exclusively mine and based upon personal experiences.**

In particular, there seems to be a lack of clarity with respect to the legislature's intent regarding retroactive application of KSA 55-1210, which decreed that the injector "does not lose title" to the gas, if it meets its burden of proof, when the gas migrates beyond the boundaries of its storage field. A review of the legislative history of the 1993 bill, S. 8168, reflects that the original version specified that the statute would apply "whether such injection occurred before or after enactment of this section." The legislative history further reflects that the language was objected to by Bernie Nordling, Executive Director of the Southwest Kansas Royalty Owners' Association, and subsequently deleted in the final version.

Notwithstanding this legislative history, at least one district court in Kansas has ruled that the statute operates retroactively even though the Supreme Court traditionally has ruled that a



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law does not operate retroactively unless it is specifically stated so on the face of the legislation. There are, of course, certain constitutional dimensions to this question and, in particular, whether retroactive application of the statute operates to deprive oil and gas lessees or lessors of property rights without due process.

Part of the confusion also arises from the question of whether subsection (c) of K.S.A. 55-1210 should be read apart from sub-sections (a) and (b) such that title vests in the injector of the gas only after it successfully meets its burden of proof. At least one legal scholar has suggested that is the only way the statute, as it stands, can be harmonized with existing law.

Given the current state of the law, an unhealthy degree of uncertainty exists in this regard and can impact the development of natural gas properties in the State. Oil and gas leases are routinely bought and sold on the basis of proven or projected reserves. If a party to such a transaction has no certainty about whether the gas will be subsequently claimed by a storage operator in the vicinity, then the value of that lease is, of course, dramatically affected. Because gas reserves are also used in valuations for estates and other purposes, this can cause a great deal of uncertainty. I would respectfully suggest that this aspect of the legislation needs careful attention.

I appreciate the opportunity to express my thoughts on these matters and thank you for such attention as you may choose to give them.

Very truly yours,

TRIPLETT, WOOLF & GARRETSON, LLC

Lee Thompson

By Lee Thompson

LT:tlt
cc: Hon. Robert Krehbiel

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STATEMENT OF JOHN V. BLACK

February 16, 1998

TO THE HONORABLE MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

Mr. Chairman and Members of the Committee:

My name is John V. Black. I am an attorney practicing law in Pratt, Kansas. I have a private practice. I am not appearing on behalf of any particular individuals. In other words, I have not been retained, and I am not being paid for my appearance.

As an attorney, I have recently been involved in litigation, and am currently involved in an appeal of litigation which arose out of the changes made in Article 12 of Chapter 55 in 1993. This amendment became effective July 1, 1993.

This amendment appears to me to have overruled Anderson v. Beech Aircraft Corporation, 237 Kan. 367 (Kan. 1985). It, in effect, took away property rights belonging to the surface owners prior to July 1, 1993, in that it took away their right of capture of gas located under their property at that time. There was no method of compensating them for loss of this property right, and, thus, would facilitate an unconstitutional taking of property that existed then prior to that date.

It is my understanding this Amendment was basically drafted and worked through the Legislature at the request of the companies in the gas industry who were storing natural gas. It was an attempt to remedy problems perceived by the gas storage companies



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when their gas migrated from their storage formations.

I have recently been involved in litigation where gas migrated outside of a gas storage reservoir. In working with the Statute as it is today, we encountered a number of inequities for the landowners. As the Statute is written today, it places a burden on a landowner, who is a victim of a trespass by storage gas, of having to finance studies to counter the gas storage company's biased studies and information being presented to the Corporation Commission. In our case, Northern Natural Gas Company spent in excess of $580,000.00 to establish their position before the Kansas Corporation Commission and the District Court. This is obviously a very burdensome expense to place on landowners who do not have the resources of this multinational company.

First, there were the hearings before the Kansas Corporation Commission in which Northern Natural was establishing that their gas had migrated into the Simpson formation under the owners' 23,000 acres of land. During the time this was taking place, Northern Natural was going to the landowners and giving them a lease contract to sign offering to give them a one time $10.00 payment for what was virtually the perpetual use of the Simpson and Arbuckle formations under their land. (A copy of the contract is attached as Exhibit "A".) They had no proof there was any gas in the Arbuckle, but they were taking it anyway. The land men who talked to these landowners, many of whom were elderly, made the implication that if they didn't sign the contract, they would take away the contract they had on the Viola formation

by means of the condemnation permitted under Article 12, and they would lose the rent on that land as well. Thus, the landowners of approximately 17,000 acres signed the contracts.

I represented the owners of a little over 5,800 acres under this area. We went to the KCC relying on the studies and information of the gas company who was contesting the hearing. The day of the hearing we learned that Northern Natural had bought the wells of that gas company, and they were withdrawing all of their exhibits. Thus, the hearing was then held without expert testimony being available to support the landowners position. To help avoid this type of injustice, we feel the provision should be made that the Corporation Commission has a duty to do an independent study before making its findings and having its public hearing, and this independent study should be paid for by the company that proposes to use the formation. The cost of this should not be a burden to the landowners when the gas company is trying to take away some of the landowners property rights.

We also feel that prior to any type of condemnation proceedings being available there should be certification from the Kansas Corporation Commission approving the use of the property for underground gas storage.

The next problem we encountered under the Statute as it is written today is that condemnation proceedings are held following the condemnation rules which were basically set up for condemning surface interest for highway and powerline use. This did not allow us to address the issues of condemning and

using a subsurface interest. It particularly did not allow us to address the issue of the value of the use of the subsurface formation which was being taken away from the landowner.

The fair and equitable way to handle this situation would be with an arms-length lease made between the landowners and the company proposing to store gas. The companies may argue that they cannot fairly negotiate such a lease. This is not true. I attach hereto Exhibits "B" and "C", which are copies of leases negotiated at arms-length without the use of condemnation between landowners and gas companies setting down at a table and working out a fair and equitable solution to the problem.

The Statute as written today leaves the company proposing to do the gas storage in a position where they can tell the landowner you will either rent your formation to us for the amount we dictate, or we will take it by condemnation and pay you a meager amount for the use of it for many years, because the amount we pay you is going to be determined by the damage that we do to the surface and has no relationship to the property right we are taking. (In other words, the large company can bully the small landowner into either bowing to their dictates, or being condemned.)

Condemnation involves the taking of a bundle of rights. If any of these rights are left out of what can be considered by the appraisers, then the property owner is not fully compensated for the rights he is losing. If condemnation is to be available on gas storage formations, then the damages to be

awarded by the appraisers should consider the values of the property rights being taken. Of course, one of the first things being taken is the recoverable oil or natural gas in place under the property. Here, the independent study of the Commission should establish the amount of the minerals still in the formation. This is should not be something left up to the experts of the company wanting to take the property rights. Naturally, they are going to use a low figure. The amount should be based upon professional engineering studies, and any interested parties should have the right to present evidence of these studies. The appraisers should then set the amounts to be paid to the mineral interest owners.

The next right that should be properly taken would be a lease value for the storage formation. Under the current Statute, they take the whole storage formation. This is not equitable to the landowners to have their neighbors leasing for an amount, and them losing their whole formation because they did not agree to the lease amount dictated by the company. Under the current Statute, the condemnor takes the perpetual right to the formation, thus, severing it from the surface owner. The cavern under the land is the property of the surface owner. If he is going to be forced to do something with it against his will, it should be a lease or rental matter, not a matter of taking it from him perpetually. Thus, the appraisers should then determine the proper annual payments to be used to set a lease value for the property. I would also point out that a lump sum payment could

place a tax burden on the surface owner or reduce the basis in his property, where rental value is strictly ordinary income to be taxed each year. What should be done is to establish a fair rental value and let the company pay that as long as they desire to use it.

The next right in the bundle of rights being taken is the right to place pipeline and utility easements on the property. This right should then also be addressed by the appraisers.

The next right is the value of surface use for pods and wellsites to be used for extraction, injection and monitoring wells. Again, this legal value should be set based on a lease value.

The next right is the right to use necessary roadways in connection with the development. Again, a lease value should be set on this.

If fresh water is to be taken and used in connection with the development, a value should be set on that and those rights should be paid for. Likewise, any other damages incurred by the property owners from the use of their property such as crop damage or damage to the surface value of the soil should be paid by the condemnors. The appraisers should assign a fair market value for all of these rights.

Consideration should be given by the legislature to the use of fresh water in connection with gas storage. While it was not involved in our case, there are proposals to use fresh water to wash out salt caverns and then inject the resulting

saltwater into a storage formation. The proposal we are aware of in this regard involves just buying irrigation rights from farmers, using water which would otherwise be freshwater available for a beneficial use to the general public, and then pumping it down and disposing of it in an underground formation. The State of Kansas has spent millions of dollars fighting with the State of Colorado over fresh water. We are about to embark on another law suit with Nebraska over fresh water. It is totally inconsistent for us to spend millions of dollars to protect the fresh water we should be getting from other states and then at the same time let this fresh water be converted to saltwater and pumped into a saltwater formation. If the fresh water is to be used for clearing out a salt storage formation, then the user should be required to process that water either by a process of reverse osmosis, or through a gortex membrane to recover most of the water as fresh water. If one of these plants was used, then the same water could be reused to remove salt from the formation, and the only thing to be placed in the disposal formation would be a very concentrated brine. Also, there is a possibility this concentrated brine could be used with drilling fluids. Thus, measures should be taken to protect the fresh water and to restore fresh water utilized in washing out a salt cavern so it could be used for other purposes. It is interesting to note that I have recently read a publication by Koch Industries explaining a system they have now developed for filtering water and making it safe for drinking. (A copy is attached as Exhibit

"D".) We all know fresh water is a vital commodity in a lot of areas in western Kansas. We are familiar with the controversy over the City of Hays wanting to buy water rights and transport water to the City of Hays. We are familiar with the problems in Sedgwick County and around the salt caverns in Harvey County. A little entrepreneurship could certainly find a economically feasible use of water recovery systems after the salt cavern was washed out. To put in simpler, couldn't these systems be sold to a city who could then use it to reclaim fresh water from oil field saltwater that is available in abundance in their area, and, thus, give a beneficial use to the public?

We have proposed changing the ability of the court to grant the petition for exercising the eminent domain so this cannot be done until first there is a certificate issued by the Corporation Commission and until the court has determined that the petitioner has compensated the property owner for the value assigned by the appraisers. The petitioners prior uncompensated and unauthorized use of the property for underground storage. In our case we had a jury trial to recover for the trespass and the unjust enrichment of Northern Natural Gas Company, which involved considerable expense for the landowners. Here we had a case of a tort feaser who had illegally used their property and then came in and condemned their property all under due process of law, and the result was totally inequitable. Before the gas storage company could have the benefits of the eminent domain laws, they should have been required to do what was right

and pay them a reasonable compensation for the use their storage formation. In our case, this went on for over 18 years.

The Statute also needs to be amended to provide that the owner of the adjoining property or stratum or portions being used shall have title and possession of all gas under their property at the time of the condemnation or purchase. This is the only way you can protect the natural gas under a persons property and adequately compensate them for the loss of it. There was no wrongdoing on the landowners part that caused other gas to get comingled with the gas company's, and the ability to identify specific gas after it has been comingled with other gas is not scientifically certain. Thus, to avoid the problems involved in claims of ownership of it, the simple way to handle it is to leave the title in the possessor of the gas. The Statute should be clarified to show that the owner of the stratum or the owner of the surface is entitled to be compensated for the use of and damages to both the surface and the substratum. The law as it stands today is somewhat ambiguous on that point.

The other ambiguity in that provision is the provision for reasonable attorney's fees. I feel certain that when the legislature put in the provision for reasonable attorneys fees, they meant that the landowners should be paid for the attorneys fees they have contracted for as long as the court found them to be reasonable. In our case, the District Court found our contract for a contingency fee to be reasonable, but also found an hourly rate to be reasonable, and then allowed the hourly rate, which

was less than the contracted attorneys fees. Thus, I feel that wording should be changed to read, "his contracted attorneys fees if found to be reasonable by the court."

You might ask why a contingency fee is reasonable. Cases of this nature are complex and involve a special skill. They are similar to the cases against the tobacco companies. In those cases, a Federal District Judge in the 7th Circuit found contingency fees, which were much higher than what we are talking about, to be reasonable for the reason that the states suing the tobacco companies were hesitant with the current state of the law to embark upon the lawsuit paying the hourly fees of the attorneys with the skills necessary to do it when the outcome was uncertain. The only way they could obtain the services of the skilled attorneys without involving the risk of loss of great amounts of taxpayers' money was to use the contingency fee. The same type of situation confronts landowners who have limited resources. They cannot afford to risk the attorney fee costs and expert witness costs in fighting a large oil company on a complex issue when they could easily lose the farm if they lost. However, they can afford to work on a contingency fee basis and protect their rights. That is exactly what was done in our Northern Natural case where the Federal Judge allowed an hourly rate, which left the landowners still saddled with a responsibility for paying under their contract. Thus, it is only fair that if the landowners win, the gas company should pay their contracted attorneys fees as long as the court supervises them and finds them to be reasonable.

STATE OF KANSAS }ss
PRATT UNTY }

386

This instrument was filed for record on the 14 day of March 19 96 at 3:10 o'clock P. M and duly recorded in Book 239 Page 386 Fees $16.00

Vera Compton
Register of Deeds

Deputy

# GAS STORAGE AGREEMENT

THIS AGREEMENT, made and entered into as of the 15th day of August, 1995 by and between the undersigned, the owner of certain lands described below and hereinafter designated as "Grantor," whether one or more, and NORTHERN NATURAL GAS COMPANY, a Delaware corporation, with principal operational offices at 1111 South 103rd Street, Omaha, Nebraska 68124-1000, hereinafter designated as "Grantee,"

**WITNESSETH:**

1. That Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and Other Valuable Consideration (OVC), the receipt and sufficiency of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained on the part of the Grantee to be paid, kept and performed, has granted, sold, and conveyed unto and by these presents does grant, sell, and convey unto Grantee, exclusively, that part of the subsurface rock formations lying below the following described land comprising the Simpson and Arbuckle Formations, subject, however, to the prior mineral leases or conveyances of record, if any, situated in the County(s) of Pratt, State of Kansas (hereinafter referred to as the "Premises") to-wit:

Being the South Half (S/2) of Section Nine (9), Township 28 South, Range 11 West of the 6th P. M.



3-11

containing 320.00 acres, more or less, and Grantor further grants unto Grantee the surface of said land for the limited purposes described hereinbelow, as well as the said subsurface formations under all of the said lands, however described, which are owned by Grantor in said section or sections herein specified; and in the event any appurtenant parcel of land now owned by Grantor lying within the external limits of or across the land described herein, or adjacent or contiguous thereto, such as a tract used for school purposes, railroad right-of-way, or other purposes becomes vacated and title thereto shall revert to or shall be conveyed by deed, or in any other manner come into the possession of Grantor or successors in title to the land described herein, while this agreement is in force, then and in that event, such additional land (surface and subsurface formations) thereupon shall be included hereunder.

2. Under the terms hereof Grantee shall have the right to use the surface and subsurface of the land described above for the following purposes:

(a) Conducting exploratory and testing work for the purpose of determining the suitability of the area for gas storage; and developing and operating the area for gas storage by means of any well or wells on said land and other lands, either previously drilled or hereafter drilled; to store any kind of gas by pumping or otherwise introducing the same into any permeable, porous rock within the Simpson and Arbuckle Formations, in and under said land and to remove and recover such gas by pumping or otherwise; to reestablish, reopen, repair, recondition or plug or re-plug any non-commercial existing wells heretofore drilled, whether or not abandoned; to have ingress and egress to, from and across this land and to have the use of so much of the surface thereof as may be reasonably necessary or convenient for the economic and efficient operation of Grantee's facilities for the purposes herein stated;

(b) The right to construct, lay, maintain, operate, replace, change the size of, and remove any pipeline or pipelines and other equipment, appliances and structures on, over and through said lands that may be necessary or convenient for the operation by Grantee or Grantee's facilities on said land alone or conjointly with other lands for the introduction and storage of gas in and under said land its withdrawal therefrom;

(c) Construction, maintenance and operation of electric, telephone, telemetering or other communication lines and equipment above or below ground along or within existing roadways or Grantee's newly established roadways on the property or along and contiguous with property lines, or in the case of buried cable, along or within the pipeline ditch or roadway.

3. It is agreed, except as provided in Paragraph 14, that this Agreement shall remain in force for a term of twenty-five (25) years from this date and as long thereafter as gas is being stored, held in storage or withdrawn from the land described above or from land in the vicinity of the land described above by Grantee. It is further understood that for storage purposes a well or wells need not be drilled on the land described above, and that Grantee shall be the sole and exclusive judge as to whether gas is being stored under the land described above or held in storage under said land, and that its determination shall be final and conclusive.

4. Grantor understands that Grantee contemplates the storage of gas in the Simpson and Arbuckle Formations and agrees with Grantee, that for the purposes of this Agreement there is no native gas remaining in commercial quantities in such formations, and Grantor agrees that Grantee may store its gas in the Simpson and Arbuckle Formations and may remove the same therefrom without any payment to Grantor other than payments hereinafter provided for.

STATEMENT OF JOHN V. BLACK TO HOUSE JUDICIARY COMMITTEE EXHIBIT "A"

5. Grantee further agrees:

(a) To pay to the owner of the surface rights the sum of Five Hundred Dollars ($500.00), as a minimum payment for estimated damage to the surface, for each new storage well site to be utilized by Grantee after the date of this Agreement for gas injection, withdrawal and observation wells and their appurtenances drilled on the Premises and, Grantee may occupy for each such well site a rectangular tract 100 feet by 200 feet. Grantee may also have temporary use of the adjoining area for operations incident to the drilling, installation, maintenance or repair thereof. Grantee may, at its option, enclose all or any part of each such storage well site area with a fence. Additional damages, if any, not covered by the minimum amount specified in this paragraph for such purposes, shall be mutually agreed upon by Grantor and Grantee.

(b) To pay to the owner of the surface rights the sum of Two Dollars (2.00) per rod for any new oil or gas line or lines constructed after the date of this Agreement and appliances attached thereto that may be laid upon the Premises pursuant hereto, such payment to be made after such pipelines are laid. All such pipelines shall be laid upon a route as determined by Grantee, and shall be buried to such depth (except as to gates, valves, meters, regulators, and drips) as will not interfere with ordinary cultivation of the land or any theretofore established drainage systems thereon.

(c) In the event any formation or formations utilized for gas storage is capable of producing oil (including condensate and distillate), Grantor hereby grants exclusively unto Grantee the right to utilize the Premises for the purposes of recovering, saving, transporting and owning the oil within said formations provided that Grantee delivers as a royalty, free of cost, to Grantor at the wells, or to the credit of Grantor, one-eighth (1/8) part of all oil recovered and saved from the Premises, or at Grantee's option pay to Grantor for such one-eighth (1/8) royalty the posted market price at the wells in the field or the area for oil of like grade and gravity prevailing on the day such oil is run into the pipeline or sold from the storage tanks. All costs and expenses resulting from the operation of the Premises under this sub-paragraph shall be fully borne and paid by Grantee. Grantor further grants Grantee the right to unitize the Premises or any part thereof with other acreage in order to form a unit for the recovery of oil to be composed of land as Grantee shall determine from time to time. Such a unit shall be consistent with the area for which Grantee's storage operations are conducted. Upon recovery of oil from such a unit Grantor shall receive only such portion of the royalty payable under the terms and conditions of this Agreement as the amount of Grantor's acreage placed in the unit or the royalty interest therein on an acreage basis bears to the total acreage in the unit. This sub-paragraph shall not be construed to grant Grantor any ownership or royalty interest in the gas being injected, stored or withdrawn from the Premises.

(d) To repair any existing roadways of Grantor upon the Premises that may be damaged by Grantee's ingress and egress and further to pay Grantor the sum of Five Hundred Dollars (500.00) per acre, as a minimum payment for estimated damges, for any new twenty (20) foot width roadway established by Grantee on the Premises. Additional damages, if any, not covered by the minimum amount specified for such purposes, shall be mutually agreed upon by Grantor and Grantee.

(e) To repair or pay for damages done to growing crops, grasses, trees, fences, or other property of said Grantor, resulting from exploratory drilling, well plugging or re-plugging, ingress and egress across the property, pipeline construction, maintenance and operation, or construction, operation and maintenance in a well site area.

6. Any controversy or dispute of any nature hereafter arising between Grantor and Grantee out of or relating to this Agreement, its performance or the breach hereof, shall be finally settled by arbitration in accordance with the Rules of the American Arbitration Association (AAA). Grantor and Grantee expressly agree not to institute any litigation or proceedings (whether judicial, administrative or otherwise) against the other party except as specifically provided herein. The arbitration proceedings shall be conducted by a panel of three arbitrators. Each party shall appoint one arbitrator of its own choosing, regardless of whether such person is listed or approved by the AAA. If a party fails to nominate an arbitrator within sixty (60) days from the date when the claimant's request for arbitration has been communicated to the other party, such appointment shall be made by the AAA.
The two arbitrators thus appointed shall attempt to agree upon the third arbitrator to act as Chairman. If the two arbitrators fail to nominate the Chairman within sixty (60) days from the date of appointment of the latter arbitrator, the Chairman shall be selected by the AAA.

The parties hereby exclude any right of application or appeal to any court, to the extent that they may validly so agree, and in particular in connection with any question of law arising during the course of the arbitration or out of the award of the arbitration panel. The arbitrators' award may include compensatory damages against either party, but under no circumstances will the arbitrators be authorized to nor shall they award punitive damages or multiple damages against either party. Judgment on the award of the arbitrators may be entered in any court having jurisdiction thereof or having jurisdiction over one or more of the parties or their assets.

7. All sums hereinafter payable under this Agreement may be made or tendered directly to Grantor, or his successors in interest. Notwithstanding the death of Grantor or his successors in interest, the payment or tender thereof in the manner provided above shall be binding on the heirs, devisees, executors and administrators of Grantor and his successors in interest.

8. If the undersigned Grantor owns a less interest in the above-described land than the entire undivided fee simple estate therein, then the aggregate of the amounts payable hereunder shall be paid said Grantor only to the extent of his interest in said fee simple estate.

9. If the interests herein are otherwise assignable and if the interest of either party hereto is assigned, the covenants hereof shall extend to the assigns and their respective successors in title including their assigns, but no change of ownership in the land or in the payments which may be made hereunder shall be binding on Grantee until after notice to Grantee and Grantee has been furnished with the written transfer or assignment or a true copy thereof certified by the Register of Deeds of the county in which the land described above is located.

10. If the Premises shall hereafter be owned in severalty or in separate tracts, the Premises, nevertheless, shall be developed and operated as under one agreement and any payments hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each such separate owner bears to the entire acreage.

11. Grantor hereby warrants and agrees to defend the title to the land herein described and agrees that Grantee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied, or assessed on the above-described lands, and shall have a lien upon said lands for any taxes, mortgages, or other liens so paid and Grantee may be subrogated to the rights of any holder or holders of any tax titles or certificates, mortgages, or other liens and may keep and apply to the discharge of any such mortgage, tax, or lien, any payments accruing hereunder. Grantor further agrees that Grantee, upon observing the terms and conditions herein stated, shall peacefully and quietly hold, enjoy and occupy the above-described lands for the purposes herein specified without any hindrance, interruption or molestation by Grantor or any person or party acting by, through or under Grantor including tenants.

12. In case of notice of any adverse claim to the Premises, or any claim affecting all or any payment required hereunder, Grantee may withhold payment or delivery of the same until the ownership is determined by agreement, compromise, or by final decree of a court of competent jurisdiction and proper evidence of same is furnished to Grantee.

13. Grantee shall have the right to use, free of cost, water found on said land for its operations thereon, except water from the water wells of Grantor. No water wells shall be drilled by Grantee on said Premises without written consent of Grantor which consent shall not be unreasonably withheld. Grantee shall have the right at any time or after the expiration of this Agreement to remove all property placed on said Premises. In the event this Agreement is terminated at any time for any reason whatsoever, Grantee, by making payment of any sums then due or owing hereunder, as provided herein, shall after the date of such termination have the right to remove all gas stored in and under said land and any natural product which may be produced therewith, and the right to own, maintain, and operate all of its pipelines, wells, and other facilities for such purpose during the time reasonably necessary and convenient to Grantee to accomplish the removal of such gas. Further Grantee shall, on conclusion of such operations, have the right and obligation to restore the surface of the portion of the said land occupied by well sites, if any, as nearly as practicable, to its condition prior to Grantee's entry thereon, as well as the right and obligation to remove all of its surface and above surface equipment from said land and plug all wells in accordance with the regulations of the Kansas Corporation Commission.

14. Grantee may at any time release this Agreement in part or in whole by paying unto Grantor, the sum of Ten Dollars ($10.00) and deliver or mail to Grantor, at Grantor's last known address, a release covering, as the case may be, a part or the whole of the acreage hereinabove described. If this Agreement is released as to only a part of the acreage covered hereby, then all payments and liabilities thereafter accruing under the terms of this Agreement as to the part released shall cease and determine, but as to the part of the acreage not released, the terms and provisions of this Agreement shall continue and remain in full force and effect for all purposes. When this Agreement is released in whole, then except for accrued liabilities, all of Grantee's liabilities under this Agreement shall cease and determine.

15. It is agreed that any operation on said land, conducted by Grantor or parties acting under Grantor's authority, which without limitation includes drilling and mining, while gas is stored on said land pursuant to this Agreement shall be so conducted as to prevent the escape of gas from and the intrusion of water and other fluids into, any formation in which gas is so stored. Before Grantor or any party proceeding under Grantor's authority begins any operation connected with or resulting from drilling and mining on said land, such party shall notify Grantee in writing by United States mail addressed to Grantee at Omaha, Nebraska, not less than thirty (30) days prior to the intended beginning of any such operation.

Thereupon and before actually beginning any such operation, such party and Grantee shall agree in writing upon the methods and practices which such party shall use in any such operation, which without limitation includes plugging and abandoning thereof. It is specifically understood and agreed that Grantor or its successors may, pursuant to this provision, only properly drill and properly case holes above or through the Simpson and Arbuckle Formations, but may not bottom any wells or perforate any casing in the Simpson and Arbuckle Formations. Grantee shall have the right to have a representative present at all times while any such operation is conducted and shall have the right of access to records of such operations and to declare the Agreement breached if the agreed upon methods and practices governing such operation are not followed and to require termination of such operation following such declaration of breach.

16. All express or implied covenants of this Agreement shall be subject to all Federal and State laws, and the present and future Orders, Rules and Regulations of regulatory authorities with jurisdiction including the Kansas Corporation Commission, Kansas Department of Health and Environment and the Federal Energy Regulatory Commission, and this Agreement shall not be terminated, in whole or in part, nor Grantee held liable in damages 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.

17. Grantor hereby releases, waives and agrees to holds harmless Grantee, its parent and affiliated companies, and the directors, officers, employees and agents of any such corporate entities ("Released Parties"), from, against and in respect of any and all claims, liability, loss, damage, costs, fees, including reasonable attorneys' fees, whether known or unknown, resulting from any acts, omissions or in any way arising out of or related to the Released Parties' operations, except for willful and/or gross negligent acts by Grantee, ownership or presence in Pratt and Kingman Counties, Kansas or in any manner related to or arising out of any prior or existing agreements between the Released Parties and Grantor relating to properties in Pratt and Kingman Counties, Kansas.

18. This Agreement embodies the complete agreement and understanding of the parties hereto with respect to the subject matter thereof.

19. The Grantor specifically agrees that Grantee may freely assign this Agreement in whole or in part. All of the terms, conditions and covenants of this Agreement shall extend to and be binding upon the heirs, successors, and assigns of the parties hereto.

20. In accordance with Paragraph 16 above, this Agreement shall be governed by the laws of the State of Kansas as effective and in force on the Agreement date.

**IN WITNESS WHEREOF,** the parties to this Agreement have set their hands and seals the day and year first above written.

GRANTOR:

**THE CLYDE A. SIMMONS LIVING TRUST**
**DATED MAY 1, 1988**

Frederick Loomis T.O.
THE PEOPLES BANK, PRATT, KANSAS, TRUSTEE
BY: FREDERICK S. LOOMIS, Trust Officer

48-6286742
Tax ID#

SEAL

GRANTEE:

NORTHERN NATURAL GAS COMPANY

By: David W. Linehan

ATTEST: Secretary / SHEVAH HIRONS Assistant Secretary

forms\gastorag.1

STATE OF KANSAS )
)ss
COUNTY OF Pratt )

BE IT REMEMBERED, that on this 13th day of October, 1995, before me, the undersigned, a notary public in and for the County and State aforesaid, came FREDERICK S. LOOMIS, Trust Officer of the Peoples Bank, Pratt, Kansas, Trustee of the Clyde A. Simmons Living Trust dated May 1, 1988, known to me to be the same person who subscribed the foregoing instrument as Trust Officer and acknowledged to me that he executed the same a free and voluntary act and deed, for the uses and purposes therein expressed and in the capacity therein stated.

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

My Commission Expires:
June 13, 1998

John R. Gensch
Notary Public

JOHN R. GENSCH
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 6-13-98

STATE OF )
)ss
COUNTY OF )

BE IT REMEMBERED, that on this ____ day of _____, 19___, before me, the undersigned, a notary public in and for the County and State aforesaid, came _____, who are personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

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

My Commission Expires:

_____ _____
Notary Public

STATE OF TEXAS )
)ss
COUNTY OF HARRIS )

BE IT REMEMBERED, that on this 19th day of Feb, 1996 before me, the undersigned, a notary public in and for the County and State aforesaid, came David W. Sinclair, agent and attorney in fact for NORTHERN NATURAL GAS COMPANY, a corporation duly organized, incorporated and existing under and by virtue of the laws of Delaware, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such agent, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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

My Commission Expires:
October 7, 1999

Liz Beddingfield
Notary Public

LIZ BEDDINGFIELD
Notary Public, State of Texas
My Commission Expires
OCTOBER 07, 1999

400

Filed: February 21, 1992 at 1:00 P.M.

Florence Merritt, Register of Deeds

PAID COLLECTION DEPARTMENT FEB 12 1992 WESTERN NATIONAL BANK TULSA, OKLAHOMA

(Richfield - Mineral & Surface Owners Form)

Book 63 Page 315

# GAS STORAGE LEASE, OIL LEASE & AGREEMENT

LEASE AND AGREEMENT, made and entered into this 21st day of January, 1992, by and between F&H Farms, Inc. 5701 Coachgate Wynde #55 Louisville, KY 40207, hereinafter referred to as "Lessor" (whether one or more), and **RICHFIELD GAS STORAGE SYSTEM**, an Oklahoma general partnership, whose address is 4200 East Skelly Drive, Suite 1000, Tulsa, Oklahoma 74135, hereinafter referred to as "Lessee".

WITNESSETH: That, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration paid by Lessee to Lessor, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the rentals, royalties, covenants and agreements to be paid, kept, and performed by Lessee as hereinafter provided, Lessor does by these presents grant, demise, lease, and let exclusively unto Lessee for the purpose of storing and removing natural gas and other gases or gaseous substances and vapors (hereinafter collectively referred to as "gas"), and to develop, operate for, and produce oil, gas liquids, and gas condensate, subject to prior mineral leases or conveyances of record, if any, the following-described land, together with any reversionary rights and after-acquired interests therein, situated in the County of Morton, State of Kansas, to-wit:

Lots 3, 4 & S/2 NW/4 & SW/4

Limited to Morrow Formation at the stratigraphic equivalent of 4616' to 5226' as found on the electric logs of the Russell 1-1 well located C SW/4 of Section 1-32S-42W

in Section 2, Township 32S South, Range 42W West, and containing 322.80 acres, more or less.

TO HAVE AND TO HOLD the same unto Lessee, its successors and assigns, for a term of thirty (30) years from the date hereof, and so long thereafter as: (i) gas is being stored, held for storage, or withdrawn from the land described above, (ii) gas storage operations are being conducted thereon or upon lands in the vicinity thereof by Lessee, or (iii) oil, gas liquids, and gas condensate, or any of them, is produced from said land or land with which said land is pooled.

1. LESSEE'S RIGHTS

Subject to the other terms and provisions of this Lease and Agreement, Lessee shall have the exclusive right, privilege, and authority to:

a. Utilize the Morrow Formation under the land herein described for gas storage purposes, including the right to construct, maintain, and operate pipelines upon and across said land and to transport through such pipelines gas produced on the land or elsewhere, and further including the right to drill, equip, maintain, and operate on said land a well or wells completed in said underground formation, and through any well or wells now located on said land or drilled hereunder and into such underground

Return To: PANADA EXPLORATION, INC. 4200 E. SKELLY DR., SUITE 1000

EXH. "B"

formation, Lessee shall have the right at its will from time to time to inject gas produced elsewhere than on such premises and store the same therein and at its will remove the gas therefrom.

b. Drill, construct, install, operate, maintain, remove, and abandon, at locations selected by Lessee upon the above-described land, such wells, pipelines, electric lines, and other fixtures, structures, equipment and appurtenances as Lessee may deem necessary or desirable for the purpose of receiving, storing, treating, processing, and removing gas in, from, and under the lease premises and other lands in the vicinity thereof;

c. Conduct geological and geophysical surveys to determine the suitability and performance of the area for gas storage;

d. Introduce gas, whether produced from the above-described land or other lands, into the Morrow Formation underlying the lease premises and store the same by injection through wells now located or to be drilled upon said land or other lands, with the gas so stored to be and remain the personal property of Lessee;

e. Remove gas, oil, gas liquids, and gas condensate, together with other hydrocarbon substances and any water vapors absorbed thereby; and

f. Re-establish, re-open, repair, recondition, plug or replug any non-commercial existing wells heretofore drilled, whether or not abandoned.

g. Use, hold, and occupy the lease premises, together with necessary rights of ingress and egress, for all such purposes.

h. Unitize this lease with others to form a gas storage unit and, at the option of Lessee, to file a designation of such with the Register of Deeds of Morton County, Kansas. This power of unitization is separate and distinct from the power to unitize pursuant to Paragraph 4 hereinafter, for oil purposes only.

i. Unitize this lease as to all or any portion of the land described above to form a unit for the recovery of oil, gas liquids, and gas condensate in accordance with the provisions of Paragraph 4 hereof.

2. WELL NOT REQUIRED

a. In the event that no surface operations for the underground storage of gas be actually undertaken on the land herein described, but such operations are conducted by Lessee on other premises in the same storage field or area, Lessee nevertheless shall likewise have the right to inject gas into the Morrow Formation underlying the surface of the land herein described, store the same therein, and remove such gas together with any gas which may now be contained therein, utilizing in such process of injection and removal any well or wells located on other premises in the general vicinity of the land herein described.

b. It is expressly understood and agreed that a well or wells need not be drilled on the land described above for storage purposes, and that Lessee shall be the sole and exclusive judge as to whether gas is being stored in the land described above or held in storage within said land, and that its determination shall be final and conclusive.

3. COMPENSATION PAID IN FULL FOR EXISTING MORROW GAS RESERVES

a. For and in further consideration of the sum of $16,140.00, paid by Lessee to Lessor, the receipt and sufficiency of which is hereby acknowledged, Lessor does hereby acknowledge that Lessor has been fully compensated by Lessee for

PAID
COLLECTION DEPARTMENT
FEB 12 1992
WESTERN NATIONAL BANK

all natural gas and other gaseous hydrocarbons that might now or in the future be recovered from the Morrow Formation underlying the lease premises or lands now or in the future be pooled or unitized therewith, subject to the provisions of Paragraph 4 below.

b. For and in consideration of the amount set forth above, Lessor, subject to the rights reserved in Paragraph 4 below, does hereby assign, transfer and convey all rights, including but not limited to royalties, overriding royalties, production payments and non-participating royalties, Lessor may have in natural gas and other gaseous hydrocarbons produced from the Morrow Formation, underlying the lease premises or lands now or in the future be pooled or unitized therewith, provided that when this Lease and Agreement terminates, all rights granted herein to Lessee by Lessor shall cease and revert to Lessor.

4. ROYALTY ON OIL

a. In the event that gas storage operations conducted by Lessee hereunder shall result in the recovery of oil (including gas liquids, and/or gas condensate) in commercial quantities from the Morrow Formation, Lessee shall deliver to the credit of Lessor in the pipeline to which Lessee may connect its wells, as royalty, the equal three-sixteenth (3/16) part of all oil produced and saved from the lease premises, or at the option of the Lessee, may pay to Lessor the market price for such three-sixteenth (3/16) royalty for oil (including gas liquids, and/or gas condensate) of like grade and gravity prevailing on the day such oil is run into the pipeline or storage tanks.

b. After division orders are executed, payments due Lessor shall be made within forty-five (45) days after the oil (including gas liquids, and/or gas condensate) is removed from the unit tank battery(s). If the amount due Lessor is less than Twenty-Five Dollars ($25.00), Lessee may withhold payment until said amount is at least Twenty-Five Dollars ($25.00). In any event (after division orders are executed) payment must be made every six (6) months even if the amount due is less than Twenty-Five Dollars ($25.00).

c. The royalty payable to Lessor hereunder shall be in addition to annual rental and other payments due Lessor in accordance with the terms of this lease. All costs and expenses associated with the production of oil from the lease premises herein shall be borne and paid solely by Lessee. It is expressly understood and agreed by Lessor that use of the lease premises by Lessee shall be for the primary purpose of injecting, storing, and removal of gas, as herein defined, and that Lessee shall have no obligation, whether express or implied, to drill or otherwise operate and develop the lease premises for the recovery of oil.

d. Nothing herein contained shall be construed to grant to Lessor any ownership or royalty interest in and to the gas to be injected, stored, and removed from the above-described land in connection with the exercise by Lessee of its gas storage rights hereunder.

e. Lessor hereby grants to Lessee the right to unitize this lease as to all or any part of the land described above with other lands and leases in the vicinity thereof to form a unit for the recovery of oil from the Morrow Formation, with such unit to be comprised of all lands forming the gas storage unit of which this lease is a part. Lessee shall execute in writing and record in the office of the Register of Deeds of Morton County, Kansas a declaration of unitization identifying and describing the acreage so pooled.

f. If oil is produced from the pooled acreage, it shall be treated as if production is had from this lease, whether the well or wells be located on the premises covered hereby or not. In

lieu of the royalties elsewhere herein specified, Lessor shall receive on oil produced from such unit only such portion of the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest herein on an acreage basis bears to the total acreage included in the unit.

5. STORAGE RENTAL

a. In full payment for the right to inject, store, and remove gas hereunder, and all other rights and privileges conferred upon Lessee, including the right to produce and remove any commercial quantities of gas remaining in the storage formation, and the right to continue this lease in force and gas storage operations hereunder beyond the term of years hereinabove provided, but excluding the right to develop, operate for, and produce oil, gas liquids, and gas condensate, Lessee shall pay to Lessor, as rental, the sum of Five Dollars ($5.00) per acre per annum, payable annually in advance, commencing with the date hereof and continuing so long as gas is injected for storage or such gas storage rights are utilized or held by Lessee. Annual rental hereunder may be paid directly to Lessor, or to the credit of Lessor at the _____ First National Bank of Louisville Bank at Louisville, Kentucky, or its successors, which shall continue as the depository and agent of Lessor to receive and credit such payments regardless of changes in the ownership of said land.

b. Notwithstanding the foregoing, on the fifth anniversary of this Lease and every succeeding five (5) year anniversary thereafter, the rental amounts shall increase by Two Dollars ($2.00) per acre per annum. At the expiration of the initial thirty (30) years term hereof, the annual rental payable hereunder shall be adjusted to reflect the net change in the Consumer Price Index or any comparable measure issued by the United States Department of Labor, or a successor governmental agency, during such term by multiplying the annual rental amount set forth in the foregoing Paragraph 5a by a factor having as its numerator the value of such index as of the end of said initial term, and as its denominator the value of such index of the inception of this Lease. Annual rental shall thereafter be adjusted each year as of each subsequent anniversary hereof in accordance with changes in such index during the preceding twelve (12) month period.

c. Payment of annual rental as herein provided shall grant to Lessee the right to extend the term of this lease beyond the period of years above set forth, and continue this lease in force and operations hereunder for successive annual periods thereafter so long as gas is stored in and under said land, or so long thereafter as Lessee shall own, maintain, or operate such gas storage facilities in the manner herein provided, or in the same storage field or area. Lessee shall be the sole and exclusive judge of the necessity, advisability, or need for retaining this Lease, and the land covered hereby, or any part thereof, for use in connection with or for the protection of such gas storage facilities or operations.

d. Lessee's failure to make payment of or tender any annual payment when due shall not operate to terminate or impair any provision of this lease unless and until Lessee shall fail to make such payment within sixty (60) days following receipt of Lessor's written demand therefor. Lessee shall pay interest on any payment of annual rental more than thirty (30) days past due at the prime rate of interest then charged by the First National Bank in Wichita, Kansas.

6. DAMAGE COMPENSATION

a. In addition to the annual rental required by Paragraph 5 hereof, Lessee further agrees to pay to Lessor the amounts shown on the attached Exhibit "A", for the privilege of conducting surface operations upon the above-described lease

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premises, such sums to be paid prior to the commencement of such operations, to compensate Lessor for all damage to the lease premises caused thereby.

b. Damages for which compensation is to be paid to Lessor in accordance with Exhibit "A" shall be limited to those damages normally arising in the ordinary course of gas storage operations.

c. Settlement of surface damage as herein provided shall be binding upon all persons acquiring any right, title, or interest in and to the surface of such lands by or through Lessor. Lessor shall hold Lessee harmless from and against any and all claims of tenant for damages to the surface, such payment being considered as payment in full.

d. Amounts to be paid Lessor in compensation for surface damages as shown upon Exhibit "A" shall be adjusted as of the third and each subsequent three (3) years anniversary hereof to reflect the net percentage change in the Consumer Price Index issued by the United States Department of Labor, or any comparable measure issued by any successor governmental agency, during the preceding three (3) year period.

7. SPECIAL DAMAGES

a. In the event Lessee shall cause a well to be drilled on this lease during the growing season of any crop planted, and should Lessee's or his agent's equipment prohibit the use of any irrigation system on said land during that time the well is being drilled, Lessee agrees to pay Lessor the difference in the value of the crop produced on that strip of land that could not be watered and the field average yield for such crop per acre, which shall be deemed the maximum producing capability of the land. The price per unit shall be the cash price at the local elevator in the town nearest to this land as of the first of the normally accepted harvest month.

b. Lessee shall pay Lessor for any and all unforeseen or extraordinary damages to the property or property rights of Lessor, whether real, personal, or mixed, caused by its operations hereunder including, without limitation, damages to land, growing crops, grass, buildings, livestock, fences, and other improvements and personal property, but shall not be liable to Lessor for latent damages of any nature whatsoever existing prior to the commencement of such operations, or damages occurring as a result of events of force majeure or other causes beyond the reasonable control of Lessee.

8. COMPLIANCE WITH CONSERVATION RESERVE PROGRAM

a. It is understood by the parties that the surface of the land covered by this Lease is presently entered into the Conservation Reserve Program, or may be entered into a Conservation Reserve Program. Under the terms of said program, the land in the program must be kept in an approved grass or vegetative cover for the duration of the program. In the event that a well is drilled on said property or pipelines are built on said property, the Lessee will indemnify and hold harmless the Lessor, his agents, or surface owners from any penalties that may be assessed as a result of the land not being in compliance with the program.

b. It is understood the Lessee will pay site damages as set out in the contract, which are anticipated to cover costs due to operations on the CRP land. It is also understood that as long as the Lessee diligently, reasonably, and with use of due care prosecutes his operations on the land, no costs or penalties in the CRP program will be generated which would entitle the Lessor to further compensation. However, in the event the Lessees or his agents fail to comply with the requirements of the County Soil

Conservation Service and the ASCS office and penalties are generated due to disregard of the regulations, the Lessee will then indemnify and hold harmless the Lessor from said costs and penalties.

c. If due care is used in the prosecution of the Lessees operations, the Lessor will be entitled to no further payments. However, in the event of the lack of due care or disregard of the regulations, the Lessors will then have the right to recover the costs and penalties that are incurred as a result of these activities.

d. Prior to drilling, constructing pipelines, or other activities on the property, the Lessee will notify the County Soil Conservation Service Office and ASCS Office of the proposed activity and obtain their consent to the activity. All activities will be conducted in compliance with their requirements. The Lessors will not be entitled to be reimbursed more than the payments set out herein for any reductions in program payments attributed to the spots where the activities are conducted. However, in the event the complete piece of property is thrown out of compliance, then the Lessors will be entitled to recover the costs of being put out of compliance from the Lessees.

9. LESSOR RESERVATIONS

a. Lessor reserves all rights to grant, lease, mine and/or produce any minerals from the lands subject hereto, except those interests in gas and oil and their constituent products herein leased to Lessee or subject to the storage provisions of this Lease.

b. In the event that the lease premises are presently subject to a valid and subsisting oil and gas lease, all rights granted herein to Lessee shall be subject to the same. Nothing herein contained shall be construed to reduce or impair any royalty payable to Lessor under the terms of any such prior oil and gas lease.

c. Lessee agrees to defend, indemnify and hold Lessor harmless from and against all liability, cost, and expense, including attorney's fees, incurred in connection with any action instituted against Lessor by the Lessee under any existing oil and gas lease of the lease premises resulting from Lessor's execution of this Lease.

10. LESSEE OPERATIONAL OBLIGATIONS

In conjunction with its operations, Lessee specifically agrees to:

a. Build any meter houses, separators, heater treaters and storage tanks, used for the purpose of producing and saving any oil and gas upon the above-described premises adjacent to any county, state, or federal road or highway adjoining the above-described premises. All storage tanks and tank batteries shall be installed in any of the four (4) corners of the lease premises to avoid interference with any irrigation circular sprinkler system. No such installation, with the exception of an actual well pad, shall be made closer than 1400 feet to the center of the lease premises. It being the intention of the parties hereto to minimize interference with farming operations on said land insofar as possible, including but specifically not limited to the operation of pivotal irrigation sprinkler systems, or any other irrigation method. Any production equipment, including but specifically not limited to pump jacks, hydraulic lifting equipment, or any other equipment necessary to produce any oil or gas well on the above-described land, shall be recessed to such depth as to permit the use by Lessor of a circular irrigation sprinkler system currently in operation.







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b. Minimize interference with Lessor's use and enjoyment of the surface, including:

(i) bury pipelines and utility lines to a depth of not less than sixty (60) inches below the surface, and backfill, compact, and maintain all ditches for pipelines and utility lines at original surface level;

(ii) fill and level all slush pits within sixty (60) days after well completion or abandonment, unless a longer time therefor is granted by Lessor, at his option;

(iii) backfill, water pack, and level any pipeline ditch across irrigated land so as to allow irrigation water to cross the pipeline ditch in a normal manner, with such backfilling, water packing, and leveling to be performed by Lessee at its expense and in a workmanlike manner, to the satisfaction of Lessor; and

(iv) reseed and establish, at Lessee's expense, native grass cover, if any, on any right-of-way and adjoining land used in pipeline construction.

c. Comply with all laws, regulations and orders of all governmental entities having jurisdiction with respect to environmental hazards, damage, contamination and remediation. Lessee further agrees to accept the leased premises in its "as is" condition. It is acknowledged that Lessee has been advised to inspect the property to determine that it is suitable for the purpose intended and to ascertain that no environmental hazards or toxins are now present, insofar as it concerns the Morrow Formation. Lessee makes no representation and shall have no obligation hereunder as to the environmental condition of existing producing oil and gas wells on the property.

d. Indemnify and hold Lessor harmless from any claims, damages, actions or causes of action from any environmental damage or contamination caused or contributed to by Lessee subsequent to the commencement of this Lease.

e. Within one (1) year after the expiration of this Lease, fill all pits and ponds, remove all structures and equipment, plug and abandon all wells drilled or used by Lessee in accordance with applicable rules, regulations, and orders of the State Corporation Commission of the State of Kansas, and restore the lease premises, as nearly as practicable to its original condition, natural wear and tear and damage from the elements excepted. Any surface equipment remaining upon the lease premises at the end of one (1) year following the expiration of this Lease shall become the sole property of Lessor. In the event this Lease is terminated at any time for any reason, including the non-payment of rental or other compensation due Lessor hereunder, Lessee shall have the right, for a period not to exceed one (1) year following the date of such termination, to remove all gas stored in and under said land and any natural produced which may be produced therewith, and the right to own, maintain, and operate all of its pipelines, wells, and other facilities for such purpose during the time necessary and convenient for Lessee to accomplish the removal of such gas and, at the conclusion of such operations, to remove all of its equipment and other property as hereinbefore provided.

f. Maintain any well site, storage tank location, or any other area used in its lease operations reasonably free of weeds, but without the use of salt or chemical substances in such weed control. Lessee will use reasonable diligence in its operations to cause minimal interference with any cattle operations on said lands.

11. ACCESS REQUIREMENT

Lessor in cooperation with Lessee, may designate routes of ingress and egress to and from all well locations, but shall not insist upon unreasonable access requirements. Prior to the construction of any roads, tank battery installations, or installation of other equipment on the lease premises, Lessee shall consult and agree with the landlord or tenant or other person(s) in possession of the surface as to the location and direction of lease roads and installations. There shall be no oil road surfaces or hard surfacing of any access roads without the written consent of Lessor. Lessee shall, insofar as possible, construct all lease roads along one-half (1/2) section lines, following a true North-South or East-West direction, so as to least interfere with farming operations as possible.

12. WATER USE

Water for the lease premises shall be used for drilling operations and water packing pipeline or utility ditches only. Lessee is expressly denied the right to use fresh water from the above-described premises for the purpose of water flooding or injection in any water flooding program in which the lease premises may, for any reason, be pooled or unitized.

13. SALT WATER DISPOSAL

The installation of any salt water disposal equipment by Lessee in the operation of this lease shall be subject to the written approval of Lessor. Lessee shall not be permitted to use any well drilled on the lease premises as a salt water disposal well without the written consent of Lessor and without compensating Lessor for the use thereof; provided, however, that the terms of this paragraph shall not apply to the disposal of salt water produced from wells located on the lease premises.

14. PROPORTIONATE REDUCTION

In the event that Lessor owns a less interest in the above-described land than the entire undivided fee simple estate therein, then the annual payments provided herein or oil royalty as provided for in Paragraph 4 shall be paid to Lessor only in the proportion which his interest therein bears to the whole and undivided fee.

15. LESSOR SUBSEQUENT TRANSFERS

If the lease premises shall hereafter be owned in severalty or in separate tracts, the premises may nevertheless be developed and operated as an entirety, and the annual payments and royalties hereunder shall be paid to each separate owner in the proportion that the acreage owned by each bears to the entire leased area.

16. ASSIGNMENTS

a. If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to and be binding upon their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of annual payments or royalties due hereunder shall be binding upon Lessee until after it has been furnished with written notice thereof and either the original recorded instrument of conveyance or a duly certified copy thereof, together with like proof of all intermediate transfers showing a complete chain of title back to Lessor of the full interest claimed.

b. If Lessee assigns or releases this Lease, in whole or in part, Lessee shall notify Lessor in writing of such assignment or release within thirty (30) days thereof, and shall thereafter be released and discharged from all payments,

obligations, and conditions herein contained with respect to the portion hereof so assigned or released; provided however, that notwithstanding release of this Lease, Lessee shall have the rights upon termination provided by the foregoing Paragraph 10e, and shall remain liable to Lessor only for environmental claims and damages, or other causes of action, if any, arising out of its use and enjoyment of the leased premises by operation of law.

17. LESSOR WARRANTY

Lessor hereby warrants and agrees to defend the title to the land herein described, and agrees that Lessee, at its option, may pay or redeem for Lessor by payment any mortgages, taxes, or other liens on the above-described land in the event of default in payment by Lessor, and be subrogated to the rights of the holder thereof or reimbursed from any annual payments and/or royalties thereafter accruing hereunder. The undersigned Lessor, for himself and his heirs, successors, and assigns, hereby surrenders and releases all rights of dower and homestead in the lease premises, insofar as said rights of dower and homestead may in any way affect the purposes for which this lease is made. In case of notice of any adverse claim to the lease premises, or any claim affecting all or any part of the annual payments or royalties to be paid to Lessor hereunder, Lessee may withhold payment or delivery of the same until the ownership is determined by agreement, compromise, or by final decree of a court of competent jurisdiction, and proper evidence of the same furnished to Lessee.

18. SUBSEQUENT THIRD PARTY DRILLING

a. It is agreed that any operation on said land, which without limitation includes drilling and mining, in which gas is stored on said land pursuant to this storage lease shall be so conducted as to prevent the escape of gas from, and the intrusion of water and other fluids into, any formation in which gas is so stored. Before Lessor or any party proceeding under Lessor's authority begins any operation connected with or resulting from drilling and mining on said land, such party shall notify Lessee in writing, addressed to Lessee at the address hereinbefore indicated (in initial recitals) or to the current operator as shown by the records of the County Clerk, not less than thirty (30) days prior to the intended beginning of any such operation. Thereupon and before actually beginning any such operation, such party and Lessee shall agree in writing upon the methods and practices which such party shall use in any such operation, which without limitation includes plugging and abandoning thereof.

b. It is specifically understood and agreed that Lessor or its successors may, pursuant to this provision, only properly drill and properly case holes above or through the Morrow Formation, but may not bottom any wells or perforate any casing within 200 feet of the top of the Morrow Formation. Lessee shall have the right to have a representative present at all times while any such operation is conducted and shall have the right of access to records of such operations and to declare the agreement breached if the agreed upon methods and practices governing such operation are not followed and to require termination of such operation following such declaration of breach.

19. SUBJECT TO FEDERAL, STATE & LOCAL LAWS

All terms, covenants, and conditions of this lease, express or implied, shall be subject to all federal, state, and local laws, rules, regulations, orders, and ordinances, and this lease shall not be terminated in whole or in part, nor Lessee held liable in damages for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such law, rule, regulation, order, or ordinance.

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TULSA, OKLAHOMA

20. ABSTRACTING

Any abstracting charges for drilling operations by Lessee under the terms of this Lease shall be paid by Lessee.

21. TERMINOLOGY

Whenever necessary in this Lease and where the context requires, the singular term and the related pronoun shall include the plural, the masculine and the feminine.

22. BINDING EFFECT

This Lease and Agreement, and all the terms and provisions hereof, shall extend to and be binding upon Lessor, his heirs, successors, executors, administrators, and assigns, shall inure to the benefit of Lessee, its successors and assigns, and shall run with the lands, tenements, and hereditaments subject hereto.

23. COUNTERPARTS

This Lease and Agreement may be executed in multiple counterparts, all of which are identical. All of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

F&H Farms, Inc.

Attest: Laura L. Heverin
Secretary

By: Laura L. Heverin
President

Tax I.D.# 85-0337631

STATE OF Kentucky )
) SS.
COUNTY OF Jefferson )

The foregoing instrument was acknowledged before me this 3rd day of February, 1992, by Laura L. Heverin, President and Secretary

Alice H. Blackburn
Notary Public
State at Large, Kentucky
(Alice H. Blackburn)

My Commission Expires:

3-13-94

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TULSA, OKLAHOMA

EXHIBIT "A"

COMPENSATION SCHEDULE

Pipeline Right-of-Way

| Line Size | Right-of-Way Per Rod | | Damages Dry Land | Damages Irrigated |
|---|---|---|---|---|
| 4 to 8" | $20.00 | plus | $10.00 | $15.00 |
| 10 to 14" | $25.00 | plus | $10.00 | $15.00 |
| 16 to 20" | $35.00 | plus | $10.00 | $20.00 |

Well Sites

| | |
|---|---|
| Pasture Land | $2,250.00 Per Location |
| Dry Land, Cultivated | $3,000.00 Per Location |
| Irrigated Land | $4,000.00 Per Location |

(Road Easements are included in well site compensation.)

For purposes of determining damages for well sites and pipeline right-of-ways, CRP Land will be treated as if it is irrigated land.

GAS STORAGE - - LEASE AGREEMENT

THIS AGREEMENT made and entered into this 21 day of September, 1981 by and between FRED I. BREHM, ELLA M. BREHM, EDWARD A. BREHM, EDITH I. BREHM, GEORGE E. HERTLEIN, MYRLAND M. HERTLEIN, of the County of Pratt, State of Kansas, owner of certain lands described below and hereinafter designated as "Lessor", whether one or more and THE KANSAS POWER AND LIGHT COMPANY, a Kansas corporation, with its principal office at 818 Kansas Avenue, Topeka, Kansas 66612, hereinafter designated as "Lessee."

WITNESSETH:

1. That Lessor, for and in consideration of TWENTY FIVE THOUSAND AND NO/100 - DOLLARS ($25,000) in hand paid by Lessee, the receipt of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained on the part of Lessee to be paid, kept and performed, has granted, demised, leased, and let unto and by these presents does grant, demise, lease, and let unto Lessee the following described land situated in the County of Pratt, State of Kansas, to wit:

The Southeast Quarter (SE/4) of Section 22, in Township 28 South, Range 13 West (Landowners: George E. Hertlein and Myrland M. Hertlein - Lease Held By: Kansas Power and Light Company) 160 Ac.

The Southwest Quarter (SW/4) of Section 23, Township 28 South, Range 13 West (Landowners: Fred I. Brehm and Ella M. Brehm - Lease Held By: Kansas Power and Light Company) 160 Ac.

The North Half (N/2) of the Northwest Quarter (NW/4) of Section 26, Township 28 South, Range 13 West (Landowners: Edward A. Brehm and Edith I. Brehm - Lease Held By: Kansas Power and Light Company) 80 Ac.

The South Half (S/2) of the Northwest Quarter (NW/4) of Section 26, Township 28 South, Range 13 West (Landowners: Fred I. Brehm and Ella M. Brehm - Lease Held By: Kansas Power and Light Company) 80 Ac.

and containing 480 acres more or less, and Lessor hereby leases to Lessee

STATE OF KANSAS } SS
PRATT COUNTY }
This instrument was filed for record on the 27th day of April 1982 at 8:30 o'clock A.M. and duly recorded in Book 170 Page 339 Fees $14.00
Mary L. Jones
Register of Deeds
Deputy

State of Kansas, Pratt County } ss.

I, Vera Compton, Register of Deeds within and for said county and state, duly elected and qualified, do hereby certify that this photo is a full true and correct copy of the original instrument filed in my office on the 19 day of April A.D., 1982 at 8:30 o'clock A.M., as shown by the record thereof in volume 170 of Misc. at page 339.

Witness my hand and official seal at my office in the City of Pratt, Kansas, this 12 day of August A.D., 1997.

Vera Compton SW
Register of Deeds

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STATEMENT OF JOHN V. BLACK TO HOUSE JUDICIARY COMMITTEE EXHIBIT "C"

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all of the lands however described which are owned by Lessor in said section, sections, or survey herein specified, and in the event any appurtenant parcel of land not now owned by Lessor lying within the external limits on or across the land leased herein, or adjacent or contiguous thereto, such as a tract used for school purposes, railroad right-of-way, roadway, highway, or other purpose becomes vacated and title thereto shall revert to or shall be conveyed by deed, or in any other manner come into the possession of Lessor or successors in title to the land described herein, while this lease is in force, then and in that event, such additional land thereupon shall be included hereunder.

2. Under the terms hereof, Lessee shall have the right to use the land described above for the purposes of:

(a) Conducting exploratory work for the purpose of determining the suitability of the area for gas storage; by means of any well or wells on said land and other lands, either previously drilled or hereafter drilled, to store any kind of gas by pumping or otherwise introducing the same into any land or lands or sub-strata, structure, or horizon in the Simpson Sandstone formation and under said land or other lands and to remove such gas by pumping or otherwise; to re-establish, reopen, repair, recondition, plug, or replug any non-commercial existing wells heretofore drilled, whether or not abandoned; to have the use of so much of the surface thereof as may be reasonably necessary or convenient for the economic and efficient operation of Lessee's facilities for the purposes herein stated;

(b) Engaging in the secondary recovery of oil from the Simpson Sandstone formation;

(c) To construct, lay, maintain, operate, change the size of, and remove any pipe line or pipe lines and other appliances and structures on, over, and through said lands that may be necessary or convenient for the operation by Lessee of said land alone or conjointly with other lands for the introduction and storage of gas in said land and its withdrawal therefrom;

(d) To develop, operate for, and produce oil, gas, casinghead gas, casinghead gasoline; to lay; construct, maintain, operate, replace, change and remove pipe lines and the necessary equipment, appliances, structures, and facilities to produce, transport, store, save, remove, and market all of such substances;

(e) To construct, maintain and operate electric telephone, telemetering

or other communication lines and equipment below ground buried to a minimum depth of three (3) feet along or within existing roadways or Lessee's newly established roadways on the property or along and contiguous with property lines, or along or within the pipe line, ditch or road;

3. It is agreed, except as provided in paragraph 12, that this lease shall remain in force for a term of twenty (20) years from this date and as long thereafter as gas is being stored, held in storage, or withdrawn from the land described above or from land in the vicinity of the land described above by Lessee, and as long thereafter as oil, gas, casinghead gas, casinghead gasoline, or any of them is or can be produced from the land described above. It is expressly understood that for storage purposes a well or wells need not be drilled on the land described above and that Lessee shall be the sole and exclusive judge as to whether gas is being stored in the land described above or held in storage within said land, and that its determination shall be final and conclusive.

4. Lessee shall have the right to utilize the Simpson Sandstone formation under the land herein described for gas storage purposes, including the right to construct, maintain, and operate pipe lines upon and across said land and to transport through such pipe lines gas produced on the land or elsewhere, and further including the right to drill, equip, maintain, and operate on said land a well or wells completed in said underground formation, and through any well or wells now located on said land or drilled hereunder and into such underground formation, Lessee shall have the right at its will from time to time to inject gas produced elsewhere than on such premises and store the same therein and at its will remove the gas therefrom. In the event no surface operations for the storage of gas underground be actually undertaken on the land herein described, but such operations are conducted by Lessee on other premises in the general vicinity thereof, Lessee nevertheless shall likewise have the right to inject gas into said formation underlying the surface of the land herein described, store the same therein and remove such gas together with any natural gas which may now be contained therein, utilizing in such process of injection and removal any well or wells located on other premises in the general vicinity of the land herein described. Lessee shall have the right to conduct and continue such gas storage operations not only during the primary term hereof, but by making the annual payment

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hereinafter provided, Lessee shall have the further right to extend such term and continue this lease in force and operation hereunder for successive annual periods thereafter so long as gas is or can be produced from or is stored in and under said land, or so long thereafter as Lessee shall own, maintain, or operate such gas storage facilities in the manner herein provided, on or in the general vicinity of said land and Lessee shall be the sole and exclusive judge of the necessity, advisability, or need of retaining this lease and the land covered hereby, or any part thereof, for use in connection with or for the protection of such gas storage facilities or operations.

In full payment for such rights and privileges granted to Lessee, Lessee shall pay to Lessor and Lessor shall accept, to cover the right and privilege of injecting and storing gas therein and removing same, and all other rights and privileges conferred, including the right to continue this lease in force and operations thereunder beyond the primary term as hereinabove provided, a combined lease and storage rental in the sum of Ten and no/100ths--------Dollars ($10.00), per acre per annum, payable annually in advance, commencing with the date hereof and continuing so long as gas is produced or stored or such gas storage rights are utilized or held by Lessee, and the receipt and sufficiency of such first annual payment and the consideration first recited herein, is hereby acknowledged by Lessor. So long as such rights are utilized or held by Lessee and payments are made hereunder, this lease shall continue in full force and effect, and the payment or tender of the annual combined lease and storage rentals as aforesaid in the manner and within the time hereinafter provided shall be sufficient notice to Lessor of the exercising of the right of Lessee to continue this lease in force beyond its primary term. For the purpose of this payment, the acreage agreed upon is 480 acres.

5. In addition to the payments provided for in paragraph #4 hereof, Lessee agrees:

(a) To pay to the owner of the surface rights as an annual well head fee the sum of One Hundred and no/100ths Dollars ($100.00) for each well whether gas input and withdrawal well, production, observation or salt water disposal well, and its appurtenances drilled on the leased premises and, as to each well so drilled by Lessee on said leased premises. Lessee may occupy for such

well and its appurtenances a tract approximately an area of 10,000 feet (either square feet or cubic circle at the option of Lessor) around the well site, and Lessee may have temporary use of adjoining area for operations incident to the installation, maintenance, or repair thereof. Lessee may enclose all or any part of each such storage well site area with a fence and, upon the written request of Lessor, shall so enclose each such well site and its appurtenances. This payment shall also cover the right to construct, maintain and use a 15 foot wide roadway, from the county or state road to each well site. Lessee shall submit a plat map as to where intended roads shall be placed and must receive the written approval of the landowner who shall not withhold approval for any reasonable request. New or additional surface equipment, including but not limited to pumps, buildings, and storage tanks may be installed by Lessee after receipt of written permission under separate agreement with the affected Lessor; however, this provision shall not apply to that 10,000 foot area and the access roads attributed to the wellhead.

(b) To pay to the owner of the surface rights the sum of $6.00 per rod for any pipe line or lines and appliances attached thereto that may be laid upon the premises, which said line or lines are used solely and exclusively for the transmission of gas in connection with the storage and removal thereof from the premises, such payment to be made after such pipe lines are laid, and in addition to pay reasonable damage which may arise to land, crops, timber, fences, or other property of said Lessor resulting from such construction. All such pipe lines shall be laid upon a route as determined by Lessee, and if the land is in cultivation, shall be buried to such depth (except as to gates, valves, meters, regulators, and drips) as will not interfere with ordinary cultivation of the land.

(c) Lessee agrees to repair any roadways upon the premises that may be damaged by ingress or egress.

(d) In lieu of repair or payment for damages done to land, crops, grasses, trees, fences, or other property of the Lessor resulting from drilling, well plugging, replugging, ingress and egress across the property, Lessee will pay and Lessor will accept a payment of $3,000.00 per well upon the above described land for each well drilled or redrilled.

6. All sums hereafter payable under this agreement may be made or tendered direct to Lessor, or deposited to credit of Lessor in bank that Lessor

directs in writing to the Lessee, or its successors, which bank and its successors are Lessor's agent and shall continue as the depository of any and all sums payable hereunder, regardless of changes in the ownership in said land, production therefrom, or in the payments to accrue hereunder. All payments or tenders may be made by check or draft of Lessee or any assignee thereof, mailed or delivered on or before the annual combined lease and storage rental paying date. No forfeiture for non-payment of such annual combined lease and storage rentals shall be had until after fifteen (15) days' written notice by Lessor to Lessee at the above indicated address, during which said time Lessee shall have the right to make the payment then in default, adding two percent (2%) of the sum due as a penalty for the delay, and thus continuing this agreement in good standing and in full force and effect.

7. If said Lessor owns a less interest in the above described land than the entire undivided fee simple estate therein, then the annual combined lease and storage rental herein provided shall be paid Lessor only in the proportion which his interest bears to the whole and undivided fee which shall be distributed in the following manner:

George E. Hertlein and Myrland M. Hertlein.....33 1/3%

Fred I. Brehm and Ella M. Brehm.....50%

Edward A. Brehm and Edith I. Brehm.....16 2/3%

8. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of Lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all property placed on said premises, including the right to draw and remove all casing. In the event this lease is terminated at any time for any reason whatsoever, except the filing of record by Lessee of a release hereof, Lessee, by making payment of any sums then due or owing hereunder and by continuing to tender or pay annually the combined lease and storage rental as provided herein, shall after the date of such termination, have the right to remove all gas stored in and under said land any natural product which may be produced therewith, and the right to own, maintain, and operate all of its pipe lines, wells, and other facilities for such purpose during the time reasonably necessary and convenient

to Lessee to accomplish and removal of such gas, and on conclusion of such operations the right to remove all of its equipment and other property from said land as hereinabove provided.

9. If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to the assigns and their respective successors in title including their assigns, but no change of ownership in the land or in the payments which may be made hereunder shall be binding on Lessee until 60 days after notice to Lessee and it has been furnished with the written transfer or assignment or a true copy thereof certified by the Recorder of the county in which the land described above is located.

10. If the leased premises shall hereafter be owned in severalty or in separate tracts, the premises, nevertheless, shall be developed and operated as one lease and the annual combined lease and storage rental payments hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners as set forth in Item No. 7 that the acreage owned by each such separate owner bears to the entire leased acreage. There shall be no obligation on the part of the Lessee to offset wells on separate tracts in which the land covered by this lease may be hereafter divided by sale, devise, or otherwise, or to furnish separate measuring or receiving tanks.

11. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens, existing, levied, or assessed on the above described lands, and shall have a lien upon said lands for any taxes, mortgages, or other liens so paid and Lessee may be subrogated to the rights of any holder or holders of any tax titles or certificates, mortgages, or other liens and may keep and apply to the discharge of any such mortgage, tax, or lien, any payments accuring hereunder.

12. It is agreed that Lessee at any time may remove all property placed by it on said premises; and further, after 20 years from the date of this Agreement, upon the payment of One Dollar ($1.00) and all amounts due hereunder, Lessee shall have the right to surrender this lease and thereupon shall be released and discharged from all payments, obligations, and conditions herein

contained. All rights and privileges granted to Lessee herein contained. All rights and privileges granted to Lessee herein shall continue until a written release is filed by Lessee in the Register of Deeds Office of the county in which the land described above is located.

13. In case of notice of any adverse claim to the premises, or any claim affecting all or any part of the annual combined lease and storage rental payments, Lessee may withhold payment or delivery of the same until ownership is determined by agreement, compromise, or by final decree of a court of competent jurisdiction and proper evidence of same furnished to Lessee.

14. The dollar amount of the annual well head fee and combined lease and storage rental shall be adjusted at the rate of 10% per annum, compounded annually.

15. All express or implied covenants of this lease shall be subject to all Federal and State laws, Executive Orders, Rules or Regulations of regulatory authorities with jurisdiction including the State Corporation Commission of the state of Kansas, and this lease shall not be terminated in whole or in part, nor Lessee held liable in damages 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.

16. It is agreed that any operation on said land which without limitation includes drilling and mining, while gas is stored on said land pursuant to this storage lease shall be so conducted as to prevent the escape of gas from and the intrusion of water and other fluids into any formation in which gas is so stored. Before Lessor or any party proceeding under Lessor's authority begins any operation connected with or resulting from drilling and mining on said land, such party shall notify Lessee in writing by United States mail addressed to Lessee at Topeka, Kansas not less than 30 days prior to the intended beginning of any such operation. Thereupon and before actually beginning any such operation, such party and Lessee shall agree in writing upon the methods

and practices which such party shall use in any such operation, such party and Lessee shall agree in writing upon the methods and practices which such party shall use in any such operation, such party and Lessee shall agree in writing upon the methods and practices which such party shall use in any such operation which without limitation includes plugging and abandoning thereof. It is specifically understood and agreed that Lessor or its successors may, pursuant to this provision, only properly drill and properly case holes above or through the Simpson Sandstone formation, but may not bottom any wells or perforate any casing in the Simpson Sandstone formation. Lessee shall have the right to have a representative present at all times while any such operation is conducted and shall have the right to access to records of such operations and to declare the agreement breached if the agreed upon methods and practices governing such operation are not followed and to require termination of such operation following such declaration of breach.

17. Lessee is, or contemplates becoming the assignee of a certain oil and gas lease or leases previously granted covering mining and operating for oil and gas from the tract herein described, and other tracts contiguous thereto. No merger of said earlier oil and gas lease and this Gas Storage--Lease Agreement is intended. Unless modified by this Gas Storage--Lease Agreement, the terms of the earlier oil and gas lease shall govern production thereunder. By reason of Lessee's plans to inject gas into the Simpson Sandstone for purposes of storage of said gas, secondary production of oil from said reservoir will result. Therefore, Lessee is expressly granted the right, power and option to consolidate the leasehold estate granted by said earlier lease, as to all or any formation or horizon thereunder, with other leasehold estates, or portions thereof, so as to form one secondary development unit. Said consolidated estate shall embrace the entire production horizon or pool, as determined by Lessee's qualified geologists or petroleum engineers by methods and standards recognized in the oil and gas industry. Said right, power and option herein granted Lessee shall be exercisable by Lessee's executing in writing and recording in the office of the Register of Deeds in the County in which the leased premises is situated an instrument identifying and describing such development unit. In lieu of royalties provided under said earlier lease, excepting shut-in royalty, Lessor shall receive

on production from a development unit so formed, only such portion of the royalty stipulated herein as to the amount calculated upon a formula which takes into consideration as to each Lessor's separate tract or tracts in the development unit the tracts' cumulative oil production from the Simpson Sandstone as of the date of unitization, as a 45% factor; the tracts current income from all producing horizons for six (6) months immediately preceding unitization as a 45% factor; and the gross acreage of each tract in the unit shall constitute a 10% factor in the weighted formula for such royalty thereon as is determined by the State Corporation Commission of the State of Kansas, or any successor agency in proceedings under K.S.A. 55-1301, et seq. Nothing herein contained shall be construed to effect any transfer of any title dated in such development unit. Lessee may terminate any consolidation effected pursuant hereto at any time the development unit formed by such consolidation is not producing by executing and filing a written declaration of the termination of such consolidation in the office of the Register of Deeds where the development unit was originally identified and described, provided that the consolidation of all interests comprising part of such development unit also be terminated in some effective manner.

18. All of the terms, conditions and covenants of this agreement and lease shall extend to and be binding upon the heirs, successors, and assigns of the parties hereto.

19. (a) In recognition of Lessor's intention to, in the future, engage in irrigation of the above described land, Lessee represents that any surface facilities modified or added will be located only upon the 10,000 foot tracts described in paragraph 5(a) and not on any adjacent land and in such a manner so as to not interfere with irrigation of adjacent land.

(b) Lessor and Lessee acknowledge that the J. J. Brehm No. 4 Well has been and is presently used as a salt water disposal well. Lessee agrees that in its operation of said well, it will be used solely for the disposal of salt water produced from the Brehm Field and not that produced in other fields or areas.

20. If at any time during the term of this agreement the Lessee should contract and pay a higher price for annual well head fee and combined lease and storage rental as part of any subsequent gas storage field operated by Lessee in the State of Kansas than the amount then currently paid hereunder as that base amount may have escalated then Lessee agrees that it will adjust its payment for said annual well head fee and combined lease and storage rental herein to such higher price.

IN WITNESS WHEREOF the parties to this agreement have set their hands and seals the day and year first above written.

THE KANSAS POWER AND LIGHT COMPANY

ATTEST:

By _____
Vice President-Gas Operations

"LESSEE"

Date: Dec. 4 1981

_____
FRED I. BREHM

_____
ELLA M. BREHM

_____
GEORGE C. HERTLEIN

_____
MYRLAND M. HERTLEIN

_____
EDWARD A. BREHM

_____
EDITH I. BREHM

"LESSORS"

350

STATE OF Kansas

ss.

COUNTY OF Pratt

I, Charles H. Backer, do hereby certify that Fred I. Brahm, Ella M. Brahm, George E. Hartlein, Myrland M. Hartlein, Edward A. Brahm, Edith I. Brahm

personally known to me to be the same person(s) whose name(s) is (or are) subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal this 21 day of September, 1981.

Charles H. Backer
Notary Public

CHARLES H. BECKER
Pratt County, Ks.
My Appt. Exp. Mar 31, 1982

My Appointment Expires:

March 31, 1982

STATE OF KANSAS

ss.

COUNTY OF LEAVENWORTH

On this 4th day of December, 1981, before me, a Notary Public in and for said County and State aforesaid, personally appeared Ned A. Vahldieck and L.M. Barker to me personally known, each being by me duly sworn, did say that the said Ned A. Vahldieck is the Vice President, and the said L.M. Barker is the Secretary of The Kansas Power and Light Company the corporation that executed the foregoing instrument, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that instrument was signed, sealed and delivered in the name and on behalf of said corporation by authority of its Board of Directors, and said Ned A. Vahldieck and L.M. Barker acknowledge said instrument to be the free and voluntary act and deed of said corporation.

WITNESS the hand and seal the day and year last above written.

Roger K Weatherby
Notary Public

My Appointment Expires:

July 13, 1983

ROGER K. WEATHERBY
STATE NOTARY PUBLIC
Leavenworth County, Kansas
My Appointment Expires

Discovery, Newslett for Koch Industries, January 1998

# Koch Membrane Systems makes drinking water safe

Water flows from a mountain cave in Cumberland Gap National Historic Park near the Virginia, Kentucky and Tennessee borders.

Nature's drink is clean and cold there — almost perfect. Only in autumn, with turbidity caused by falling leaves and eventual humus, does the water need much treatment of any kind to make it perfectly safe.

This water serves the citizens of Cumberland Gap, as well as the students of Lincoln Memorial University.

"The water is so good," says Sam Reid, the operator of the

Continued on page 4

Continued from page 1

university's water and wastewater treatment plants. "It seemed wrong to treat this water with chemicals when seasonal turbidity and a little microbial influence were our only difficulties."

## Koch comes through

Enter Koch Membrane Systems.

This Koch company has designed, manufactured, and marketed filtration processes to filter products that touch our lives everyday: foods and beverages, printing needs, automotive painting, and industrial cleaning. In each case, a pressure-driven process called "ultrafiltration" (UF) separates certain materials from water based on the size differences of those materials.

Now Koch UF technology is being brought to the service of municipal water systems such as Lincoln Memorial University/Cumberland Gap to remove viruses, giardia (a particularly nasty form of water-borne pathogen), bacteria, coliform, particulate matter, and crypto-sporidium, (the contaminant identified in the tragic water-caused deaths in Milwaukee a few years ago).

"Our product is considered to be an economical, alternate technology, as more cities and companies find better ways to meet safe drinking water standards," says Evelyn Scibelli, Koch sales manager. Indeed, piloting has been completed in more than 15 states, and opportunities exist in numerous others. As a result, four successful installations are underway.

## Membranes replace sand

Before Koch UF was developed, many communities relied on chlorine as a disinfectant or sand filtration — technology at least a 100 years old. Sand filtration demands large land areas for efficient use. It's slow to use and costly to clean. Further, besides being resistant to chlorine, both giardia and crypto are frequently too small to be removed by traditional filtration.

"For communities and institutions, the cost savings are everywhere," says Jamie Monat, vice president of Koch Membrane. "Land and manpower can be used more productively* by using our technology, and disposal requirements are easier to implement."

## Low maintenance, high volume

Koch UF systems also are very reliable, requiring only minimal maintenance. Typically, the systems last 20 years, although membrane cartridges themselves must usually be replaced at four-to-five-year intervals. In addition, costs of capital and operation are competitive with conventional treatment.

Volume flexibility is another key success factor surfacing in current tests. The Koch product can now filter 0.3-4.0 MGD (million gallons a day). Piloting has been completed on volumes up to 27 MGD. Soon, Koch plans to test in markets in the 20-70 MGD range.

Meanwhile, in the extreme northeastern corner of Tennessee, Sam Reid is "amazed and tickled" with the two-year performance of his plant's UF system.

> **"Land and manpower can be used more productively* by using our technology, and disposal requirements are easier to implement."**
> *- Jamie Monat*

"I'll tell you how good this water is," he says; "companies come over here, gather the water from our holding tank, remove the little bit of chlorine in the water, bottle it, and sell it."

Reid reports that the system works "like a dream," with no maintenance necessary beyond a chemical cleaning every couple of weeks.

"I tell everybody who'll listen that this Koch UF system does everything you folks claim, and then some."

### Applying MBM™

***Creative Destruction**

is the evolutionary process through which new and better products and production processes, (based on advancing technology), replace older ones less able to satisfy human wants and needs.

Imaginative, creative people constantly look for new and better ways to provide for human needs and wants. They steadily accumulate knowledge of how to produce goods and services better and more cheaply. They build this knowledge into new tools, production processes, management techniques, goods and services. These destroy the economic value of the older and inferior.

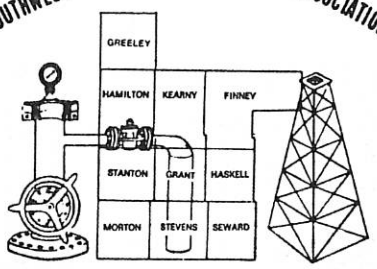
### *Clean Water Awards*

Koch Membrane Company has been honored with awards for its UF technology from:

- The American Consulting Engineers Council
- Consulting Engineers of Tennessee

#1

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION




PHONE (316) 544-4333
FAX (316) 544-2230

209 EAST SIXTH STREET

P.O. BOX 250
HUGOTON, KS 67951



STATEMENT OF
BERNARD E. NORDLING, ASSISTANT EXECUTIVE SECRETARY
SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION
HUGOTON, KANSAS 67951

February 18, 1998

TO THE HONORABLE MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

INTRODUCTION

Mr. Chairman and Members of the Committee:

My name is Bernard E. Nordling of Hugoton and Lawrence. I am Assistant Executive Secretary of the Southwest Kansas Royalty Owners Association. I am appearing on behalf of members of our Association and on behalf of Kansas royalty and land owners in support of House Bill 2522 dealing with proposed changes in the statute covering underground storage of natural gas.

I am a lawyer and senior partner of Kramer, Nordling and Nordling. I began practicing law in Hugoton in 1949 with A. E. "Gus" Kramer, the founder of the Southwest Kansas Royalty Owners Association. Mr. Kramer served as its first Executive Secretary until 1968, at which time I became Secretary. I served until 1994, when my son, Erick, who is my law partner, assumed responsibilities of the Secretaryship. Much of our law

House Judiciary
2-18-98
Attachment 4

practice has involved the representation of landowners on oil and gas issues, mainly in the Hugoton Gas Field.

HISTORICAL BACKGROUND OF SWKROA

The Southwest Kansas Royalty Owners Association is a non-profit Kansas corporation organized in 1948 for the primary purpose of protecting the rights of landowners in the Hugoton Gas Field. We have a membership of over 2,500 members. Our membership primarily consists of landowners owning mineral interests in the Kansas portion of the Hugoton Field who are lessors under oil and gas leases as distinguished from oil and gas lessees, producers, operators, or working interest owners. Along with my statement is a brochure about the Association which gives some of its history, activities and achievements over the years. The brochure is in the process of being updated to show the current leadership and recent activities of the Association.

For those of you who are not familiar with the Hugoton Gas Field, it covers parts of eleven southwest Kansas counties, including Seward, Stevens, Morton, Stanton, Grant, Haskell, Finney, Kearny, Hamilton, Wichita and Gray. The Kansas portion of the Hugoton Field encompasses some 2,600,000 acres. The field extends through the Oklahoma Panhandle into Texas. It runs 150 miles north and south and 50 miles east and west and is one

common source of supply.

BACKGROUND OF HOUSE BILL NO. 2522

House Bill No. 2522 was introduced during last year's legislative session to solve some of the problems created by Senate Bill No. 168 passed during the 1993 legislative session. Current Section K.S.A. ~~12~~ 55-1210 contains the provisions of SB 168 and deals with, among other things, natural gas migrating from an established gas storage area to adjoining property.

It may help this committee to study the legislative history of Senate Bill 168. I am attaching statements I submitted to the Senate and House Committees on Energy and Natural Resources in 1993 expressing our concerns about the proposed legislation. We felt strongly that the gas injector should not be given the right to go on adjoining property to test for migrating gas. The leading proponent of SB 168 was Williams Natural Gas Company.

Bill Bryson, then Director of the Conservation Division of the Kansas Corporation Commission, also appeared in opposition to SB 168. The Commission took the position that the courts already deal with the determination of the ownership of natural gas escaping from underground storage facilities and should continue to do so. The Commission undoubtedly was referring to at least

two Kansas cases dealing with natural gas storage, Anderson, et al, vs. Beech Aircraft Corporation, 237 Kan. 336,699 P.2d 1023 (Kan. 1985) and Union Gas System, Inc., v. Carnahan, et al, 245 Kan. 80, 774 P.2d 963 (Kan. 1989).

In Anderson vs. Beech Aircraft Corporation, the Kansas Supreme Court held, among other things, that Beech, having purchased, injected and stored non-native gas in a common reservoir under Anderson's adjoining property without obtaining a license, permit or a lease, lost its ownership in that gas and could not thereafter preclude plaintiffs from producing that gas as their own when the Corporation Commission had not issued a certificate authorizing an underground storage facility and no natural gas public utility was involved.

The Union Gas case involved a natural gas utility (Union Gas Systems, Inc.). The Kansas Supreme Court held that: (1) The utility was not entitled to recover for any of its injected gas that had been taken by the surface owners, lessees, or working interest owners before the issuance of a certificate authorizing underground storage; (2) The underground storage of natural gas did not meet the statutory element of open and exclusive possession for adverse possession purposes; (3) The date of taking for purposes of condemnation was the date the award was paid; and (4) The utility was entitled to an offset for the

amount of gas captured after issuance of its certificate.

SB 168 CHANGES KANSAS LAW ON RULE OF CAPTURE

Kansas courts have long held that the person vested with the title to land is deemed to own, in addition to the surface, any oil, gas or other minerals which might be located beneath the surface boundaries of the land. As early as 1904, in Zinc Co. v. Freeman, 68 Kan. 691, 696, 75 P. 995. 997, the Court held that although the landowner has a present ownership in oil and gas beneath his land, rights in the resource are lost once it moves outside surface boundaries. Only by "capturing" the oil and gas can the landowner perfect his ownership interest. This is known as the "rule of capture" and Kansas has long followed this rule, extending the rule in Anderson v. Beech Aircraft Corp., supra, to gas injected into a private gas storage reservoir. (For a discussion of the "ownership in place" theory and the "rule of capture", see Sections 3.01, 3.02, and 3.03, Chapter 3, The Oil and Gas Property Interest, Kansas Oil and Gas Handbook, by Law Professor David E. Pierce (1986)).

The Kansas Legislature, by passing Senate Bill 168 (now K.S.A. 55-1210), overruled Anderson and changed the Kansas law of "rule of capture" by providing that title to the natural gas migrating to adjoining property remains in the injector. This has caused litigation to result and

raises the question of its constitutionality by depriving the adjoining property owner of his property rights and the opportunity to be heard on a level playing field.

The proposed changes in K.S.A. 55-1210 will cure some of the problems created by the passage of SB 168. The other proposed changes will provide a more equitable method of determining damages in condemnation proceedings brought under Article 12, Chapter 55, K.S.A., dealing with the underground storage of natural gas.

Thank you for this opportunity to be heard.

Respectfully submitted,

Bernard E. Nordling
Assistant Executive Secretary
SOUTHWEST KANSAS ROYALTY
OWNERS ASSOCIATION

BEN:ckh
Attachments

S:\CONNIE\BERNIE\STATEMEN.HB

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

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FAX 316 544 - 2230

209 EAST SIXTH STREET

P. O. BOX 250
HUGOTON, KS 67951

March 16, 1993



The Honorable Carl Holmes and Members of the
House Committee on Energy and Natural Resources
State Capitol
Topeka, Kansas 66612

RE: Senate Bill No. 168

Dear Chairman Holmes and Committee Members:

By way of introduction, my name is Bernard Nordling of Hugoton. I am Executive Secretary of the Southwest Kansas Royalty Owners Association, a nonprofit Kansas corporation organized in 1948 for the primary purpose of protecting the rights of landowners in the Hugoton Gas Field. We presently have over 2,400 land and mineral owner members.

By way of further introduction, I am the senior partner in the law firm of Kramer, Nordling, Nordling & Tate of Hugoton, having lived in Hugoton since 1949. Our law firm specializes in representing landowners and royalty owners in oil and gas matters. I personally have represented surface and mineral owners in negotiating storage leases covering two gas storage fields in Morton County, the most recent of which was the Richfield Gas Storage Reservoir last year.

I am appearing on behalf of our Association and on behalf of the Kansas royalty owners with reference to Senate Bill No. 168, as amended.

Our Association appeared in opposition to Senate Bill 168, as originally drafted, at the time it was under consideration before the Senate Committee on Energy and Natural Resources. A copy of my statement made to that Committee is attached hereto and made a part of this statement as though fully set forth herein.

On Page 4 of the statement made to the Senate Committee, we suggested four amendments to the bill to alleviate our concerns. Senate Bill 168 was amended in the Senate to take care of Items No. 1, 3 and 4. We are still concerned about Item No. 2 with reference to the right of the injector to conduct tests on adjoining property for natural gas which might have migrated from the storage reservoir.

The Oklahoma law, after which Senate Bill 168 was patterned, contains no reference to natural gas migrating to adjoining property. To me, there obviously was a reason the Oklahoma law contains no such provision.

We see all kinds of problems which might arise if the injector is given the right to go on adjoining property to test for migrating gas. For example, one of the clients I represented in the Richfield Gas Storage Field owned land within the boundaries of the reservoir and immediately adjoining the field. The reservoir still had remaining reserves for which the landowners within the storage area were compensated. However, my client received no compensation for the potential reserves underlying his land adjoining the storage area.

If and when the gas injector exercises its right to go on my client's adjoining property to test for migrating gas, my client will contend it is his gas that has never been produced and not migrating gas. My client will then find himself in court at considerable expense to protect his rights as a result of the right given to the injector to go on adjoining property to test for migrating gas under Senate Bill No. 168.

We respectfully request that Senate Bill No. 168, as amended, be further amended to delete the words "that has migrated to adjoining property or to" (lines 34 and 35) and insert the word "in" immediately preceding the words "a stratum" (line 35). By these deletions and insertions, Senate Bill No. 168 then will read the same in this regard as the Oklahoma statutes after which Senate Bill No. 168 is patterned.

Thank you for this opportunity to be heard.

Sincerely,

B. E. Nordling

B.E. Nordling
Executive Secretary
Southwest Kansas Royalty Owners Association

BEN/dh
Attachment

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

PHONE 316 544 - 4333
FAX 316 544 - 2230

209 EAST SIXTH STREET

P. O. BOX 250
HUGOTON, KS 67951

February 25, 1993



The Honorable Don Sallee and Members of the
Senate Committee on Energy and Natural Resources
State Capitol
Topeka, Kansas 66612

RE: Senate Bill No. 168

Dear Senator Sallee and Committee Members:

By way of introduction, my name is Bernard Nordling of Hugoton. I am Executive Secretary of the Southwest Kansas Royalty Owners Association, a nonprofit Kansas corporation organized in 1948 for the primary purpose of protecting the rights of landowners in the Hugoton Gas Field. We presently have over 2,400 land and mineral owner members.

It is my understanding your honorable Committee has before it for present consideration Senate Bill No. 168 clarifying the rights of an injector of natural gas into an underground storage facility. We must respectfully oppose Senate Bill No. 168 as presently drafted because it is contrary to present Kansas law and contains provisions broader than the Oklahoma law after which it is patterned.

Reese Exploration, Inc. v. Williams Natural Gas Co., 1991 U.S. Dist. LEXIS 9124 (D. Kan. 1991), was a case in which the defendant, Williams Natural Gas Company (WNG), owned the gas rights and gas storage rights from the surface down to 1,050 feet below the surface. The plaintiff, Reese Exploration, owned the oil rights in the property. WNG completed wells to inject and produce gas from the Bartlesville formation 900 feet below the surface. Reese conducted enhanced oil recovery operations in the Squirrel formation which was 800 feet below the surface.

For several years, WNG knew that gas was migrating from the Bartlesville formation storage reservoir up to the Squirrel formation. The higher gas pressures in the Squirrel formation interfered with Reese's oil operations and Reese brought a negligence action against WNG for damages caused by the migrating gas.

The Court awarded Reese $147,733.11 for permanent damages and held that WNG had a duty not to interfere with Reese's oil operations and had violated that duty by allowing gas to escape in the Squirrel formation.

Two other Kansas cases dealing with natural gas storage are Anderson, et al, vs. Beech Aircraft Corporation, 237 Kan. 336, 699 P. 2d 1023 (Kan. 1985) and Union Gas System, Inc. v. Carnahan, et al, 245 80, 774 P. 2d 963.

In Anderson vs. Beech Aircraft Corporation, the Kansas Supreme Court held, among other things, that Beech, having purchased, injected and stored non-native gas in a common reservoir under Anderson's adjoining property without obtaining a license, permit or a lease, lost it's ownership in that gas and could not thereafter preclude plaintiffs from producing that gas as their own when the Corporation Commission had not issued a certificate authorizing an underground storage facility and no natural gas public utility was involved.

The Union Gas case involved a natural gas utility (Union Gas Systems, Inc.). The Kansas Supreme Court held that: (1) The utility was not entitled to recover for any of its injected gas that had been taken by the surface owners, lessees, or working interest owners before the issuance of a certificate authorizing underground storage; (2) The underground storage of natural gas did not meet the statutory element of open and exclusive possession for adverse possession purposes; (3) The date of taking for purposes of condemnation was the date the award was paid; and (4) The utility was entitled to an offset for the amount of gas captured after issuance of its certificate.

Senate Bill No. 168 is broader in scope than the Oklahoma gas storage law in two respects (See copy of Oklahoma Statutes 52, Section 36.6, attached):

(a) The Oklahoma law does not apply to natural gas that has migrated to adjoining property (compare lines 25 and 26, page 1, Senate Bill No. 168); and

(b) The Oklahoma law does not apply to gas injected before or after its enactment (see lines 32 and 33, page 1, Senate Bill No. 168).

We also have concern about the words, "or otherwise interfere with" (lines 23 and 24). In the Hugoton Gas Field there are numerous producing zones, both oil and gas, below the shallow Hugoton (2,500 to 2,800 feet) and Panama Council Grove (2,800 to 3,100 feet) pay zones.

Natural gas utilities acquiring gas storage rights normally limit, by condemnation or purchase, the storage facility to a particular formation, leaving the surface and/or mineral owner with the right to explore and develop potentially productive zones lying above or below the storage stratum. If the words "or otherwise interfere with" are left in the bill, the gas injector could possibly prevent the mineral owner, and its lessee, from testing the other productive zones lying above or below the formation being used by the injector.

In subparagraph (c) (3) (lines 39 and 40), no reference is made to compensation to the surface owner. In the Hugoton Field, literally tens of thousands of acres have different ownership of the surface and minerals. For example, in Stevens County (my home county), close to 50% of the mineral interests is severed from the surface with different ownership.

For that reason, reference needs to be made in lines 39 and 40 to provide for compensation to the surface owner as well as compensation to the owner of the stratum.

Our Association would have no objection to the passage of Senate Bill No. 168 with the following amendments:

1. Delete the words "or otherwise interfere with" on lines 23 and 24.

2. Delete the words "that has migrated to adjoining property or to" (lines 25 and 26) and insert the word "in" immediately preceding the words "a stratum" (line 26). By these deletions, Senate Bill No. 168 then will read the same in this regard as the Oklahoma statute after which Senate Bill No. 168 is patterned.

3. On line 31, place a period following the word "storage" instead of a comma, and delete in their entirety the words "whether such injection occurred before or after enactment of this section". (Lines 32 and 33.) The Oklahoma statute does not include these words.

4. On line 39, insert the words "and surface owner" following the word "stratum."

We appreciate this opportunity to present this statement and respectfully request serious consideration of the proposed amendments listed above.

Respectfully submitted,

B. E. Nordling

B. E. Nordling
Executive Secretary
Southwest Kansas Royalty
Owners Association

BEN/dh
Attachment

## § 36.6. Ownership of gas

All natural gas which has previously been reduced to possession, and which is subsequently injected into underground storage fields, sands, reservoirs and facilities, shall at all times be deemed the property of the injector, his heirs, successors or assigns. In no event shall such gas be subject to the right of the owner of the surface of said lands or of any mineral interest therein, under which said gas storage fields, sands, reservoirs, and facilities lie, or of any person other than the injector, his heirs, successors and assigns, to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control thereover. With regard to natural gas in a stratum, or portion thereof, which has not been condemned or otherwise purchased under the provisions of this act:[1]

1. The injector, his heirs, successors and assigns shall not lose title to such gas if such injector, his heirs, successors or assigns can prove by a preponderance of the evidence that such gas was originally injected into the underground storage;

2. The injector, his heirs, successors and assigns, shall have the right to conduct such tests, at his sole risk and expense including, but not limited to, the value of any lost production of other than the injector's gas, as may be reasonable to determine ownership of such gas; and

3. The owner of the stratum shall be entitled to such compensation as is provided by law.

Amended by Laws 1991, c. 140, § 1, eff. Sept. 1, 1991.

[1] Section 36.1 et seq. of this title.

### Historical and Statutory Notes

Section 2 of Laws 1991, c. 140, provides for an effective date.

(Richfield - Mineral & Surface Owners Form)

DULY RECORDED IN BOOK 63 ON PAGE 186 REGISTER OF DEEDS

PAID MAR 8 1992 KESTERY NATIONAL BANK

# GAS STORAGE LEASE, OIL LEASE & AGREEMENT

LEASE AND AGREEMENT, made and entered into this 22nd day of January, 19 92, by and between Mary Frances Simmons & Edwin L. Simmons, wife & husband, 5319 W. 15th Street, Topeka, KS 66604, hereinafter referred to as "Lessor" (whether one or more), and **RICHFIELD GAS STORAGE SYSTEM**, an Oklahoma general partnership, whose address is 4200 East Skelly Drive, Suite 1000, Tulsa, Oklahoma 74135, hereinafter referred to as "Lessee".

WITNESSETH: That, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration paid by Lessee to Lessor, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the rentals, royalties, covenants and agreements to be paid, kept, and performed by Lessee as hereinafter provided, Lessor does by these presents grant, demise, lease, and let exclusively unto Lessee for the purpose of storing and removing natural gas and other gases or gaseous substances and vapors (hereinafter collectively referred to as "gas"), and to develop, operate for, and produce oil, gas liquids, and gas condensate, subject to prior mineral leases or conveyances of record, if any, the following-described land, together with any reversionary rights and after-acquired interests therein, situated in the County of Morton, State of Kansas, to-wit:

Lots 6, 7 & E/2 SW/4

Limited to Morrow Formation at the stratigraphic equivalent of 4616' to 5060' as found on the electric logs of the Russell 1-1 well located C SW/4 of Section 1-32S-42W

in Section 6, Township 32S South, Range 41W West, and containing 151.10 acres, more or less.

TO HAVE AND TO HOLD the same unto Lessee, its successors and assigns, for a term of thirty (30) years from the date hereof, and so long thereafter as: (i) gas is being stored, held for storage, or withdrawn from the land described above, (ii) gas storage operations are being conducted thereon or upon lands in the vicinity thereof by Lessee, or (iii) oil, gas liquids, and gas condensate, or any of them, is produced from said land or land with which said land is pooled.

1. LESSEE'S RIGHTS

Subject to the other terms and provisions of this Lease and Agreement, Lessee shall have the exclusive right, privilege, and authority to:

a. Utilize the Morrow Formation under the land herein described for gas storage purposes, including the right to construct, maintain, and operate pipelines upon and across said land and to transport through such pipelines gas produced on the land or elsewhere, and further including the right to drill, equip, maintain, and operate on said land a well or wells completed in said underground formation, and through any well or wells now located on said land or drilled hereunder and into such underground

formation, Lessee shall have the right at its will from time to time to inject gas produced elsewhere than on such premises and store the same therein and at its will remove the gas therefrom.

b. Drill, construct, install, operate, maintain, remove, and abandon, at locations selected by Lessee upon the above-described land, such wells, pipelines, electric lines, and other fixtures, structures, equipment and appurtenances as Lessee may deem necessary or desirable for the purpose of receiving, storing, treating, processing, and removing gas in, from, and under the lease premises and other lands in the vicinity thereof;

c. Conduct geological and geophysical surveys to determine the suitability and performance of the area for gas storage;

d. Introduce gas, whether produced from the above-described land or other lands, into the Morrow Formation underlying the lease premises and store the same by injection through wells now located or to be drilled upon said land or other lands, with the gas so stored to be and remain the personal property of Lessee;

e. Remove gas, oil, gas liquids, and gas condensate, together with other hydrocarbon substances and any water vapors absorbed thereby; and

f. Re-establish, re-open, repair, recondition, plug or replug any non-commercial existing wells heretofore drilled, whether or not abandoned.

g. Use, hold, and occupy the lease premises, together with necessary rights of ingress and egress, for all such purposes.

h. Unitize this lease with others to form a gas storage unit and, at the option of Lessee, to file a designation of such with the Register of Deeds of Morton County, Kansas. This power of unitization is separate and distinct from the power to unitize pursuant to Paragraph 4 hereinafter, for oil purposes only.

i. Unitize this lease as to all or any portion of the land described above to form a unit for the recovery of oil, gas liquids, and gas condensate in accordance with the provisions of Paragraph 4 hereof.

2. WELL NOT REQUIRED

a. In the event that no surface operations for the underground storage of gas be actually undertaken on the land herein described, but such operations are conducted by Lessee on other premises in the same storage field or area, Lessee nevertheless shall likewise have the right to inject gas into the Morrow Formation underlying the surface of the land herein described, store the same therein, and remove such gas together with any gas which may now be contained therein, utilizing in such process of injection and removal any well or wells located on other premises in the general vicinity of the land herein described.

b. It is expressly understood and agreed that a well or wells need not be drilled on the land described above for storage purposes, and that Lessee shall be the sole and exclusive judge as to whether gas is being stored in the land described above or held in storage within said land, and that its determination shall be final and conclusive.

3. COMPENSATION PAID IN FULL FOR EXISTING MORROW GAS RESERVES

a. For and in further consideration of the sum of $15,110.00, paid by Lessee to Lessor, the receipt and sufficiency of which is hereby acknowledged, Lessor does hereby acknowledge that Lessor has been fully compensated by Lessee for

all natural gas and other gaseous hydrocarbons that might now or in the future be recovered from the Morrow Formation underlying the lease premises or lands now or in the future be pooled or unitized therewith, subject to the provisions of Paragraph 4 below.

b. For and in consideration of the amount set forth above, Lessor, subject to the rights reserved in Paragraph 4 below, does hereby assign, transfer and convey all rights, including but not limited to royalties, overriding royalties, production payments and non-participating royalties, Lessor may have in natural gas and other gaseous hydrocarbons produced from the Morrow Formation, underlying the lease premises or lands now or in the future be pooled or unitized therewith, provided that when this Lease and Agreement terminates, all rights granted herein to Lessee by Lessor shall cease and revert to Lessor.

4. ROYALTY ON OIL

a. In the event that gas storage operations conducted by Lessee hereunder shall result in the recovery of oil (including gas liquids, and/or gas condensate) in commercial quantities from the Morrow Formation, Lessee shall deliver to the credit of Lessor in the pipeline to which Lessee may connect its wells, as royalty, the equal three-sixteenth (3/16) part of all oil produced and saved from the lease premises, or at the option of the Lessee, may pay to Lessor the market price for such three-sixteenth (3/16) royalty for oil (including gas liquids, and/or gas condensate) of like grade and gravity prevailing on the day such oil is run into the pipeline or storage tanks.

b. After division orders are executed, payments due Lessor shall be made within forty-five (45) days after the oil (including gas liquids, and/or gas condensate) is removed from the unit tank battery(s). If the amount due Lessor is less than Twenty-Five Dollars ($25.00), Lessee may withhold payment until said amount is at least Twenty-Five Dollars ($25.00). In any event (after division orders are executed) payment must be made every six (6) months even if the amount due is less than Twenty-Five Dollars ($25.00).

c. The royalty payable to Lessor hereunder shall be in addition to annual rental and other payments due Lessor in accordance with the terms of this lease. All costs and expenses associated with the production of oil from the lease premises herein shall be borne and paid solely by Lessee. It is expressly understood and agreed by Lessor that use of the lease premises by Lessee shall be for the primary purpose of injecting, storing, and removal of gas, as herein defined, and that Lessee shall have no obligation, whether express or implied, to drill or otherwise operate and develop the lease premises for the recovery of oil.

d. Nothing herein contained shall be construed to grant to Lessor any ownership or royalty interest in and to the gas to be injected, stored, and removed from the above-described land in connection with the exercise by Lessee of its gas storage rights hereunder.

e. Lessor hereby grants to Lessee the right to unitize this lease as to all or any part of the land described above with other lands and leases in the vicinity thereof to form a unit for the recovery of oil from the Morrow Formation, with such unit to be comprised of all lands forming the gas storage unit of which this lease is a part. Lessee shall execute in writing and record in the office of the Register of Deeds of Morton County, Kansas a declaration of unitization identifying and describing the acreage so pooled.

f. If oil is produced from the pooled acreage, it shall be treated as if production is had from this lease, whether the well or wells be located on the premises covered hereby or not. In

lieu of the royalties elsewhere herein specified, Lessor shall receive on oil produced from such unit only such portion of the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest herein on an acreage basis bears to the total acreage included in the unit.

5. STORAGE RENTAL

a. In full payment for the right to inject, store, and remove gas hereunder, and all other rights and privileges conferred upon Lessee, including the right to produce and remove any commercial quantities of gas remaining in the storage formation, and the right to continue this lease in force and gas storage operations hereunder beyond the term of years hereinabove provided, but excluding the right to develop, operate for, and produce oil, gas liquids, and gas condensate, Lessee shall pay to Lessor, as rental, the sum of Five Dollars ($5.00) per acre per annum, payable annually in advance, commencing with the date hereof and continuing so long as gas is injected for storage or such gas storage rights are utilized or held by Lessee. Annual rental hereunder may be paid directly to Lessor, or to the credit of Lessor at the First Kansas Corporate Center Bank at Chanute, or its successors, which shall continue as the depository and agent of Lessor to receive and credit such payments regardless of changes in the ownership of said land.

b. Notwithstanding the foregoing, on the fifth anniversary of this Lease and every succeeding five (5) year anniversary thereafter, the rental amounts shall increase by Two Dollars ($2.00) per acre per annum. At the expiration of the initial thirty (30) years term hereof, the annual rental payable hereunder shall be adjusted to reflect the net change in the Consumer Price Index or any comparable measure issued by the United States Department of Labor, or a successor governmental agency, during such term by multiplying the annual rental amount set forth in the foregoing Paragraph 5a by a factor having as its numerator the value of such index as of the end of said initial term, and as its denominator the value of such index of the inception of this Lease. Annual rental shall thereafter be adjusted each year as of each subsequent anniversary hereof in accordance with changes in such index during the preceding twelve (12) month period.

c. Payment of annual rental as herein provided shall grant to Lessee the right to extend the term of this lease beyond the period of years above set forth, and continue this lease in force and operations hereunder for successive annual periods thereafter so long as gas is stored in and under said land, or so long thereafter as Lessee shall own, maintain, or operate such gas storage facilities in the manner herein provided, or in the same storage field or area. Lessee shall be the sole and exclusive judge of the necessity, advisability, or need for retaining this Lease, and the land covered hereby, or any part thereof, for use in connection with or for the protection of such gas storage facilities or operations.

d. Lessee's failure to make payment of or tender any annual payment when due shall not operate to terminate or impair any provision of this lease unless and until Lessee shall fail to make such payment within sixty (60) days following receipt of Lessor's written demand therefor. Lessee shall pay interest on any payment of annual rental more than thirty (30) days past due at the prime rate of interest then charged by the First National Bank in Wichita, Kansas.

6. DAMAGE COMPENSATION

a. In addition to the annual rental required by Paragraph 5 hereof, Lessee further agrees to pay to Lessor the amounts shown on the attached Exhibit "A", for the privilege of conducting surface operations upon the above-described lease

premises, such sums to be paid prior to the commencement of such operations, to compensate Lessor for all damage to the lease premises caused thereby.

b. Damages for which compensation is to be paid to Lessor in accordance with Exhibit "A" shall be limited to those damages normally arising in the ordinary course of gas storage operations.

c. Settlement of surface damage as herein provided shall be binding upon all persons acquiring any right, title, or interest in and to the surface of such lands by or through Lessor. Lessor shall hold Lessee harmless from and against any and all claims of tenant for damages to the surface, such payment being considered as payment in full.

d. Amounts to be paid Lessor in compensation for surface damages as shown upon Exhibit "A" shall be adjusted as of the third and each subsequent three (3) years anniversary hereof to reflect the net percentage change in the Consumer Price Index issued by the United States Department of Labor, or any comparable measure issued by any successor governmental agency, during the preceding three (3) year period.

7. SPECIAL DAMAGES

a. In the event Lessee shall cause a well to be drilled on this lease during the growing season of any crop planted, and should Lessee's or his agent's equipment prohibit the use of any irrigation system on said land during that time the well is being drilled, Lessee agrees to pay Lessor the difference in the value of the crop produced on that strip of land that could not be watered and the field average yield for such crop per acre, which shall be deemed the maximum producing capability of the land. The price per unit shall be the cash price at the local elevator in the town nearest to this land as of the first of the normally accepted harvest month.

b. Lessee shall pay Lessor for any and all unforeseen or extraordinary damages to the property or property rights of Lessor, whether real, personal, or mixed, caused by its operations hereunder including, without limitation, damages to land, growing crops, grass, buildings, livestock, fences, and other improvements and personal property, but shall not be liable to Lessor for latent damages of any nature whatsoever existing prior to the commencement of such operations, or damages occurring as a result of events of force majeure or other causes beyond the reasonable control of Lessee.

8. COMPLIANCE WITH CONSERVATION RESERVE PROGRAM

a. It is understood by the parties that the surface of the land covered by this Lease is presently entered into the Conservation Reserve Program, or may be entered into a Conservation Reserve Program. Under the terms of said program, the land in the program must be kept in an approved grass or vegetative cover for the duration of the program. In the event that a well is drilled on said property or pipelines are built on said property, the Lessee will indemnify and hold harmless the Lessor, his agents, or surface owners from any penalties that may be assessed as a result of the land not being in compliance with the program.

b. It is understood the Lessee will pay site damages as set out in the contract, which are anticipated to cover costs due to operations on the CRP land. It is also understood that as long as the Lessee diligently, reasonably, and with use of due care prosecutes his operations on the land, no costs or penalties in the CRP program will be generated which would entitle the Lessor to further compensation. However, in the event the Lessees or his agents fail to comply with the requirements of the County Soil

Conservation Service and the ASCS office and penalties are generated due to disregard of the regulations, the Lessee will then indemnify and hold harmless the Lessor from said costs and penalties.

c. If due care is used in the prosecution of the Lessees operations, the Lessor will be entitled to no further payments. However, in the event of the lack of due care or disregard of the regulations, the Lessors will then have the right to recover the costs and penalties that are incurred as a result of these activities.

d. Prior to drilling, constructing pipelines, or other activities on the property, the Lessee will notify the County Soil Conservation Service Office and ASCS Office of the proposed activity and obtain their consent to the activity. All activities will be conducted in compliance with their requirements. The Lessors will not be entitled to be reimbursed more than the payments set out herein for any reductions in program payments attributed to the spots where the activities are conducted. However, in the event the complete piece of property is thrown out of compliance, then the Lessors will be entitled to recover the costs of being put out of compliance from the Lessees.

9. LESSOR RESERVATIONS

a. Lessor reserves all rights to grant, lease, mine and/or produce any minerals from the lands subject hereto, except those interests in gas and oil and their constituent products herein leased to Lessee or subject to the storage provisions of this Lease.

b. In the event that the lease premises are presently subject to a valid and subsisting oil and gas lease, all rights granted herein to Lessee shall be subject to the same. Nothing herein contained shall be construed to reduce or impair any royalty payable to Lessor under the terms of any such prior oil and gas lease.

c. Lessee agrees to defend, indemnify and hold Lessor harmless from and against all liability, cost, and expense, including attorney's fees, incurred in connection with any action instituted against Lessor by the Lessee under any existing oil and gas lease of the lease premises resulting from Lessor's execution of this Lease.

10. LESSEE OPERATIONAL OBLIGATIONS

In conjunction with its operations, Lessee specifically agrees to:

a. Build any meter houses, separators, heater treaters and storage tanks, used for the purpose of producing and saving any oil and gas upon the above-described premises adjacent to any county, state, or federal road or highway adjoining the above-described premises. All storage tanks and tank batteries shall be installed in any of the four (4) corners of the lease premises to avoid interference with any irrigation circular sprinkler system. No such installation, with the exception of an actual well pad, shall be made closer than 1400 feet to the center of the lease premises. It being the intention of the parties hereto to minimize interference with farming operations on said land insofar as possible, including but specifically not limited to the operation of pivotal irrigation sprinkler systems, or any other irrigation method. Any production equipment, including but specifically not limited to pump jacks, hydraulic lifting equipment, or any other equipment necessary to produce any oil or gas well on the above-described land, shall be recessed to such depth as to permit the use by Lessor of a circular irrigation sprinkler system currently in operation.

b. Minimize interference with Lessor's use and enjoyment of the surface, including:

(i) bury pipelines and utility lines to a depth of not less than sixty (60) inches below the surface, and backfill, compact, and maintain all ditches for pipelines and utility lines at original surface level;

(ii) fill and level all slush pits within sixty (60) days after well completion or abandonment, unless a longer time therefor is granted by Lessor, at his option;

(iii) backfill, water pack, and level any pipeline ditch across irrigated land so as to allow irrigation water to cross the pipeline ditch in a normal manner, with such backfilling, water packing, and leveling to be performed by Lessee at its expense and in a workmanlike manner, to the satisfaction of Lessor; and

(iv) reseed and establish, at Lessee's expense, native grass cover, if any, on any right-of-way and adjoining land used in pipeline construction.

c. Comply with all laws, regulations and orders of all governmental entities having jurisdiction with respect to environmental hazards, damage, contamination and remediation. Lessee further agrees to accept the leased premises in its "as is" condition. It is acknowledged that Lessee has been advised to inspect the property to determine that it is suitable for the purpose intended and to ascertain that no environmental hazards or toxins are now present, insofar as it concerns the Morrow Formation. Lessee makes no representation and shall have no obligation hereunder as to the environmental condition of existing producing oil and gas wells on the property.

d. Indemnify and hold Lessor harmless from any claims, damages, actions or causes of action from any environmental damage or contamination caused or contributed to by Lessee subsequent to the commencement of this Lease.

e. Within one (1) year after the expiration of this Lease, fill all pits and ponds, remove all structures and equipment, plug and abandon all wells drilled or used by Lessee in accordance with applicable rules, regulations, and orders of the State Corporation Commission of the State of Kansas, and restore the lease premises, as nearly as practicable to its original condition, natural wear and tear and damage from the elements excepted. Any surface equipment remaining upon the lease premises at the end of one (1) year following the expiration of this Lease shall become the sole property of Lessor. In the event this Lease is terminated at any time for any reason, including the non-payment of rental or other compensation due Lessor hereunder, Lessee shall have the right, for a period not to exceed one (1) year following the date of such termination, to remove all gas stored in and under said land and any natural produced which may be produced therewith, and the right to own, maintain, and operate all of its pipelines, wells, and other facilities for such purpose during the time necessary and convenient for Lessee to accomplish the removal of such gas and, at the conclusion of such operations, to remove all of its equipment and other property as hereinbefore provided.

f. Maintain any well site, storage tank location, or any other area used in its lease operations reasonably free of weeds, but without the use of salt or chemical substances in such weed control. Lessee will use reasonable diligence in its operations to cause minimal interference with any cattle operations on said lands.

11. ACCESS REQUIREMENT

Lessor in cooperation with Lessee, may designate routes of ingress and egress to and from all well locations, but shall not insist upon unreasonable access requirements. Prior to the construction of any roads, tank battery installations, or installation of other equipment on the lease premises, Lessee shall consult and agree with the landlord or tenant or other person(s) in possession of the surface as to the location and direction of lease roads and installations. There shall be no oil road surfaces or hard surfacing of any access roads without the written consent of Lessor. Lessee shall, insofar as possible, construct all lease roads along one-half (1/2) section lines, following a true North-South or East-West direction, so as to least interfere with farming operations as possible.

12. WATER USE

Water for the lease premises shall be used for drilling operations and water packing pipeline or utility ditches only. Lessee is expressly denied the right to use fresh water from the above-described premises for the purpose of water flooding or injection in any water flooding program in which the lease premises may, for any reason, be pooled or unitized.

13. SALT WATER DISPOSAL

The installation of any salt water disposal equipment by Lessee in the operation of this lease shall be subject to the written approval of Lessor. Lessee shall not be permitted to use any well drilled on the lease premises as a salt water disposal well without the written consent of Lessor and without compensating Lessor for the use thereof; provided, however, that the terms of this paragraph shall not apply to the disposal of salt water produced from wells located on the lease premises.

14. PROPORTIONATE REDUCTION

In the event that Lessor owns a less interest in the above-described land than the entire undivided fee simple estate therein, then the annual payments provided herein or oil royalty as provided for in Paragraph 4 shall be paid to Lessor only in the proportion which his interest therein bears to the whole and undivided fee.

15. LESSOR SUBSEQUENT TRANSFERS

If the lease premises shall hereafter be owned in severalty or in separate tracts, the premises may nevertheless be developed and operated as an entirety, and the annual payments and royalties hereunder shall be paid to each separate owner in the proportion that the acreage owned by each bears to the entire leased area.

16. ASSIGNMENTS

a. If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to and be binding upon their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of annual payments or royalties due hereunder shall be binding upon Lessee until after it has been furnished with written notice thereof and either the original recorded instrument of conveyance or a duly certified copy thereof, together with like proof of all intermediate transfers showing a complete chain of title back to Lessor of the full interest claimed.

b. If Lessee assigns or releases this Lease, in whole or in part, Lessee shall notify Lessor in writing of such assignment or release within thirty (30) days thereof, and shall thereafter be released and discharged from all payments,





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obligations, and conditions herein contained with respect to the portion hereof so assigned or released; provided however, that notwithstanding release of this Lease, Lessee shall have the rights upon termination provided by the foregoing Paragraph 10e, and shall remain liable to Lessor only for environmental claims and damages, or other causes of action, if any, arising out of its use and enjoyment of the leased premises by operation of law.

17. LESSOR WARRANTY

Lessor hereby warrants and agrees to defend the title to the land herein described, and agrees that Lessee, at its option, may pay or redeem for Lessor by payment any mortgages, taxes, or other liens on the above-described land in the event of default in payment by Lessor, and be subrogated to the rights of the holder thereof or reimbursed from any annual payments and/or royalties thereafter accruing hereunder. The undersigned Lessor, for himself and his heirs, successors, and assigns, hereby surrenders and releases all rights of dower and homestead in the lease premises, insofar as said rights of dower and homestead may in any way affect the purposes for which this lease is made. In case of notice of any adverse claim to the lease premises, or any claim affecting all or any part of the annual payments or royalties to be paid to Lessor hereunder, Lessee may withhold payment or delivery of the same until the ownership is determined by agreement, compromise, or by final decree of a court of competent jurisdiction, and proper evidence of the same furnished to Lessee.

18. SUBSEQUENT THIRD PARTY DRILLING

a. It is agreed that any operation on said land, which without limitation includes drilling and mining, in which gas is stored on said land pursuant to this storage lease shall be so conducted as to prevent the escape of gas from, and the intrusion of water and other fluids into, any formation in which gas is so stored. Before Lessor or any party proceeding under Lessor's authority begins any operation connected with or resulting from drilling and mining on said land, such party shall notify Lessee in writing, addressed to Lessee at the address hereinbefore indicated (in initial recitals) or to the current operator as shown by the records of the County Clerk, not less than thirty (30) days prior to the intended beginning of any such operation. Thereupon and before actually beginning any such operation, such party and Lessee shall agree in writing upon the methods and practices which such party shall use in any such operation, which without limitation includes plugging and abandoning thereof.

b. It is specifically understood and agreed that Lessor or its successors may, pursuant to this provision, only properly drill and properly case holes above or through the Morrow Formation, but may not bottom any wells or perforate any casing within 200 feet of the top of the Morrow Formation. Lessee shall have the right to have a representative present at all times while any such operation is conducted and shall have the right of access to records of such operations and to declare the agreement breached if the agreed upon methods and practices governing such operation are not followed and to require termination of such operation following such declaration of breach.

19. SUBJECT TO FEDERAL, STATE & LOCAL LAWS

All terms, covenants, and conditions of this lease, express or implied, shall be subject to all federal, state, and local laws, rules, regulations, orders, and ordinances, and this lease shall not be terminated in whole or in part, nor Lessee held liable in damages for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such law, rule, regulation, order, or ordinance.

20. ABSTRACTING

Any abstracting charges for drilling operations by Lessee under the terms of this Lease shall be paid by Lessee.

21. TERMINOLOGY

Whenever necessary in this Lease and where the context requires, the singular term and the related pronoun shall include the plural, the masculine and the feminine.

22. BINDING EFFECT

This Lease and Agreement, and all the terms and provisions hereof, shall extend to and be binding upon Lessor, his heirs, successors, executors, administrators, and assigns, shall inure to the benefit of Lessee, its successors and assigns, and shall run with the lands, tenements, and hereditaments subject hereto.

23. COUNTERPARTS

This Lease and Agreement may be executed in multiple counterparts, all of which are identical. All of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

SSN: [redacted] Mary Frances Simmons
Mary Frances Simmons

SSN: [redacted] Edwin L. Simmons
Edwin L. Simmons

STATE OF Kansas )
) SS.
COUNTY OF Shawnee )

The foregoing instrument was acknowledged before me this 20th day of February, 1992, by Mary Frances Simmons and Edwin L. Simmons.

MARY ANN STANBUCK
Notary Public

Notary Public

My Commission Expires:
6/25/93

PAID
COLLECTION DEPARTMENT
MAR 0 1992
WESTERN NATIONAL BANK
TULSA, OKLAHOMA



4-22

EXHIBIT "A"

COMPENSATION SCHEDULE

Pipeline Right-of-Way

| Line Size | Right-of-Way Per Rod | | Damages Dry Land | Damages Irrigated |
|---|---|---|---|---|
| 4 to 8" | $20.00 | plus | $10.00 | $15.00 |
| 10 to 14" | $25.00 | plus | $10.00 | $15.00 |
| 16 to 20" | $35.00 | plus | $10.00 | $20.00 |

Well Sites

| | |
|---|---|
| Pasture Land | $2,250.00 Per Location |
| Dry Land, Cultivated | $3,000.00 Per Location |
| Irrigated Land | $4,000.00 Per Location |

(Road Easements are included in well site compensation.)

For purposes of determining damages for well sites and pipeline right-of-ways, CRP Land will be treated as if it is irrigated land.

# HOUSE BILL 2522

House Judiciary Committee
February 18, 1998

My name is Jeff Kennedy. I am an attorney with the Wichita firm of Martin, Pringle, Oliver, Wallace & Swartz, L.L.P. I represent Northern Natural Gas Company and am here today to testify on Northern's behalf in opposition to HB 2522.

Northern is a public utility pipeline company which transports gas in interstate commerce. Northern operates three underground natural gas storage facilities. Two of these facilities are located in Kansas and one in Iowa. These storage facilities allow Northern to provide large sources of deliverability of natural gas during periods of peak demand for the benefit of millions of residential, commercial and industrial consumers. Northern's largest storage facility, located near Cunningham, Kansas, has a storage volume of approximately 51 billion cubic feet (BCF). Northern is able to cycle approximately 25 BCF from the facility on an annual basis. Northern's storage facilities are extremely important to both Northern and its customers.

HB 2522 has been carried over from the 1997 session where it was first introduced as HB 2322 and subsequently HB 2522.

HB 2522 amends and repeals 55-1201, 55-1204, 55-1205 and 55-1210. These statutes, with the exception of 55-1210, have been in place, with limited amendments, for nearly 50 years.

The Kansas legislature has recognized for many years the benefit of building natural gas reserves for periods of peak demand. There is no question that the underground storage of natural gas promotes the public interest and welfare of this state.

Article 12 of Chapter 55 deals specifically with the underground storage of natural gas in Kansas and provides the method by which a public utility, such as Northern Natural Gas Company may acquire property suitable for the underground storage of natural gas.



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55-1201

The first amendment is to 55-1201, which has been the law since 1951, without change. HB 2522 presents two significant changes to this statute. First, the deletion of the definition of "native gas" and second, the addition of a definition of "suitable for the underground storage of natural gas."

When a natural gas public utility is seeking to acquire property for the purpose of establishing an underground natural gas storage facility, the utility will look for an underground stratum or formation that is depleted or nearly depleted of natural gas as well as one that will adequately contain the natural gas to be injected into the formation for storage.

Any natural gas remaining in the formation to be acquired would be considered "native gas," defined by the legislature in 1951 as "gas which has not been previously withdrawn from the earth." If a utility were to acquire an underground formation for storage which still had native reserves remaining, the appraisers in an eminent domain proceeding would take those reserve amounts into consideration when determining what compensation is due the property owners of that formation. The distinction between "native gas" and any other natural gas is significant when dealing with the underground storage of natural gas. The legislature, knowing the great value storage gas has to consumers and the public interest, rightfully chose to protect both the interests of the property owner by requiring the public utility to compensate the property owner for gas which was left in the formation and had never been withdrawn and the public utility by not requiring the public utility to compensate the property owner for gas which had been previously withdrawn from the earth and then injected back into the earth at the injector's expense. An amendment to delete all reference to "native gas" and to provide no distinction between native gas and any other natural gas undermines the obvious value the legislature places on the underground storage of natural gas.

The addition of the definition of "suitable for the underground storage of natural gas" is beyond what the legislature should attempt to define. Currently, 55-1204(a)(1) provides that in order for a public utility to exercise its right of eminent domain, the Kansas Corporation Commission (KCC) must, after a public hearing, determine that the underground formation is suitable for the storage of natural gas. The KCC, which is the state agency with expertise in oil and gas issues is best suited to evaluate evidence presented to it and determine if a formation is suitable for underground storage. But, even the KCC, with all of its technical expertise could

not be expected to find that natural gas in a particular formation "cannot" migrate to another formation. The nature of natural gas is such that, even with a vast amount of information, drilling and production history in a particular area, no person, company or state body can guarantee that gas "cannot" migrate to another formation. The KCC can only be asked to do its best, based upon its expertise and the information presented to it, to determine whether a formation is suitable for underground storage. Of course, it is not the desire of any underground storage operator for its storage gas to migrate to another formation or outside the storage area, so a potential storage operator will strive to determine with as much certainty as possible whether injected gas will be contained in the storage formation.

55-1204

55-1204 contains the steps a public utility and the KCC must follow prior to an eminent domain proceeding.

HB 2522 amends 55-1204 at (a)(2) to delete reference to "native" as a description of the gas remaining in the formation sought to be acquired. As stated earlier, Northern objects to the failure to distinguish between "native gas" and previously withdrawn gas. Failure to make that distinction would unfairly require the storage operator to pay for the value of natural gas previously withdrawn and injected into the storage field.

55-1204(b) currently requires a public hearing on any application for the underground storage of natural gas. The amendment to (b) adds the requirement that the KCC direct an independent study be made to assist the KCC in determining whether underground storage should be certified. The amendment would also authorize the KCC to assess the entire cost of the independent study to the applicant which would also undertake its own study for presentation at the public hearing.

When HB 2322 (predecessor to HB 2522) was introduced last session, the KCC staff provided a Fiscal Impact Statement to Jim Langford and Tom Day. The KCC was opposed then, and to my understanding remains opposed, to the requirement that the KCC conduct an independent study not only because of the awkward position it would put the KCC in by hiring its expert when the applicant and other parties would have their own experts and then being forced to weigh that evidence, but the effect any delay in reimbursement of the independent study costs might have on the KCC's budget.

Northern is opposed to this amendment for similar reasons. The public utility and any party in support or in opposition are the best and only sources of expert testimony that are needed to allow the KCC to make an informed and sound decision regarding underground storage. Any party contemplating gas storage activities will most certainly conduct a detailed study of the affected reservoir and related lands. To require the KCC to conduct an independent study is both expensive and unnecessary. The KCC, as always, has the ability to weigh the evidence presented to it by each and every applicant and party in interest, and determine whether the evidence supports approval or denial of their application. This amendment would be financially burdensome to both the KCC and the applicant. The KCC may not be in a financial position to undertake an independent study. The applicant, who may spend hundreds of thousands of dollars on its own study, should not be required to pay for another study.

55-1205

55-1205 is the eminent domain procedure statute which references the eminent domain procedure act found in Article 5 of Chapter 26. 55-1205 provides that the KCC certificate and petition be filed with the district court and that the appraisers, in awarding damages to the property owners, take into consideration the amounts of recoverable oil and native gas remaining in the property as previously determined by the KCC.

New subsection (c), to which Northern objects, sets up the interest condemned in an eminent domain proceeding as a leasehold interest. The damages to be awarded for this leasehold interest include the value of recoverable oil and natural gas in place, in addition to seven other categories of compensation. Although several of these categories appear to be factors that an appraiser would consider under Chapter 26, the requirement of payment for royalties and annual payments based upon the annual leased value of the storage formation appear to require the storage operator to make annual payments to the property owners after the eminent domain proceeding is complete. That scenario will undoubtedly discourage gas storage operators from establishing facilities in Kansas. Such a requirement is also contrary to eminent domain procedure wherein a total sum for damages is determined by the appraisers at the time of the taking and paid out to the property owners. An individual or corporation or public utility that acquires rights through an eminent domain proceeding is not seeking a leasehold interest but something more - a fee or an easement.

Northern objects to all of the new categories presented in this subsection. The law of eminent domain and proceedings related thereto are well established in Kansas. The factors to be considered by appraisers in any eminent domain proceeding are adequately set out in Chapter 26. There is no need to complicate the responsibilities of the appraisers in an underground storage matter when sufficient guidance regarding compensation is already provided in the eminent domain procedure act.

New subsection (d) includes the authority of the appraisers to value prior use of the property for the underground storage of gas if the use was uncompensated or unauthorized. Such a provision has no place in an eminent domain statute. Condemnation awards do not contemplate past or prior value but rather the value of the property at the time immediately prior to and after the taking. Likewise, the district court cannot be expected under subsection (f) to include or require a prior use value in an eminent domain award.

55-1210

Most important to Northern is its opposition to the amendment of 55-1210. 55-1210 was enacted in July 1993. The effect of the current statute is to provide that gas that is reduced to possession and injected for storage shall at all times be the property of the injector and not subject to the rights of either the surface or mineral owner to produce such gas under the law of capture.

HB 2522 makes no amendment to subsections (a), (b) and (d). However, subsection (c) of the statute is completely gutted.

Current subsection (c) deals specifically with natural gas that has migrated to an adjoining property or stratum not otherwise condemned or purchased by the injector, and (c)(1) makes clear that the injector does not lose title or possession to the gas if it can prove that the gas was originally injected into the underground storage. Subsection (c)(2) grants the injector the right to conduct well tests to determine ownership of the migrating gas, at the injector's expense. Current subsection (c)(3) deals with the rights of the surface and stratum owners upon whose property gas has migrated.

HB 2522 completely deletes current subsections (c)(1) and (c)(2) and contrary to the current statute, provides that the owner of the adjoining property or stratum retains title and possession of storage gas that has migrated until the property is

condemned or purchased. The effect of this statutory language would be absolutely devastating to underground storage operators as well as the public.

If natural gas were in fact migrating outside a certified storage formation or area without a storage operator's knowledge, a landowner would in effect be able to legally drill a well and drain large quantities of storage gas from the storage facility until such property is either condemned or purchased. Such a situation is exactly what the legislature was seeking to avoid in 1993 with the passage of 55-1210. HB 2522 not only allows a property owner to retain possession of migrating storage gas, but gives the injector no statutory authority to test the migrating gas to verify if it is in fact storage gas. The passage of HB 2522 and specifically the deletion of 55-1210(c)(1) and (c)(2) have the potential of destroying the integrity of underground storage facilities which a public utility might have spent decades and millions of dollars building for the benefit of thousands of consumers of natural gas.

Northern respectfully objects to the passage of HB 2522.



5-6

#6

February 18, 1998

One Williams Center
P.O. Box 2400
Tulsa, Oklahoma 74102
918/588-2000

Rep. Tim Carmody
Chairman, Judiciary Committee
Kansas House of Representatives

Re: Kansas House Bill 2522

Dear Rep. Carmody:

Following are the comments of Williams Gas Pipelines Central, Inc. ("Williams") regarding the above-referenced bill (the "Bill"). In our view, passage of the Bill would be detrimental to the interests of the citizens of Kansas. As discussed below, the changes proposed in the Bill would increase the rates paid by Kansas consumers for natural gas service and would cause migration of investment dollars out of Kansas.

Passage of the Bill would discourage gas storage projects in the State. The current law encourages outside investment in Kansas by offering reasonable rules for those who risk their capital by operating storage fields. Replacing those rules with the protections in House Bill 2522 would increase the risks of gas loss for storage operators.

Defining the boundaries of a storage field is not an exact science. Gas migration is not a common event but it does occur from time-to-time. Expecting storage companies to know exactly where their gas will remain is unreasonable. Unfortunately, the Bill does just that by stripping title to migrating gas from the storage companies. That change would have the effect of encouraging undesirable behavior around the borders of storage fields. In fact, it would create the appearance that Kansas approves of such behavior. For example, in 1995 a company established by two former Williams employees began producing gas from leases located immediately next to a Williams storage field. That production was made possible by the fact that the size of the field had not been known to Williams at the time of certification of the field. Despite its use of the best reservoir engineering/geological practices at that time, Williams could not determine that it had not acquired rights to the entire storage areal extent. It was not until the offset production began that Williams became aware of the problem. Under the current law, Williams was able to file suit, test the producer's wells, prove title to its gas, and recoup a portion of its losses. That would not have been possible under the changes proposed in the Bill. The current law provides protections for landowners, as well. In the rare event that gas migrates, landowners may collect for their actual damages that result from the migration.

House Bill 2522 also sets an unreasonable standard for the certification of storage fields. If passed, the Bill would require storage companies to show that their field will be located in "a separate and distinct stratum or formation from which natural gas cannot migrate to another stratum or formation." As noted above, the imprecise nature of reservoir engineering makes proof of such a requirement nearly impossible. This requirement alone will likely eliminate the possibility of future storage projects being approved in Kansas.

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Even if that standard could be met, the risk of loss from migration would cause storage companies to acquire too much buffer acreage around their fields as a form of insurance against gas losses (assuming FERC allows its regulated companies to acquire the otherwise unnecessary acreage). This would unnaturally increase the amount of property on which the companies' rates are based. Such increased and unnecessary costs would be borne in part by Kansas gas consumers who take gas service from local distribution companies who store and transport gas on Williams' system.

The overall impact of House Bill 2522 is to limit future investment in Kansas gas storage projects. Those investment dollars will migrate to neighboring states with more favorable laws (e.g., Oklahoma). This will cause a decrease in tax and job opportunities for the State of Kansas. In contrast, the current law benefits Kansas consumers and encourages storage investment. Thus, the public interest will be best served if the Bill is defeated.

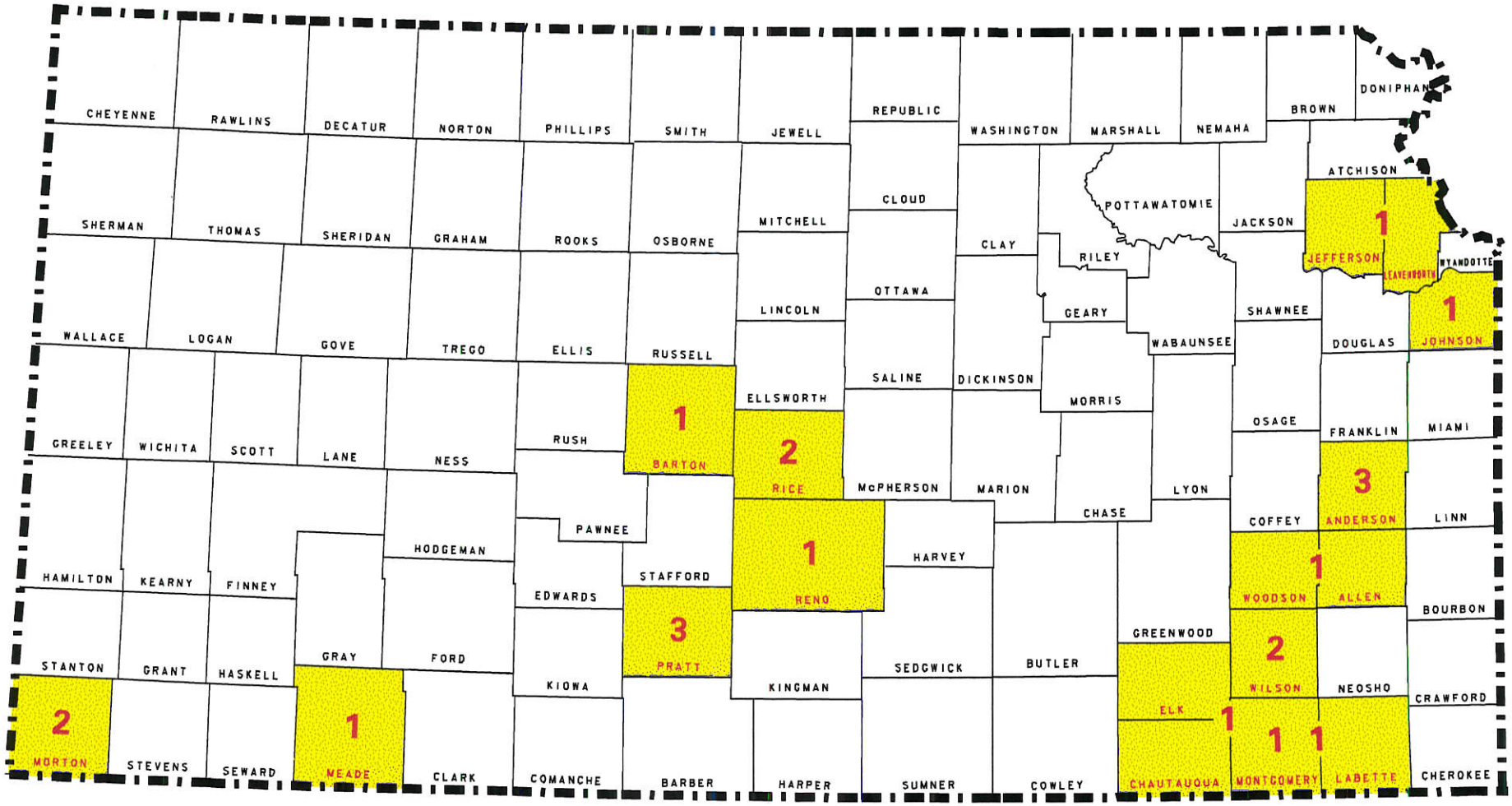
Very truly yours,

James D. Henderson
Director, Gas Management

Enclosures

# STATE OF KANSAS

## GAS STORAGE FIELDS BY COUNTY




**2 – NUMBER OF STORAGE FIELDS IN THE COUNTY**

**TOTAL NUMBER OF FIELDS DEPICTED ON THE MAP = 21**

# WILLIAMS

**Williams is a $13.3 billion company headquartered in Tulsa, Oklahoma. Williams major business units are:**

- Five interstate natural gas pipelines, collectively the largest in the United States. The largest natural gas pipeline transmission system in Kansas.
- One of the largest U.S. natural gas gatherers and processors.
- A full-service energy trading company.
- A Midwest petroleum products pipeline and ethanol producer/marketer.
- A telecommunications products and service company.
- An advanced-technology video, learning and fax services company with owned, international fiber-optic and satellite transmission facilities.
- Kansas Employees = 388
- Kansas Payroll = $16,324,000.
- Kansas Investment = $690,000,000.
- Kansas Property & Income Tax = $9,346,770 (est. 1997)

#7

# STATEMENT OF SOUTHWEST GAS STORAGE IN OPPOSITION TO HOUSE BILL 2522 BY JACK GLAVES - FEBRUARY 18, 1998 BEFORE THE HOUSE JUDICIARY COMMITTEE

I represent Southwest Gas Storage, a subsidiary of Panhandle Eastern Pipeline Company, in turn a subsidiary of Duke Energy Corp. Southwest Gas Storage owns and operates a gas storage field known as the Borchers Field in Meade County, Kansas. Space in the storage field is leased to Panhandle Eastern Pipeline customers and to the pipeline which transports gas from the Texas, Oklahoma, Kansas, Hugoton and other areas across Kansas to the upper midwest. Panhandle Eastern has utilized eminent domain statutes and will no doubt be required to do so in the future. We are not only concerned about the particular provisions proposed to be made applicable to proceedings to acquire gas storage rights, but we are also concerned about the precedential effect should this Bill be enacted on the eminent domain procedure generally in Kansas. Sec. 3 of House Bill 2522 directs the use of the eminent domain procedure act (K.S.A. 26-501 et seq), "except as otherwise provided by this Section". This Bill would create a new methodology for calculating damages in an eminent domain proceeding and depart from the normal eminent domain methodology for calculating damages. The award provided in Section 3 c. would apparently be comprised of the sum of eight specified potential damages and values, stating that, ".... the appraisers shall assign the fair market value of all rights taken." (This is lines 15 and 16 on page 3.) This, we

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believe, is a total departure from existing Kansas law, which does not permit utilizing a "summation method" for calculating damages. This is strikingly evident from Senate Bill 448, that has been reported out of the Senate Judiciary Committee, and is pending on the Senate calendar. That Bill amends the Kansas Eminent Domain Procedures Act, and defines "fair market value" as,

> "the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without compulsion. The fair market value shall be determined by use of the comparable sales, cost, or capitalization of income, or any other general accepted appraisal method."

The Supplemental Note on SB 448, states that this definition is taken from K.S.A. 79-503 (a) (property valuation law) and from case law. Applying the SB 448 definition to the elements spelled out for the damage award in House Bill 2522, would be difficult and confusing. The present law (K.S.A. 26-513) provides for a number of factors to be considered in ascertaining the amount of compensation and damages. Factors that affect fair market value are to be given consideration. However, 2522 provides that the appraisers shall assign the fair market value of all rights <u>taken</u> (lines 15 and 16 of page 3), indicating that the "rights" are to be valued independently, contrary to the provision of K.S.A. 26-513(d) which states that the enumerated factors <u>are not</u> to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage. As you know, the standard that we use in Kansas is "the value of the

taking", which is simply the difference between the value before the taking and the value after the taking. This is far different from the concept of the appraisers being directed to assign a value to a number of very specific items i.e., the value of water rights taken, value of surface easements for pads or well site areas to be used for extraction, injection and monitoring wells, value of any surface area used for roadways, annual payments based on the annual leased value of the property for underground storage, i.e. the leased value of the storage formation, value of pipeline and utility easements, value of prior use, if any, that was uncompensated for use of underground storage. The bottom line is that this Bill (2522) is a very radical departure from the traditional Kansas law of eminent domain and from the concept that is included in Senate Bill 448, that resulted from a Kansas judicial council study of the eminent domain law, as indicated by the supplemental note. It would have been fortuitous if that study had included the concept of 2522. Although there are certainly changes that I could suggest to the eminent domain law, it does not seem appropriate that changes should be done in a piece meal fashion.

Given the fact that you are presumably going to receive Senate Bill 448 in the next few weeks, it would seem appropriate to, at the very least, await its receipt and if there's a desire to effect changes in gas storage acquisition, it should at least be made compatible with the Eminent Domain Procedures Act that is amended by 448. This will not be easy because of the great divergence in philosophy from the existing case law. In City of

Manhattan vs. Signor 772 P.2nd 753 (1989), at 755 the Court stated, "The district court correctly noted that,

> "K.S.A. 26-513(d) prohibits the use of the "summation method" of evaluation and approves the "unit rule method"....
> "The summation method" denotes a process of appraisal whereby each of several items that contribute to the value of real estate are valued separately and the total represents the market value thereof. Use of this method of appraisal has generally been rejected since it fails to relate the separate value of the improvements to the total market value of the property. (Cite from ALR2d.) In contrast, the "unit rule", which is the general accepted method of valuation, denotes a process of appraisal whereby the total value of real estate is first determined without placing a value on each of the separate contributing items. Consideration of value of buildings and improvements is limited to the extent they enhance the value of the land taken."

This Bill would seem to combine an eminent domain action employing the proscribed "summation method" with a suit for damages for "prior use". To say the least, it is unique. We are plowing new ground. It has many ramifications and is in need, at least, of very extended study. It is certainly not something to be adopted out of pique or intuition. We believe that it could be a very bad precedent, with very serious implications for every corporate entity or public body authorized to utilize eminent domain. A very comprehensive study should be required, we believe, to determine the appropriateness of this legislation.