Approved: March 6, 2000
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:00 a.m., on March 1, 2000 in 245-N of the Capitol.

All members were present except:

Committee staff present:
Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:
Eugene Shore, Ulysses, KS
Merl Rexford, Meade, KS
Kirby Clawson, Satanta, KS
Clint Stalker, Satanta, KS
Robert Krehbiel, Kansas Independent Oil and Gas Assn.
David Bleakley, Eastern KS Oil and Gas Assn.
Steve Dillard, Pickrell Drilling Company, Inc., Wichita, KS
Danny Biggs, Pickrell Drilling Company, Inc., Great Bend, KS

Others attending:
See attached list.

The hearing was opened on **SB 610**-determination and payment of surface owner's damages from drilling of oil and gas wells. A fiscal note was distributed on the bill.

Eugene Shore, Ulysses, KS, urged the support of **SB 610** as a measure of fairness to both the operator and the landowner. He suggested an amendment be included which would protect the rights of the tenant, as in many instances the tenant is not the landowner and they can also suffer damages (Attachment 1)

Merl Rexford, Meade, KS, said the bill is needed to bring fairness into the settlement of damages while not giving up the rights of both parties involved (Attachment 2).

Kirby B. Clawson, Satanta, KS, supported the proposed legislation. He said it is utilized by the state of Oklahoma, and if adopted it would enable landowners in the state of Kansas a remedy to recover cost for damages to their property or crops without the expense of litigation (Attachment 3).

Clinton Stalker, Satanta, KS supported the bill as it would assure contact between the landowner and the drilling company before a location is started. It also would provide for fair compensation for damages, should they occur, and it does so in a timely manner (Attachment 4).

Written testimony from, Warren F. Fox, Meade County, KS, supporting the bill was distributed (Attachment 5).

Robert E. Krehbiel, Kansas Independent Oil and Gas Assn., spoke in opposition to the bill. His testimony lists eight problems associated with the bill. He urged the committee not to pass the bill (Attachment 6).

David Bleakley, Eastern Kansas Oil and Gas Association, presented testimony opposing the bill. He posed several questions that they thought were important in determining the merits of the bill. He said drilling companies have already diminished in numbers from years of low oil prices, and this legislation would further burden them (Attachment 7).

Steve M. Dillard, Pickrell Drilling Company, Inc., Wichita, KS, said passage of **SB 610** would result in the legislature interfering with existing contracts that were negotiated in good faith. He pointed out that the oil and gas business in Kansas is unlike Oklahoma and the proposed legislation would be a burden to

Kansas drillers (Attachment 8).

Danny Biggs, Pickrell Drilling Company, Inc., said they have been operating in Kansas for 52 years, drilling over 2000 prospects in 35 counties. They have had good relationships with lease owners during and after drilling and producing on their land. His testimony gave some examples. In closing, he said proposed legislation would put an additional burden on the Kansas drilling industry that is still struggling for survival (Attachment 9).

John Pinegar asked that testimony from Erick E. Nordling, Southwest Kansas Royalty Owners Assn., of Hugoton, KS be distributed. Their testimony stated that SWKROA Board of Directors would be meeting in the near future and they would like an opportunity to supplement their comments and recommendation about the proposed legislation after that meeting (Attachment 10).

Ron Hein, Pioneer Natural Resources U.S.A., Inc., submitted written testimony opposing **SB 610** (Attachment 11).

Ron Hein, Legislative Counsel, Pioneer Natural Resources USA, Inc., presented written testimony opposing **SB 610** (Attachment 11).

The committee time expired. Chairperson Corbin said the hearing on **SB 610** will be continued at a date to be announced.

The meeting adjourned at 9:00 a.m. The next scheduled meeting is on March 2, 2000.

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: 3-1-2000

NAME	REPRESENTING
Robert E. Krehbiel	KIOGA
Steve Dillard	Pickrell Drilling
Barry Biggs	Pickrell Drlg Co
Jack P. Blakely	EKOGA - Coff Energy, INC
Jim Allen	EKOGA
Eugene Shore	Ulysses
Merl D Redford	MEADE
Kirby B. Clawson	Satanta
Clinton Stalcup	Satanta,
Tom Bruno	Farm Credit Systems
DICK CANTER JR	ENRON
Ken Peterson	KS Petroleum Council
Lanie Ann Lower	KSEA Consulting
John Prieger	SWKRCA

TESTIMONY IN FAVOR OF SENATE BILL 610

EUGENE SHORE, 1013 WICHITA DR. ULYSSES, KS 67880

Mr. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

SENATE BILL 610 IS A BILL WHICH DEALS WITH FAIRNESS. IT IS NOT WEIGHTED IN FAVOR OF THE LANDOWNER NOR IS IT WEIGHTED IN FAVOR OF THE DRILLING COMPANY. IT IS SIMPLY A METHOD WHEREBY BOTH PARTIES CAN OBTAIN FAIR AND IMPARTIAL OPINIONS AS TO WHAT DAMAGES ARE WHEN A DRILLING RIG IS BROUGHT ON THE PROPERTY TO EXPLORE FOR GAS OR OIL

SENATE BILL 610 IS A PRACTICE WHICH HAS BEEN IN FORCE IN OTHER STATES WITH A GREAT DEAL OF SUCCESS FOR A NUMBER OF YEARS. WE ARE NOT ASKING YOU TO PLOW NEW GROUND. THE METHOD OF OBTAINING FAIR DAMAGES CONTAINED IN S610 HAS PROVEN ACCEPTABLE AND WORKABLE.

TIMES HAVE CHANGED. A FEW YEARS AGO OIL WAS $15 PER BARREL AND WHEAT WAS $4.00 PER BUSHEL. TODAY OIL IS $30 PER BARREL AND WHEAT IS LESS THAN $3.00. LAND IS JUST AS HIGH AS EVER AND FUEL AND OIL FOR AGRICULTURE ARE CLOSE TO AN ALL TIME HIGH. IT WOULD APPEAR TO BE FAIR TO ALLOW, NOT A WINDFALL FOR THE LANDOWNER, BUT AT LEAST A REASONABLE CHANCE AT A FAIR AMOUNT OF DAMAGES. SENATE BILL 610 GIVES THE LANDOWNER A LEVEL PLAYING FIELD WHEN IT COMES TO BEING PAID FOR DAMAGES ON HIS PROPERTY, NOTHING MORE.

IF AN APPRAISER IS NEEDED, SENATE BILL 610 PROVIDES THAT LAND OWNER AND THE OPERATOR SHARE EQUALLY IN THE COST. SOUNDS FAIR TO ME.

BEFORE ENTERING A DRILL SITE WITH HEAVY EQUIPMENT THE OPERATOR AND THE LANDOWNER MEET FOR NEGOTIATIONS AS TO DAMAGES. IF THEY AGREE ON A AMOUNT A CONTRACT IS SIGNED AND THE OPERATOR MAY ENTER ONTO THE SITE AND COMMENCE DRILLING.

IF THEY DON'T AGREE THE OPERATOR PETITIONS THE DISTRICT COURT FOR APPRAISERS, THEN THE DRILLING CAN COMMENCE.

EACH PARTY CHOOSES AN APPRAISER AND THE TWO CHOSE THE THIRD. IF THERE ARE UNKNOWN HEIRS OR OWNERS THE COURT APPOINTS THAT APPRAISER AFTER PUBLISHING ONE TIME IN THE LOCAL PAPER.

IF EITHER PARTY DISAGREES THERE ARE FURTHER REMEDIES IN COURT BUT DRILLING IS NOT HELD UP AND THERE IS THE EXPECTANCY BY THE LANDOWNER THAT FAIR DAMAGES WILL BE PAID.

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MOST DRILLING COMPANIES ARE FAIR TO DEAL WITH, BUT THERE HAVE BEEN MANY MERGERS AND ACQUISITIONS THE LAST FEW YEARS AND LANDOWNERS ARE LEFT WONDERING WHO IS RESPONSIBLE, WHEN DAMAGES ARE NOT SETTLED UP FRONT. SENATE BILL 610 WOULD PROVIDE THAT DAMAGES WILL BE SETTLED IN A TIMELY AND FAIR MANNER FOR BOTH PARTIES.

I URGE YOUR SUPPORT OF SB 610 AS A MEASURE OF FAIRNESS TO BOTH THE OPERATOR AND THE LANDOWNER.

ONE SUGGESTION I WOULD HAVE FOR AN AMENDMENT IS A SECTION TO BE INCLUDED WHICH WOULD PROTECT THE RIGHTS OF THE TENANT. THE TENANT MANY TIMES IS NOT THE LANDOWNER AND WOULD SUFFER DAMAGES ALSO.

March 1, 2000

Testimony in favor of SB 610
Merl D. Rexford
507 Vine
Meade, Kansas 67864

Mr. Chairman and members of the Committee:

Senate Bill 610 is a bill which is needed to bring fairness into the settlements of damages while not giving up the rights of both parties involved.

Damages, or at least a reasonable estimate, should be made prior to the movement upon a drill site. If agreement cannot be reached, appraisers will have to be sought out - cost of which is shared by both sides.

If these appraisers cannot agree, then the District Court will have to bring in another set of appraisers before the site is entered for drilling purposes.

In the case of a successful well being completed, the drilling companies generally pay their own damages. But on an unsuccessful well, they are not to be found. The landowner and tenant are left with a mess and a company on the other side who does not see any advantage to pay.

Drilling companies sometimes are made up of many partners which change from well to well (location to location). A dry well does not make them want to stay and clean up but just to cut and run. Therefore, damages have to be settled before they have discarded the project.

Thank you.

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Attachment: 2

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STATEMENT IN SUPPORT OF LEGISLATION TO PROVIDE A REMEDY TO KANSAS LANDOWNERS TO BE FAIRLY COMPENSATED FOR DAMAGES INCIDENTAL TO OIL AND GAS DRILLING, DEVELOPMENT, AND EXPLORATION OPERATIONS

My name is Kirby B. Clawson, with address of Rt. 1, Box 65F, Satanta, Kansas 67870, and I appear before you today at the request of Senator Tim Huelskamp, in support of the proposed legislation above referenced.

I am blessed in that I and my family own real estate in Kansas, Oklahoma and Texas. Over the years we have had many dealings with various oil and gas companies who operate in these states, and as you might imagine, some of the dealings have been pleasant, while others haven't been so pleasant.

The unpleasant dealings that we have had primarily concerned the inability to reach an agreement as to the compensation to be paid for damages to the land (including crops), incidental to the development, operation and production of the leasehold estates held by the oil and gas companies. Thus, it is my hope that the state of Kansas will pass some legislation that will protect the landowners of the state of Kansas, by giving them a statutory remedy to recover damages that they suffer.

Presently there are three ways that Kansas landowners can recover damages, as follows:

1. By specifically providing in a new oil and gas lease what damages will be paid up front for site damages, roadway damages, pipeline damages, and powerline crossing damages.

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2. If the landowner does not include in a new oil and gas lease what these damages are to be, or alternatively if an oil and gas company further develops the premises under an old oil and gas lease that has been perpetuated by previous production, then it is up to the landowner and oil and gas company to reach an agreement as to the damages suffered, which often times results in an impasse.

3. In the event an oil and gas lease does not provide what the damages are to be and an impasse results, then the landowners only remedy is to engage the services of an attorney, file a legal action, and further engage the services of an agronomist expert to establish the damages.

As previously mentioned, I and my family own land in other states. In the state of Oklahoma, a remedy is available to Oklahoma landowners to recover damages if an oil and gas lease does not provide what those damages will be, and if the landowner and the oil and gas company can not agree on what is reasonable. Summarily stated, the landowner can select an arbitrator, the oil and gas company can select an arbitrator, and those two arbitrators can select a third. These three arbitrators then view the property and establish the damages that are to be paid by the oil and gas company to the landowner, resulting from the oil and gas company's activities on the premises.

Legislation, as suggested herein and as utilized by our sister state, Oklahoma, would provide a remedy to all landowners in the state of Kansas, and would enable them to avoid prolonged litigation and the necessary expenses incidental thereto. In addition, I would think that the oil and gas companies would favor legislation of this nature, as they too would be able to avoid the same expenses that a landowner would have if litigation results. Furthermore, I believe that legislation of this nature would go a long ways in fostering

landowner and oil and gas company relations, and allow the parties to often times reach an agreement as to the damages short of going through the arbitration process in the event an oil and gas lease does not specifically provide what the damages will be.

Thank you for your consideration of my thoughts, and on behalf of all Kansas landowners, please give the proposed legislation your due consideration. If you have any questions or if I can be of any help, I assure you that I would welcome hearing from you.

Respectfully submitted this 1st day of March, 2000,

KIRBY B. CLAWSON
Rt. 1, Box 65F
Satanta, Kansas 67870
Phone # (316) 657-2381
Fax # (316) 657-2001

March 1, 2000

Testimony in favor of SB 610

I am Clinton Stalker, Rte. 2, Box 30-C, Satanta, Kansas 67870. I am here to speak in favor of Senate Bill 610.

I am involved in farming and ranching, along with my two sons, in Haskell County in Southwest Kansas. Some of our farming operations involves irrigation in an area in which a considerable amount of oil and gas drilling has occurred over the last three to four years. We make an extra effort to get along with the oil and gas companies producing on the land that we own or operate. Most of the time we are successful in this effort.

A drilling location with its' water pits and other dirt work causes considerable damage to agricultural land particularly an irrigated field. A good percent of the time we are able to settle with the oil and gas companies for damages resulting from a drilling site. Some companies are good to consult with us planning the drilling location to minimize damage to crops and the land and to settle for what damages will occur. In other cases it is frustrating as a farm operator and landowner to deal with a company that makes no effort to consult with us before building a drilling location and then refuses to compensate a fair amount for damages. In a recent incidence a drilling location adversely affected over twice as much irrigated cropland as it should have and two years later we have not received payment for damages.

Senate Bill 610 will assure contact between landowner and the drilling company before a location is started and provide for fair compensation for damages to the landowner in a timely manner.

I ask your support for the bill and thank you for your time and attention.

Statement in Support of Senate Bill No. 610

My name is Warren F. Fox. I own and operate a farm and ranch in southern Meade county, in southwestern Kansas. Over the past thirty years I have had many dealings with oil and gas companies...some good...some bad. Each time I give a new lease for drilling exploration I try to correct what mistakes were made in the previous lease. This is a very expensive learning process. I have purchased land that was leased to companies fifty years ago when a dollar was much larger than it is today. I am living with the conditions of that lease today. The standards of 1950 and the standards of 2000 are quite different, and so is the value of the dollar.

I feel Senate Bill No. 610 would offer protection to current land owners and tenants by establishing an ongoing standard for crop and land damage due to drilling and production operations for the year 2000 and beyond. Some leases perpetuated by production since 1950 do not offer a fair standard of compensation for land and crop damages in today's economy. I have had thousands of dollars of actual crop damages left unpaid because the previous owner and lessor of the land established a payment of $300 per well sight in their 1950 lease, which has been perpetuated by production that will not even pay today's property tax. Some individuals think that they can protect themselves by listing what they think

KANSAS INDEPENDENT OIL & GAS ASSOCIATION
105 S. BROADWAY • SUITE 500 • WICHITA, KANSAS 67202-4262
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HEARING ON SENATE BILL 610
BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
MARCH 1, 2000
TESTIMONY OF ROBERT E. KREHBIEL,
ON BEHALF OF THE KANSAS INDEPENDENT OIL AND GAS ASSOCIATION

Mr. Chairman and Members of the Committee:

My name is Robert E. Krehbiel and I am appearing on behalf of the Kansas Independent Oil and Gas Association in opposition to SB 610.

S.B. 610 appeared late in the Session and was quickly set for hearing. We have had very little time to inform the industry about this bill and I have had very little time to review the bill myself. It is clear, however, that this bill is very bad and will be unanimously opposed by the industry. The following are a few of the problems with SB 610:

1) SB 610 will undo 100 years of Kansas oil and gas law in the area of surface use. It will rewrite thousands of private contracts and seriously impair rights bargained for in those contracts.

2) SB 610 will substantially impair or totally eliminate the value of thousands of vested property rights denying the owners of the value of those rights without compensation.

3) SB 610 will significantly reduce oil and gas development in Kansas and create excessive litigation where none need exist.

4) SB 610 will serve to allow those who assert unreasonable claims for surface damages to utilize the threat of a jury trial to extort excessive payments.

5) SB 610 is designed to put the surface owner in a position to be paid again for what he or his predecessor in title has already received compensation.

6) SB 610 does not encompass a legitimate state interest or valid public purpose. The state may not use its power for the purpose of benefitting a favored class of private citizens at the expense of another. Such a statute will not withstand constitutional muster. What is the public purpose of SB 610?

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7) SB 610 requires the payment of damages by mineral owners, or their lessees, to surface owners without any requirement that those payments be applied to repairing damages. There is no environmental purpose for the bill which might benefit the public.

8) SB 610 is not necessary to protect either the interest of the surface owner or a mineral owner. The vast majority of surface damage issues are resolved without litigation except where unreasonable claims are asserted.

A single example might serve to illustrate the points I have tried to make. About five years ago a rancher in Western Kansas wanted to retire. To do so he sold two sections of grass land for $150 per acre but reserved the minerals for a period of 10 years together with the right of ingress and egress and the executory right to lease. The reserved minerals, and the right to use a reasonable amount of the surface to explore for and develop those minerals were worth another $150 and are vested property rights negotiated by private contract. The warranty deed conveying the two sections contained the following reservation:

"Except and Subject to: Easements, rights of way and oil and gas leases of record, and further reserving and excepting unto the Grantor, his successors and assigns, all of the oil, gas and other minerals, royalty, production, lease bonuses and rentals, including the right of egress and ingress to enter upon the premises and the right to execute any and all leases or other instruments necessary to mineral exploration, production and development for a term of ten years from the date hereof."

Under current law, and by the terms of the mineral reservation, the retiring rancher would have the right of ingress and egress and an easement to use a reasonable amount of the surface for the purpose of exploration and production and without further payment. The right of way and easement are vested property rights which belong to the retired rancher to utilize himself or to assign to another. The mineral reservation and accompanying surface rights served to reduce the sales price to the Purchaser and the Purchaser accepted title on that basis.

The land also had a producing gas well on one section with room for further development. Several years prior to the sale the rancher had executed an oil and gas lease covering one section and was receiving royalty payments from the sale of natural gas. He needed the revenue from the mineral interest for retirement. The well was being operated under the terms of an existing oil and gas lease covering one section and which provided that the Lessor would be paid damages to growing crops. The oil and gas lease covering the producing section had likewise been bargained for when leased to the lessee and the price paid was based on the terms contained therein. The sale price of the land was determined accordingly. The Purchaser had full knowledge of the terms of that oil and gas lease, accepted title and determined the purchase price accordingly.

SB 610 would require the retired rancher to pay the purchaser damages for a property right he retained in a private contract. SB 610 will re-write this private contract and diminish the rights of the retired rancher without compensation. Likewise, the terms of the existing oil and gas lease will now be re-written for the oil and gas lessee and subjected to jury trial.

If SB 610 is passed the retired rancher will have his right of ingress and egress diminished or destroyed and will be required to pay for that right and for damages which might ultimately be determined by a jury. The retiring rancher will have no idea what damages a jury might award as there does not appear to be any direction for such a determination. If the retired rancher decides to lease his rights to a lessee he will find the value of his mineral interest has been substantially reduced because lessee will now be required to pay the new surface owner. Whatever the jury awards would allow the purchaser to be paid twice because the purchase price of the land was reduced as the minerals and the right of ingress and egress was retained.

If SB 610 had been in force at the time of the sale the retired rancher would not have sold the land for the same price. SB 610 substantially alters, without consideration, vested property rights negotiated in good faith by private contract. The value of the retired rancher's mineral rights have been greatly reduced, and quite possibly reduced to nothing, by SB 610 and without compensation. What public purpose is served? The answer is none. SB 610 merely serves the private purpose of the purchaser to enhance the value of the land he acquired at the expense of the Seller.

In this example, if the rancher's lessee drills a development well on one section he will be required to re-negotiate surface damages in advance with the new purchaser even though the new purchaser was advised in his title opinion that the lessee had an existing contract wherein lessee had agreed to pay damages to growing crops.

The new owner might demand $10,000 to $15,000 to access the property and utilize about two acres of land valued at $150 per acre. Because of such an extreme demand the lessee will then face a jury trial. The lessee will simply not develop the acreage and the net effect of SB 610 will be to totally deprive the rancher of developing the mineral interest.

The value of the retired rancher's mineral interest will also be lost on the rancher's non-producing acreage as no prudent oil and gas operator would risk a substantial investment on the uncertainty of a jury trial.

What public purpose is served? The surface owner will either use the threat of a jury trial to extort unreasonable sums or development will cease. The undisclosed purpose of the purchaser will be to prevent drilling for ten years or until the reversionary mineral interest vests in his possession. The retired rancher is totally deprived of vested property rights without compensation.

This bill appears on the surface to be an agricultural protection bill. In reality it is a bill to enhance the private interests of a very few landowners who have acquired large blocks of acreage. These large landowners have purchased this acreage at prices negotiated upon title opinions which fully advised them of interests which were being or which had been previously reserved and for which they paid no compensation. This bill will do serious damage to the vested interests of many retired ranchers, their heirs and assigns and will serve no purpose other than to transfer money from them to a few large landowners. Mineral owners include farmers, ranchers, universities, churches, hospitals and charities. These are the people who, along with the oil and

gas industry, will be damaged by SB 610.

I urge you not to pass this bill. It is bad for Kansas. Thank you very much.

Attachment to Testimony of Robert E. Krehbiel

logs, completion reports, and production test, for the basic information often required on the forms. For most lawyers this is the only option. It should be remembered that if the lawyer verifies certain applications and submits it on "statements" of counsel, the information needs to be correct.

Many operators prepare the KCC forms and only use a lawyer to prepare the notices and appear at any hearings. Other operators need a lot of help and will have to engage consultants unless they have staff to provide the data.

For a corporation to appear at a KCC Conservation Division hearing, they must be represented by a lawyer. K.A.R. §82-1-228(d)(2) (Feb. 1977). An individual may appear *pro se,* but needs to be prepared to abide by the Commission's procedures and should consult with the Commission's staff in advance of the hearing to advise that they will appear *pro se.* Even then, they are at the mercy of the other lawyers and may be in an adversarial situation with the staff or Commission's attorney. The author has seen *pro se* individuals lose matters they shouldn't have because they fail to realize when they are at odds with the Commission Staff. A stern *caveat* is in order to any individual who appears *pro se*, or novice conservation practitioner: this is the last bastian of "trial by ambush." There is little or no discovery, save the prefiled exhibits and testimony.

The last source of law applicable to the substantive hearings and KCC procedures is found in a number of Kansas cases addressing mainly the topics of due process, notice, equal protection (application) of the law, arbitrary, capricious, or patently unreasonable conduct, or undue discrimination in the equal protection (or application) of the law sense. The *Kansas Digest* is a good source as well as the *Kansas Statutes Annotated,* looking under the annotations to statutes from which specific regulations are promulgated.

Unreported District Court cases which have ruled the Commission's actions to be arbitrary are hard to find but well worth the effort. They usually involve orders which grant one operator and deny another on a given set of facts. One has to either contact attorneys who regularly conduct this type of practice for citations or search the District Court files and indexes in the county in which the lease is located. One may ask why such conflicting results occur and necessitate appeals? It is probably more attributable to changes in Commission personnel and changing policies of various political administrations than any intentional ill will (although some operators do irritate the Commission from time to time). But, the legal effect is the same, due process and equal protection (application) of the law should be granted for all.

B. [§13.08] The Kansas Oil And Gas Operator's License

1. [§13.09] Introduction

Since 1982, any person who is in charge of the development or operation of an oil and gas or salt water disposal facility in Kansas, either as an operator or contractor, must obtain a license from the Kansas Corporation Commission K.S.A. §55-155 (1986). This resulted from the implementation of the Kansas regulations for Underground Injection Control (U.I.C.) required under the Federal Clean Water Act, 33 U.S.C.A. §1251 *et seq.*

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2. [§13.10] Requirements For License

The following is required to obtain an oil and gas operator's or contractor's license: See generally K.A.R. §82-3-120 (May, 1983). See Appendix Form No. 1.

a. Completion of a verified application on a form prescribed by the Commission. The form requires:

(1) Name under which the applicant transacts business.

(2) Correct business mailing address of the partners.

(3) If a partnership, the name and address.

(4) If a corporation, the name and address of the principal officers.

(5) A statement that *the applicant has read the KCC's regulations.* Note: this is one of the first questions KCC staff attorneys ask at the hearing when an operator asks for an exception to a violation such as off pattern location exception (after the fact of course).

(6) Designation of the applicant's agent K.A.R. §82-3-121 (May, 1983).

b. Payment of the annual fee of $100.00 plus $25.00 per rig (drilling or workover).

c. The number of rigs sought to be licensed.

d. Copies of property tax receipts on the rigs.

e. Annual renewal by payment of fees and refiling the form.

f. K.S.A. §55-155 (1986) requires an identification tag shall be displayed on the rigs at all times.

3. [§13.11] Designation Of Agent [K.A.R. §82-3-121 (May, 1983)]

Every person, firm, or corporation operating oil, gas, or injection wells and rigs in Kansas must designate an agent. The agent must certify compliance with the Commission's regulations concerning the drilling completion, or plugging of wells. K.A.R. §82-3-121 (May, 1983). In practice the agent is usually the applicant, or a field supervisor who has sufficient knowledge to be able to certify compliance.

4. [§13.12] Licensees And Complaints [K.A.R. §82-3-122 (May, 1984)]

Mandatory hearings are required by K.A.R. §82-3-122 (May, 1984) when the Commission finds there is a written complaint, or reasonable cause to believe, a licensee has willfully violated any of the rules and regulations. The Commission can revoke or suspend the license or assess administrative fines (see current fines list in Appendix, Form No. 2).

5. [§13.13] Transfer Of Operator Responsibility [K.A.R. §82-3-136 (May, 1985)]

Notice must be given to the Conservation Division of any transfer of operator responsibilities on a given lease or rig within thirty (30) days of the change. K.A.R. §82-3-136 (May, 1985). Notice must be through a form prescribed by the Commission.

6. [§13.14] Revocation And Suspension Of License

The license can be revoked and suspended by the Commission. Commission practice has been to revoke or suspend only after a hearing. Failure to renew a license results in its suspension after publication of notice in the *Kansas Register*. K.S.A. §55-162 (1986). Once the license has been suspended or revoked, no new license may be issued to an applicant until one year has passed since the suspension or revocation. K.S.A. §55-155(d) (1986).

C. [§13.15] Drilling A Well

The KCC has provided a convenient list of operator responsibilities which are well worth reviewing for a novice operator. The list is not all encompassing, but will aid a new operator in avoiding the most frequently encountered problems with the KCC. See Appendix Form No. 3. The following list of considerations prior to drilling are things one needs to review to predict when regulatory filings must be made in advance of drilling, to aid in obtaining permits, and to most efficiently conduct the drilling project in light of the regulatory requirements.

1. [§13.16] Pre-Drilling Considerations

Once the operator's license has been obtained there are a number of preliminary steps to consider prior to obtaining an "intent to drill" permit. There are also a number of practical considerations that determine whether regulatory applications are advisable prior to actual drilling. It is well to consider these regulatory and practical items in advance of drilling, because when one is facing hearing on complaint on an issue of noncompliance, or seeking *ex post facto* an exception, the same questions will be most likely raised at the hearing by staff or a complaintant. In the past few years the KCC has built in more regulatory penalties for noncompliance in the nature of: "no allowable and punitively restricted allowables." See for example, [§13.21].

a. [§13.17] Area Fresh And Usable Water Supplies

Inquiry should be made of the landowners or surface lessee about wells and water supplies, depths of fresh water, and other wells drilled in the area, perhaps left unplugged. Fresh water is defined as containing not more than 1,000 milligrams of total dissolved solids per liter. This upper limit is approximately equivalent to 1,000 p.p.m. salt or 500 p.p.m. chlorides. Fresh water must be protected by surface casing with the space between the outside of the casing and the well bore hole (annulus), cemented top to bottom, K.A.R. §82-3-106 (May, 1988). The depth of the deepest usable water is usually not known by surface

owners. For a visual illustration of these layers see [§13.28] and K.A.R. §82-3-101(a)(32)and §82-3-101(a) 77 (May, 1988) for definitions.

In general one can check the published Table I and II charts from the KCC for the depths of fresh and usable waters, or telephone the KCC staff in Wichita for their data.

b. [§13.18] Source Of Water For Drilling
[K.A.R. §82-3-119 (May, 1984)]

Determine if the water source for drilling is to be hauled in or if a water well will be drilled that requires a permit. Usually the drilling contractor obtains the well permit. Drilling contracts differ on who's to obtain the permits and it may be the responsibility of the operator. Determine if the water well is to be offered to the landowner or to be plugged after the well is drilled. K.A.R. §82-3-119 (May, 1984), requires the landowner's written consent to leave the water well.

c. [§13.19] Location Topography — Location Exceptions
[K.A.R. §82-3-108 (May, 1988)]

Location exceptions are important on the leaseline wells. A well that is too close presumptively violates the correlative rights of the adjacent lease. In spaced areas the minimum distance will be found in the basic proration order or field rules. In all unspaced areas, except for an area in eastern Kansas, the minimum distance one can locate a well adjacent to another lease is 330 ft. The 330 distance also applies in **all** of Kansas unspaced areas for **gas** wells and all oil wells below the depths specified in the exception areas in eastern Kansas. In these excepted areas, the minimum location to a leaseline is 165 ft. for **oil** wells less than 2000 feet deep in the eastern Kansas counties of:

Allen	Elk	Lyon
Anderson	Franklin	Miami
Atchison	Greenwood	Montgomery
Bourbon	Jackson	Neosho
Brown	Jefferson	Osage
Cherokee	Johnson	Shawnee
Coffey	Labette	Wilson
Crawford	Leavenworth	Woodson
Douglas	Linn	Wyandotte

In Chautauqua County, it is 165 ft. minimum to the nearest leaseline for **oil** wells of up to 2500 feet in depth. See K.A.R. §82-3-108(b).

Determine if the location is on a topography that permits drilling and access; inquire whether it is in an area that floods which might require extra precautions to contain the drilling fluids. K.A.R. §82-3-108 (May, 1988). If a location exception will be required due to water ways, topography or man-made structures, take warning: this must be obtained in advance of drilling, the penalty is both no allowable and a punitively restricted one at that. See [§13.21]. An example of an application for a location exception is found as Form No. 7 in the Appendix, together with a waiver form for offsetting operators to sign if they are agreeable.

d. [§13.20] Rechecking Location After Grading

In typical situations, location has been staked by a competent surveyor weeks before the rig arrives. To ensure it is still at, and remains at the minimum distances to a lease line it should be rechecked after the location is graded. Often the stake gets moved twenty to thirty feet inadvertently by the grader operator. This is critical to lease line locations, and a careless grader operator has not been accepted by the KCC as an excuse.

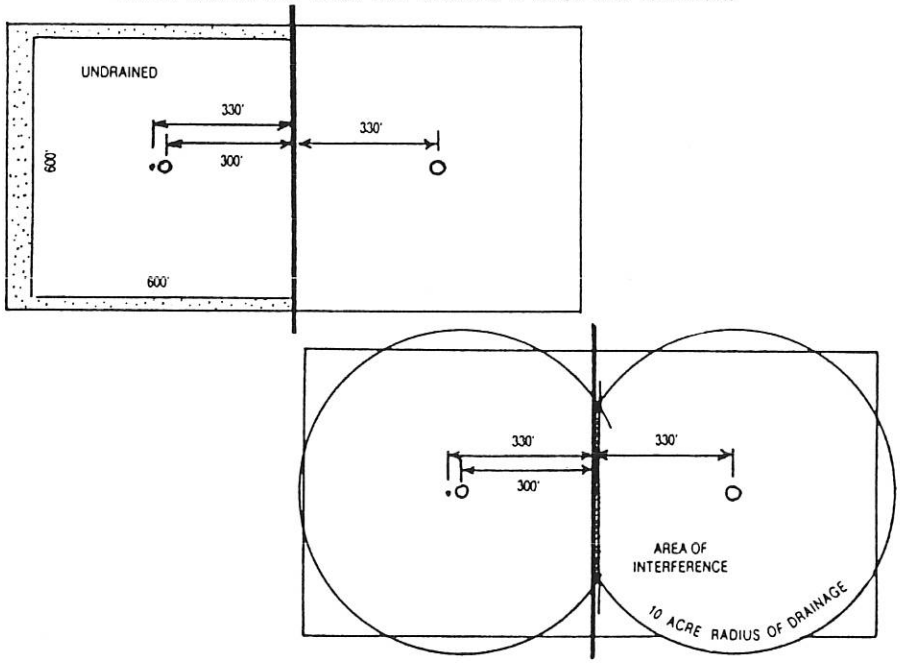
e. [§13.21] Penalties For Off Location Wells

Penalties for failing to obtain prior approval for a location too close to a lease line are severe: See K.A.R. §82-3-108 (May, 1988). They are:

(1) No allowable accrues until an exception is granted, K.A.R. §82-3-108 (May, 1988), or an "appropriate" allowable is determined. An operator who goes ahead and produces the well before an "appropriate" allowable is determined, risks having the well shut-in to make up the overproduction. This can result in serious correlative rights problems.

(2) The allowable in the past has been reduced much greater by the KCC than the actual interference with correlative rights would warrant by calculation. The old wording in K.A.R. §82-3-108 (Dec., 1988) resulted in a reduced allowable as a penalty by the method illustrated below. Although the strict penalty wording has been amended out of the regulation the Commission still uses and favors this method for determining a reduced allowable. It is an overly restrictive penalty which is also asked for by upset offsetting operators or commission staff and works violate correlative rights rather than balance them as follows:

Given that a well is 30' too close to a lease line location:



The penalty reduces the well's allowable by limiting the attributable acreage to that covered by a square with the well being the center of a square in this case 600′ on a side, or 360,000 square feet. Ten acres normally is 435,600 square feet, therefore the allowable is reduced to 360,000/435,600 = .826 of the original amount.

The actual interference with drainage would be a 15′ strip, 660′ long (assuming greater than 10 acre drainage). Each well competing for fluids in the reservoir would pull equally from distances 315′ apart [(330 + 300′) ÷ 2]. This results in an allowable of .977 of the original amount:

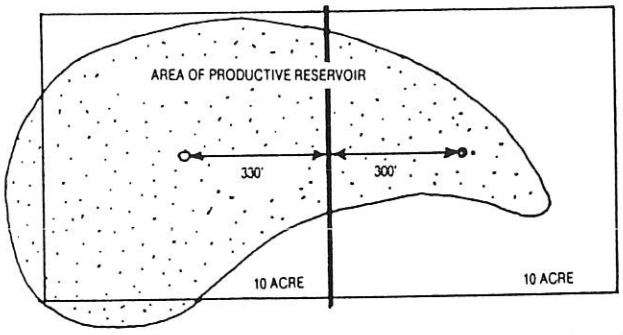
$$\frac{435{,}600'-(15' \times 660')}{435{,}600} = .977$$

Therefore the formula used by the penalty often asked for by complaintants is 7.56 times too severe to balance correlative rights:

$$\frac{1.0 - .826}{1.0 - .977} = \frac{.174}{.023} = 7.56$$

It is thus punitive and causes a correlative rights imbalance contrary to the statutory mandate of the legislature for the Commission to protect correlative rights. It seems hardly justifiable where the error was committed by a careless subcontractor. It is visually difficult to detect a 30′ error, therefore double checking after the location is graded on lease line locations becomes very important.

There are, however, situations where non-radial drainage may make more severe adjustments to allowables necessary. One might need to consider filing or defending a complaint when an evaluation shows non-radial drainage. Below is a geological exhibit which would show that an adjustment in allowables is necessary to balance correlative rights:



In the above example, one can visually estimate a 300′ location of the well to the right, even though reduced per the Commission's rule, would result in 30-40% more allowable than the well drains. If this argument fails to abate the granting of an allowable on the "center of the square" rule, then one can consider filing for spacing and proration to protect correlative rights. See Chapter 14. This leads Kansas operators and the KCC down the rough and tumble path of every allowable being a battle, as is routine in Louisiana, but it

seems to be the coming trend from several recent KCC battles that should have been routine allowables.

f. [§13.22] Excuses For Failure To Obtain Prior Approval

The excuses for off pattern locations asserted include: (1) Surveyor error; (2) Location stake was moved when rig moved-in to avoid creek or drainage; (3) Location stake moved while grading flat area for rig location by careless earth mover operator; and (4) If the Commission doesn't grant relief, it will result in a violation of correlative rights. None of these excuses have been particularly successful in subsequent hearings for relief from the penalties under the regulations, although the author knows of no appeals taken on the point of the penalties causing (rather than the Commission's duty to prevent) a violation of correlative rights. The only remedy one would suppose is to drill an on-location well to get the full allowable (and plug the off-location well). This is wasteful in most circumstances and rather absurd since most rotary drilled holes spiral downward in a 60' wide radius spiral anyway. Only the surface spot is truly "on location." The reason the Commission is being so firm in enforcing location problems stems from years of "fudging" by some operators, and the Commission is tired of hearing such disputes.

Attorneys also should be aware that many operators believe they can move the surface location within thirty feet of the spot. It's not true. There's no tolerance in the rules.

g. [§13.23] Lost Circulation Zones

The operator needs to check to make sure the drilling contractor is familiar with the area drilling problems such as lost circulation zones, squeezing shale zones, and tight zones. Other operators experienced in the area where the well is to be drilled may need to be consulted if the applicant is not experienced in the particular locale. Usually the drilling fluid (mud) company and sometimes the KCC field personnel will know if it's an area of known drilling hazards, and can provide this information. It affects the decision whether to run an Alternate I or II surface casing string. See [§13.28].

h. [§13.24] Hazardous Chemicals

The operator needs to determine if any hazardous chemicals will be used that require disposal or special handling, training and hazardous materials documentation compliance under OSHA, 29 U.S.C.A. §651 and 29 CFR §19.10.1200, or K.A.R. §82-3-602 (May, 1988), K.A.R. §82-3-603 (May, 1988).

i. [§13.25] Gas Markets, Venting Gas. K.A.R. §82-3-208

Markets for gas, if gas is discovered, need to be considered. Special problems occur if the Commission should seek shut-in of combination oil and gas wells, rather than permit venting of the casinghead gas. If markets are actually too distant, costly to reach, or unavailable for the gas produced with the oil, an affidavit for relief may be filed. See K.A.R. §82-3-208 (May, 1986). KCC Form

ACO-18, used for this purpose is found as Form No. 4 in the Appendix. See also a more detailed explanation in [§13.67].

j. [§13.26] Consider Spacing And Proration Prior To Drilling

It may be advisable to space the area and prorate the production in advance of drilling to protect a wider spacing voluntarily utilized by the drilling party. This is often done in an area where:

(1) one well will efficiently drain a certain number of acres, for example 40 acres or up to 640 acres, depending on reservoir conditions and whether the well produces oil or gas,

(2) the operator wants to start on a wider spacing pattern, and

(3) where offset operators would be open to drilling minimum spaced wells under the general rules, crowding close to the discovery.

k. [§13.27] Field Rules And Spacing Already Established

A check needs to be made to see if the location is already in a spaced and prorated area. (Note: some are spaced only.) If so, determine if:

(1) minimum attributable acreage is available;

(2) the location is proper for the spacing and acreage available; and

(3) an allowable should be obtained in advance of drilling to assure the acreage or exception sought will in fact be permitted (note: each order spacing and prorating a field is different. They must be checked and reviewed).

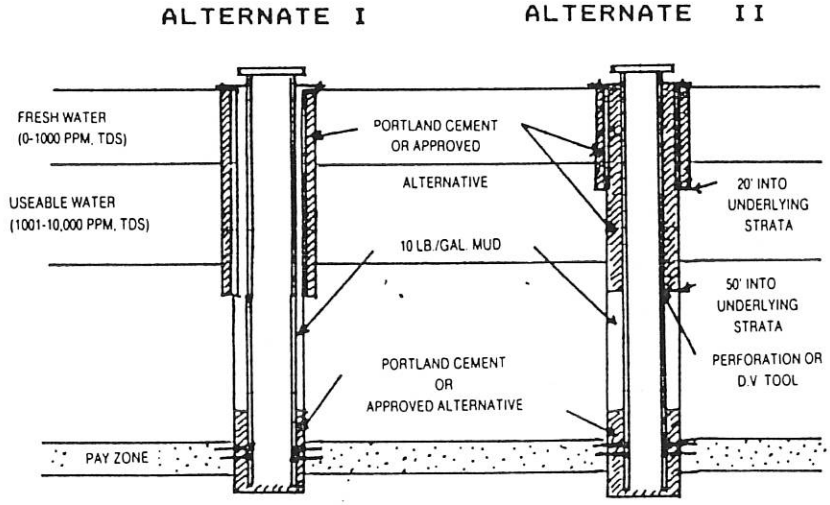
The Commission will answer inquiries by telephone or letter as to whether a particular location is in a spaced and/or prorated field. Copies of the field rules for spaced and prorated areas may be obtained from the KCC Staff at the Wichita conservation office.

Many old spaced and prorated areas were spaced early in their development to provide for orderly development within a common source of supply (whether or not one single reservoir). After the fields are completely developed by drilling, it is sometimes discovered the field consists of many different reservoirs within the spaced and prorated formation. Then it may be desirable for development or protection of correlative rights to file to despace and remove proration. It may permit better location flexibility (statewide general rules are ten (10) acre spacing in most areas). One drawback to despacing is the allowable formula under the general rules [K.A.R. §82-3-203 (May, 1987) for oil, and §82-3-312 (May, 1988) for gas], are usually lower than the formulas in the order spacing the field.

l. [§13.28] Alternate I And II Cementing Considerations

Alternate I and II are regulatory options concerning how much surface pipe is to be run to protect fresh and usable water. Generally, fresh water zones are

nearest the surface, and the water bearing zones become increasingly saline with depth. Alternate I cementing is used to cement a longer string of surface casing from the base of the formations containing the deepest usable water (1,001 to 10,000 milligrams total dissolved solids per liter (mg. TDS/L) through and including zones containing the fresh water zones (0-1,000 mg. TDS/L). This cementing is done all at one time with cement circulated to the surface.



Cement is a blend of portland cement or a prior approved alternative which seals the space between the outside of the pipe and the bore hole of the well. K.A.R. §82-3-101(a)(10) (May, 1988). Alternate II permits cementing the fresh and usable water zones in two stages. The first stage is to cement the fresh water zones between the borehole and the surface casing prior to drilling the rest of the hole. Prior to the second stage of cementing one can test the productive zones and then later (up to 120 days) inject cement behind the production casing up through the usable water zones to the surface.

The advantage of Alternate II is it requires running less surface casing in the event of a dry hole. Thus an operator can take up to 120 days to complete and test a well in which production casing is run, prior to doing the Alternate II cementing. If the well doesn't prove commercially productive, the operator can recover much of the production casing. The disadvantages are:

(1) Once the Alternate II cement is placed behind the production casing through the usable water zones to the surface, the production casing cannot be salvaged or pulled;

(2) The risk is on the operator that he can effectively squeeze the second stage cement to the surface; and

(3) The wells drilled which result in dry holes under Alternate II are not good candidates for later re-entry for utilization for salt water injection completion, or to try other zones for oil and gas production, or drill deeper, because the usable water zones must have extensive cement plugs through them. These extra cement

plugs are very hard and make it much more likely the drill bit will drift off into the softer rocks while attempting a "wash down" (re-entry of an old plugged well).

The state, in effect, loses a valuable resource for future economic development, and the energy used to drill these holes is wasted forever. The appropriateness of protecting the surface, fresh, and usable waters to this extent will be a judgment for future generations. However, an operator should consider Alternate I if there is any chance he will desire to wash down the hole later, and a cost comparison between the two methods is advisable in development wells within a field. If the difference is only several hundred feet of surface casing, Alternate I may easily be the more economical choice because of the higher cost of either a D.V. tool (a cylindrical valve set in the casing which can be opened for the Alternate II cement to be injected through) or perforating the production casing and cement squeezing operations.

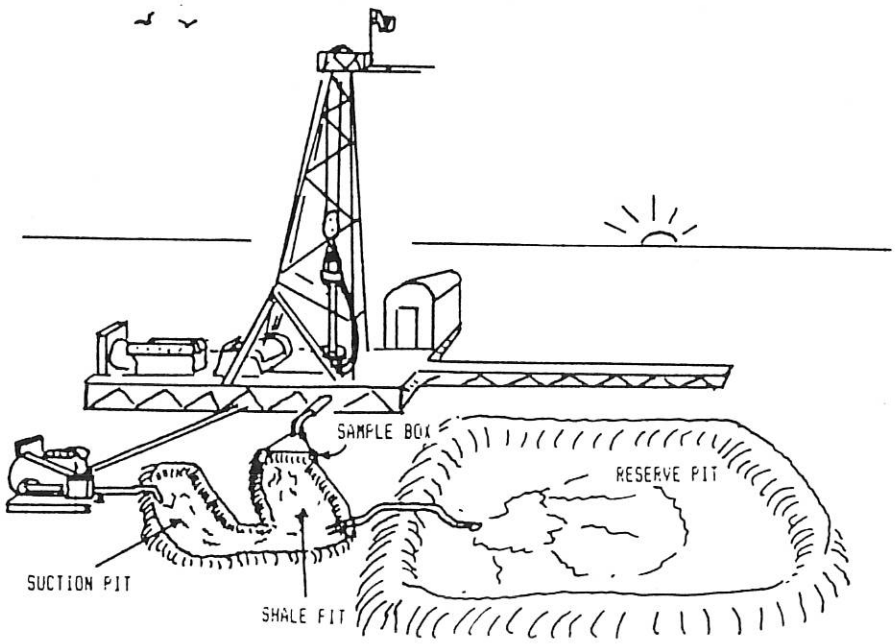
The Commission's staff frequently makes alterations on intents to drill from Alternate I to Alternate II and vice versa and the changes have not been consistent. This form should be carefully checked by the operator when returned by the Commission because the alterations on the face of the permit are the only notification one will receive that it has been changed. It may be that the operator made an error and the Commission Staff changed the permit selecting the lesser alternative. It causes the KCC staff to try to guess at what the operator intended. At other times additional footages of casing were added for no discernable reason, and negotiation, geological data presentation, and conferences were required to arrive at an appropriate amount of Alternate I or Alternate II casing.

The amount of Alternate I and Alternate II surface casing is found in Tables I & II attached to the order as revised from time to time in KCC Docket No. 34,780-C (C-1825) and some special rules attached thereto and identified as Order #133,891-C which sets forth special rules for certain areas in eastern Kansas.

m. [§13.29] Surface Pond Permits K.A.R. §82-3-600 (May, 1987)

Surface ponds are excavated or naturally occurring depressions upon the surface of the earth. They include the shale pits and reserve (waste) pit used while drilling and ponds that are used to temporarily store fluids during completion and recompletion operations and "burn pits." See K.A.R. §82-3-600 (May, 1987) *et seq.* Application is required for a permit on KCC Form CDP-1, 2/87. See Form No. 5, Appendix. Approval is given when the KCC returns the approved Notice of intent form. See KCC Form C-1, 11/86, found as Form No. 6. A separate intent to drill form is used for Hugoton infill wells. See Form No. 6A, Appendix.

13.29



There are many kinds of pits and ponds used in drilling, completion, and workover operations. "Shale pits" are typically two small 3'-4' deep pits, 8' wide and 20' long, immediately adjacent to the drilling rig. They collect the settled rock chips from the drilling mud. The rock chips are "jetted (sucked)" over to the reserve pit which is often 70'-100' square and 6' deep. The rock chips dry faster by spreading the muddy rock chips out over a larger area and can be buried sooner. Burial is usually in place and accomplished by pushing the subsoil and soil over the reserve pit.

Some drilling contractors dig water pits or ponds to hold the "makeup" (for drilling mud) water. This water is either produced from a well or hauled in by truck. Typically these are plastic lined. During workover operations small pits are sometimes dug adjacent to the well, 6'-8' wide, 15'-20' long and 2'-3' deep to hold spent acid water or other fluids. Most operators use steel tanks for workover operations, however, as they are easier to "gauge" (measure) for the quantities for water, oil, and treatment fluids recovered.

Permits for surface ponds and pits are new regulations and are a substantial broadening of the KCC scope of regulation of oil field activities. Disposal of waste accumulated in these pits is also now regulated.

The liquids accumulated in surface ponds must be disposed of when each pond is abandoned. Customarily these were buried on site but now they may have to be removed to an approved disposal well. See K.A.R. §82-3-602 (May, 1988). The "contents," presumably the solids, may be required to be remove to an off-site disposal area approved by the Kansas Department of Health and Environment (KDHE), or a permitted solid waste landfill. See K.A.R. §82-3-602 (May, 1988). The Commission may require other disposal techniques and

may require monitoring wells, trenches, or holes maintained in regard to any abandoned surface pond. See K.A.R. §82-3-602 (May, 1988). The surface is to be regraded, as soon as practical or as required by the Commission, with the surface soil replaced "to the greatest extent possible" to restore the land to the same condition as existed prior to the construction, see K.A.R. §82-3-602 (May, 1988). This is a tougher standard than most oil and gas lease forms which require restoring the surface to its original condition "as nearly as practicable." Such a strict standard for surface restoration may be outside the KCC's statutory authorization.

Spills that are not contained within a permitted surface pond must be reported, K.A.R. §82-3-603 (May, 1988). See [§13.69] for detailed procedure.

n. [§13.30] Drilling Through Gas Storage Formations

Any person drilling through a gas storage formation which a natural gas public utility has appropriated by exercise of eminent domain right to underground storage of gas, by K.S.A. §55-1204 (1986), is required to seal off the natural gas storage stratum. [Note: There are underground gas storage fields in Kansas that were acquired by purchase rather than being appropriated by eminent domain. This statute and the regulations would not apply to such storage fields.] For those fields to which the regulations apply, the methods for sealing off the gas storage formation are either prescribed by the utility or what the Commission determines to be fair if the drilling party files protest. K.A.R. §82-3-311 (May, 1988) provides a time sequenced procedure:

(1) Written notice to Public Utility and Commission must be sent by the drilling party, registered mail or delivered not less than thirty (30) days prior to commencement of drilling, or plugging a producing well, containing the date desired for commencement of operations. See K.A.R. §82-3-311(c).

(2) Public Utility recommendations must be mailed or delivered to the Commission within ten (10) days after receipt of the notice, and then the Commission forwards a copy to the person seeking to drill or plug such well. See K.A.R. §82-3-311(d).

(3) Objections or complaints by the person seeking to drill or plug the well are filed within five (5) days after the recommendations are filed with the Commission. This procedure probably is inadequate if the party seeking to drill or plug doesn't get their copy in the mail in sufficient time to react. One should work closely with the Commission staff and request a call when the recommendations are filed by the utility. See K.A.R. §82-3-311(e).

The Commission then determines whether a hearing is to be held and the party requesting the hearing has to give notice not less than thirty days prior to the hearing pursuant to K.A.R. §82-3-135 (May, 1988).

The Commission shall then prescribe the manner and method used to seal off the gas storage formation. Any extra cost and expense in the recommendation

by the public utility incurred in sealing off the stratum, or in plugging, maintenance, inspecting or testing, which are above that ordinarily used, will be borne by the public utility. The utility has the right to have a representative present during the operations and access to all data. See K.A.R. §82-3-311(h) (May, 1988).

2. [§13.31] Notice Of Intent To Drill

a. [§13.32] Timing

Drilling cannot commence unless an intent to drill is filed five (5) days prior to commencement on a Commission form called a Notice of Intent to Drill (Form C-1), see Form No. 6 in the Appendix. K.A.R. §82-3-103(a)(1)(D)(2) (May, 1988). Drilling may commence immediately after approval, K.A.R. §82-3-103(c) (May, 1988). The approved Intent to Drill form must be posted at the rig and is good for six (6) months from the date of approval. A six-month extension may be granted by the Commission if a written request for extension is filed prior to expiration.

b. [§13.33] Types Of Holes Or Wells Requiring Permits

Permits are required for:

(1) Exploratory holes anticipated to penetrate a salt water formation.

(2) Holes for the discovery or production of oil, gas, or other minerals.

(3) Re-entry of a previously plugged and abandoned well, called "washdown" wells, sometimes designated in completion records as "OWWO" (old well worked over).

(4) Drilling of a "service" well, to inject or supply fluids in enhanced recovery projects, or dispose of salt water. See K.A.R. §82-3-103(a)(1)(A) through (D) (1988).

c. [§13.34] Required Information On Intent To Drill Form

The Notice of Intent to Drill form requires the following information [See K.A.R. §82-3-103 (May, 1988)]:

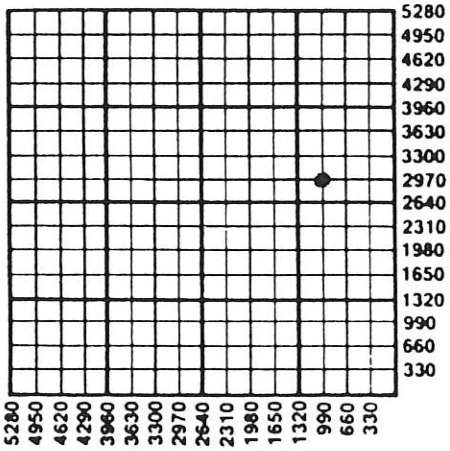
(1) Operator's name, address, and Commission license number.

(2) Drilling contractor's name, address, and Commission license number.

(3) Date drilling is anticipated to begin.

(4) Lease name, location of well in footages from East and South Section lines to the well and the quarter section, section, township, range and county (see example on next page).

(5) Distance to nearest lease line (see example) = 990' F.E.L. (from East Line) and 2970' F.S.L. (from the South Line), in the NE/4 Section 4:



(6) Estimated total depth of well.

(7) Type of drilling equipment to be used.
(a) Rotary
(b) Air
(c) Cable Tool

(8) Depth of deepest fresh water (0-1,000 milligrams total dissolved solids per liter (mg. TDS/L) at the drillsite.

(9) Depth of bottom of the formation containing the deepest usable (1,001-10,000 mg. TDS/L) water at the drillsite.

(10) Executed by operator or operator's agent. See K.A.R. §82-3-103 (1988).

(11) Prior to actual spudding, the operator shall notify the appropriate district office (See Appendix No. 7 for May, 1988 list and plat). See also K.A.R. §82-3-103(b).

(12) The operator must designate on the Intent to Drill form the source of the drilling water. The Commission may also require the vested right or permit file number assigned by the Division of Water Resources of the State Board of Agriculture. See K.A.R. § 82-3-103(g) (1988).

d. [§13.35] Issuance Of Permit

The Commission gives to the operator the amount of surface pipe necessary to protect all fresh and usable water with the approved Notice of Intention to Drill. (Note: *caveat* in [§13.28] above regarding Commission practice of occasionally changing the amount of casing specified by the operator). Drilling may proceed immediately upon approval. Preliminary plugging instructions,

solid and liquid waste disposal, and pond permits are given with approval of the permit. See K.A.R. §82-3-103(d) (May, 1988).

3. [§13.36] Commencing Drilling

(a) See [§13.34(11) above]. Notify appropriate district office prior to actual spudding. See Appendix Form No. 8 for list.

(b) Post the approved Intent to Drill on the rig.

(c) Perform Alternate I cementing or Alternate II surface casing cementing. See K.A.R. §82-3-106(c) (May, 1988). Minimum surface casing is 50'. This is a new requirement for some shallow well operators who are unaware that one may not drill into the zones containing oil and gas until a string of surface casing has been set. Some of these operators are used to drilling and setting only one string of casing, cemented top to bottom. Exceptions to this may possibly be had (on application filed for exception to the requirement) under K.A.R. §82-3-106 (May, 1988), but will most likely only be granted on application prior to drilling.

Many Eastern Kansas operators used to only run 2-3/8" tubing in their 600-900' wells and cement it top to bottom without any surface casing. This does not comply with the regulations but may be permitted on prior application where the geological evidence clearly shows no fresh water zones to protect. See K.A.R. §82-3-106 (May, 1988).

(d) Cement must set eight hours or reach a compressive strength of 300 p.s.i. prior to commencing other operations. A one tour (pronounced "tower" in the field), an eight-hour shift, is the most common waiting period for surface casing cement to cure. See K.A.R. §82-3-106(d)(4) (May, 1988). Most operators leave their production casing a minimum of 4-5 days prior to commencing completion operations to allow the cement to cure to high strengths to withstand the perforation, acidization, and fracturing processes.

(e) Notify appropriate district office of the Conservation Division prior to cementing usable water zones on Alternate II completions. See K.A.R. §82-3-106(c)(2)(B)(11) (May, 1988). See also Form No. 8, Appendix for a list of district offices.

(f) Within 120 days of the spud date operator must file two copies of an affidavit on the Commission's prescribed form (KCC Form ACO-1, see Form 9 in Appendix), and including copies of legible documentation (invoices, job logs, job descriptions, or other service company reports) of cementing operations across fresh and usable water strata. The form requires data such as location (depth intervals), types of casing, type and amount of cement, completion zones, tops, test, and initial production data.

4. [§13.37] Preservation Of The Samples And Logs

Under K.A.R. §82-3-107(b) (May, 1988) formation samples normally saved in the drilling operations *shall be* retained by the operator. This is sometimes not done unless they are requested to be turned in, and much data has been lost forever. When requested by the State Geological Survey or Conservation Division the well samples (drill cuttings and cores) are required to be delivered

SENATE COMMITTEE ON ~~ASSESSMENT AND TAXATION~~ Energy & Natural Res

March 1, 2000

RE: SB 610 - An Act concerning oil and gas; relating to determination and payment of certain damages from drilling of wells; providing remedies for violations.

Testimony of David Bleakley - Legislative Chairman
Eastern Kansas Oil and Gas Association
&
Director of Acquisitions & Land Management
Colt Energy, Inc.

The Eastern Kansas Oil and Gas Association (EKOGA) strongly opposes SB 610.

Our association represents and supports eastern Kansas oil and gas producers, service companies, royalty owners and associated businesses along with the overall welfare of the Kansas oil and gas industry in this state.

In testimony opposing SB 610, EKOGA feels the following questions are important in determining the merits of this Bill.

1. Is this bill interfering with an existing contract? **YES.** In our opinion, it is, because the original contract to lease property for the purpose of exploring for, developing and operating oil and gas was made between the original Lessor and Lessee with all terms and conditions being negotiated at that time. Furthermore, most contracts (leases) state that both parties have the right to assign, in whole or in part, with the covenants of the contract extending to the heirs, executors, administrators, successors or assigns.

2. Should the legislature consider a Bill of this nature? **NO.** In our opinion, the legislature was not setup nor elected to become involved in settling personal legal matters between two individual parties over a legitimate, binding contact that one or the other party no longer considers favorable. For either party, if all else fails, there is always the legal system to determine who is right or wrong.

3. What would the ramifications of this Bill be if it were to pass?

    A. The Oil and Gas Industry would suffer a severe blow to any future drilling by having the state change contracts (leases) that the industry and property owners had mutually negotiated in good faith . (New drilling is the life blood of our industry.)

    B. The lengthy appraisal process proposed in this Bill could keep an Oil and Gas company that wanted to drill a new well tied up for months at the whim of a property owner.

Senate Energy & Natural Resources

Attachment: 7

Date: 3-1-2000

7-1

C. Severed mineral, Overriding royalty and passive royalty interest owners in the oil and gas lease would be damaged because of the above delays or the oil and gas company deciding not to drill because of excessive and unreasonable damages requests.

D. Drilling companies, already diminished in numbers from years of low oil prices, would now face one more burden to doing business in this state.

E. The State, KCC and Counties would lose revenue from production taxes, sales taxes and ad valorem taxes due to the loss of new drilling.

F. A Bill of this type has far reaching negative implications that we haven't even thought of yet. If this Bill, or any likeness of this Bill were to pass, we believe the Legislature will have opened a pandora's box. Every industry, Company and individual wanting to have the legislature change a contract they are involved in to become more favorable to them would inundate this State Capitol building with their own Bills.

EKOGA feels that with over 100 years of history of oil and gas operators and property owners generally coexisting in harmony as Lessors and Lessees, and when they don't they either workout there differences or go through the legal system; the system and avenues are already in place to deal with contract (lease) disputes and there is no purpose for the Legislature to unjustly enrich one side in these potential disputes through this Bill.

Therefore, Mr. Chairman and members or this Committee, we urge you to vote against SB 610.

Thank you for your time.

David P. Bleakley

Testimony of Steve M. Dillard

Senate Energy and Natural Resources Committee

In opposition to SB No. 610

March 1, 2000

My name is Steve M. Dillard. I am Vice-President and Land Manager for Pickrell Drilling Company, Inc. in Wichita, Kansas. Pickrell has been in business in Kansas for over 50 years throughout which it has been one of the most active oil and gas operators and exploration companies in the state. Pickrell also operates 2 rotary rigs solely within the State of Kansas.

Passage of SB No. 610 would result in the legislature interfering with existing contracts that were negotiated in good faith. Location damages are part of the negotiations entered into between the parties when an oil and gas lease is acquired. I provide copies of just a few examples of special provisions included in oil and gas leases taken by Pickrell. After a lease is acquired, if the parties are unsatisfied with damage settlement negotiations, the courts can be used to settle disagreements. The legislature should not be used to paint this issue with a "broad brush" approach, as this bill would do.

It is very difficult to estimate actual damages prior to moving in and drilling a well, as this bill would require. Damages should be determined considering the actual area damaged. The damaged area on drilling locations varies greatly for multiple reasons. Weather and location conditions result in extreme variables. Rotary drilling contractors make significantly different sized locations. The type of equipment and trucks entering onto the location can also result in different damaged areas from one location to another. It is best to settle damages after a well has been drilled and the drill site has been restored to the landowner's satisfaction. Only then, can losses be accurately determined.

Additionally, settlement of damages in advance often eliminates for us the option of more extensive post-drilling remediation to reduce our cash outlay for damage settlement. Many landowners would much rather see a location ripped, plowed, manured and if pastureland, re-seeded rather than receiving all cash payment.

I'm sure that the proponents of this bill will point out that Oklahoma has a law that is similar to this bill in many ways. However the oil and gas business in Kansas is unlike Oklahoma for several reasons. It is relatively rare to find a tract of land on which a surface owner owns none of the oil, gas, and other minerals in Kansas. It is much more common in Oklahoma for a surface owner not to own any minerals for numerous reasons. A Kansas surface owner that is a fee owner (meaning that he also owns the minerals) has the right to negotiate a lease including surface damage provisions.

Even where the minerals were severed from the surface, the surface owner was on notice that the minerals were severed and that a reasonable amount of the surface could be used to explore for, produce and transport oil and or gas. A subsequent owner of a tract of land that is already under lease was also on notice regarding the oil and gas lease to which the

land was subject. An oil and gas lease that is properly recorded provides constructive notice of the lease and its terms. The legislature should not step in and re-write the agreements to which all parties are already knowledgeable and which those parties found acceptable when they acquired the land or entered into the oil and gas lease.

The Oklahoma statute was enacted in 1982, when hundreds of rigs were operating in Oklahoma during the deep drilling boom in the Anadarko Basin. The drilling of 14,000+ feet requires a much larger use of the surface estate than any drilling in Kansas, either then or now including the building of concrete pads, massive pits, larger and better roads, etc., etc. The rigs were left on location for months at a time.

There are only 20 some rigs operating in the State of Kansas now and at this time last year there were less than 10 rigs operating in the state. A well in Kansas usually takes no more than 2 weeks to drill, often a week or less. The locations disturb far less surface and do not require semi-permanent fixtures such as concrete pads for drilling. This bill, if passed will serve a deterrent to exploration and development of Kansas' natural resources. It also changes the economics of exploration in this state.

Oklahoma also has compulsory unitization for primary production that the Kansas legislature has rejected. In Oklahoma, a fee owner can be "force pooled" and if approved by the Oklahoma Corporation Commission can be compelled to lease for terms that are consistent with the area. A drill site can then be located on the fee owner's land resulting in the fee owner having his right to reject an oil and gas lease effectively revoked by the Oklahoma Corporation Commission. This can't happen in Kansas.

Pickrell Drilling Company, Inc. has been in business for over fifty years. I have been Land Manager for Pickrell for the past nineteen (19) years during which time we have drilled over 400 wells in Kansas. I have amicably settled damages on the vast majority of locations drilled by Pickrell over those nineteen (19) years. In a few cases I have tendered a settlement where the landowner was not fully satisfied. (Usually because the landowner heard about a neighbor that received a larger settlement from some other company) Almost always, we ultimately settle in the middle somewhere. Sometimes I end up matching the settlement of the other company. In those cases where the settlement offer was not satisfactory to the landowner, the landowner could seek remedies through the courts. However, in all my years at Pickrell, a lawsuit has never even been initiated against us on surface damages. I have hundreds of release agreements in my files in Wichita representing equitable and amicable damage settlements between Pickrell and the landowners on which we have drilled. There is no reason for the legislature to interfere with the contractual rights and obligations of the parties to oil and gas leases.

I have talked with most of the oil and gas attorneys in Wichita that represent oil and gas operators. They all state that damages are almost always settled without court action. In my own experience, I want to avoid going to court in the landowner's district with a jury of his peers and I'll usually settle to avoid ending up in a western Kansas district court and incurring legal expenses.

This bill represents a far-reaching solution looking for a problem.

Examples of Special Damage Provisions Contained in Oil and Gas Leases Taken by Pickrell Drilling Company, Inc.

Lessee or his assigns shall pay unto the lessor the amount of $1800.00 damages prior to commencing any drilling operations on said lands.

Location damages will be $1,850.00 per well and land will be restored to as near original condition as possible.

Lessee shall pay Lessor for damages to all property, real, personal, or mixed, or caused by its operations on said land, including but not limited to land, growing crops, grass, buildings, livestock, surface, fences and other improvements and personal property. All damages hereunder shall be due and payable on or before three (3) months after the same occur. The Lessee agrees that prior to drilling he will pay to Lessor a minimum of $1,500.00 to cover the damages for each well that is drilled, and will restore the surface to its original condition, and should the actual damages exceed $1,500.00 will pay the amount for the actual damage.

Lessee hereby agrees to pay for any and all damages occasioned by its operations hereunder, including crop damage caused by pipelines installed on or removed from the premises. Lessee shall pay Lessor a reasonable amount, which includes crop damages, but not less than $1,500.00 for each drill site location on the leased premises. Upon completion of Lessee's operations on each well, Lessee agrees to restore the premises to as nearly as practical the same condition they were in prior to the commencement of operations hereunder.

Lessee, or assigns, agree to pay Lessor One Thousand Dollars ($1,000.00) prior to the start of drilling operations for each test well drilled for oil and/or gas purposes on the above described land. Damages, if any, in excess of this amount shall be paid as suffered.

Lessee hereby agrees to pay for any and all damages occasioned by its operations hereunder, including crop damage caused by pipelines installed on or removed from the premises. Lessee shall pay Lessor a reasonable amount but not less than $1,500.00 for each drill site location on the leased premises. Upon completion of Lessee's operations on each well, Lessee agrees to restore the premises to as nearly as practical the same condition they were in prior to the commencement of operations hereunder. All trash and debris shall be removed before the surface of the premises is restored. It is understood that said $1,500.00 includes crop damages for drillsite.

In the event of drilling operations on the leased premises, Lessee agrees to pay a minimum of $3,000.00 per drillsite location for damages caused by their operations thereon.

Lessee further agrees to pay to Lessor a reasonable amount, but not less than $2,000.00 for each drill site location on the leased premises. As further consideration hereunder, Lessee agrees to pay to Lessor a minimum of $5.00 per rod, plus crop damages, for any pipeline installed or constructed on the above land, whether or not connecting to the well on the leased premises.

STATEMENT OF DANNY BIGGS
VICE PRESIDENT - SUPERINTENDENT
PICKRELL DRILLING COMPANY, INC.

BEFORE THE SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

FEBRUARY 23, 2000

Mr. Chairman and Members of the Committee:

My name is Danny Biggs, and I reside in Great Bend, Kansas. I am a vice president, stockholder and field superintendent for Pickrell Drilling, an independent oil and gas exploration and production company headquartered in Wichita, Kansas, with field offices in Ness City and Kingman. We have two rotary drilling rigs and four well servicing rigs. Pickrell operates 260 oil and gas wells in Kansas. We have been operating in Kansas for 52 years, drilling over 2000 prospects in 35 counties.

I have been employed with Pickrell for 42 years, working in drilling and production. Our policy has always been to establish a good relationship with the owner or the tenant of any property that we lease for exploration. It is also our policy, as well as the majority of other companies to always contact the owner or tenant. Before making a location for a drilling prospect, we discuss with the landowner or tenant the following:

Location of the proposed well
Route to the location
Water source
Crops nearing harvest
Different options on irrigated ground
Fencing, cattle guards, etc.

The following are some examples of the good relationships we've had with lease owners after drilling and producing on their land:

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The John Maple family in Kingman County. We have producing wells, compressor station and pipe lines surrounding their church camp and recreation lakes. We've had an excellent relationship for 35 years.

The Norton family in Ness County. We had to build over 3 miles of road for drilling and production. The road was built to service our wells and also to accommodate the rancher.

The Norman Giles family in Clark County (George Seacat Ranch). We built 4 1/2 miles of road across their pastures.

The Johns family in Stanton County. They had the county build one mile of road to our production facilities.

The Carpenter family in Scott County. With no county road to our location, the Carpenters allowed us to use 1 mile of their private road.

William C. "Bill" Wells in Ness County. He was a regular visitor in our office for the past 30 years. Bill passed away last month and left the Kansas Oil and Gas Museum Foundation and the Kansas Energy Education Center a gift of $10,000.00.

I believe it is extremely important for the operators to explain the drilling and lease operations to the landowner, and equally important for the company to understand and comply with the landowner's requirements.

It was only a year ago that our rotary rig count was at a record low. Exploration is important to the economy of our great state. Every well drilled has a potential for new economic development. We should not put an additional burden on the Kansas drilling industry that is still struggling for survival.

Senate Bill 610 would be detrimental to those who explore for oil and gas and could discourage future development. Please consider the unnecessary time, paperwork, and monetary cost this bill would impose on the oil and gas industry. Our present system is adequate and fair for all parties involved.

Thank you very much for this opportunity to tell our story. I'll be glad to answer any questions.

Written only -

STATEMENT OF
ERICK E.NORDLING, EXECUTIVE SECRETARY
SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION
HUGOTON, KANSAS 67951
March 1, 2000

To the Honorable Members of the Senate Environment Committee:

Senate Bill No. 610 relating to gas and oil wellsite damages

Chairman Corbin and Members of the Committee:

My name is Erick E. Nordling of Hugoton. I am Executive Secretary of the Southwest Kansas Royalty Owners Association (SWKROA). I am appearing on behalf of members of our Association.

BACKGROUND ON SWKROA

SWKROA 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 around 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.

WELLSITE DAMAGES

Wellsite damages occur in connection with the drilling or reworking of an oil or gas well. It appears that SB No. 610 is designed to facilitate settlement, between the owners of the land where the well is drilled and the lease operator, for damages caused by drilling operations.

There are three different classes of property interests which are effected by the drilling operations: the mineral owner, the surface owner, and the oil and gas lessee (operator). The settlement of wellsite damages is an issue between the surface owner and the operator, although the surface owner may be "stuck" with oil and gas lease terms negotiated by the operator and the predecessor mineral/surface or mineral owner. The oil and gas lease generally contains provisions which govern the settlement of damages for the lessee's operations.

At the time many of the oil and gas leases in Southwest Kansas were granted, the same person owned both the surface and mineral estates. Now, more often than not, the surface and mineral interests are owned by different parties.

Further, a great deal of the leases in our area were written more than forty years ago. Terms in modern leases dealing with damages are generally more favorable to the landowner than the older lease forms.

The values of the surface estate has also increased over time.

The differing ownership interests, evolving lease damage provisions and higher land prices

sometimes create differing views and conflicts on the settlement of wellsite damages.

These differences are also revealed in SWKROA membership, as a majority of our members only own a mineral interest, while other members own both surface and mineral interests. An oil and gas lease grants the oil and gas lessee certain rights, including the right to enter onto the leasehold property to conduct drilling operations.

An oil and gas lease typically contains provisions which provide for the payment of damages caused by such drilling operations. Older leases generally only provided for the payment of damages to crops. However, wellsite damage payments have traditionally included a component for damages to the surface estate as well.

Although wellsite damages don't accrue until drilling operations have begun, the standard practice of many operators is to try to settle for ordinary damages, including crop and surface damages, in advance of drilling operations. Most damages are settled on such basis. Of course, not all damage issues are easily resolved and sometimes there are extraordinary damage issues which must be addressed.

At any rate, the payment for damages caused by drilling operations should be fair and reasonable. Mineral owners and operators alike are benefited by exploration efforts to discover oil and gas reserves. Surface owners are entitled to be compensated for the damage caused to their land because of such mineral exploration. Whether Senate Bill No. 610 addresses these concerns should be reviewed carefully.

SWKROA had little notice of Senate Bill No. 610, or opportunity to consider its implications. The SWKROA Board of Directors will be meeting in the near future, and would like to be able to supplement its comments and recommendations about the proposed legislation.

Thank you for this opportunity to present these concerns to your honorable committee.

Respectfully submitted,

Erick E. Nordling,
Executive Secretary, SWKROA

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Testimony re: SB 610
Senate Energy and Natural Resources Committee
Presented by Ronald R. Hein
on behalf of
Pioneer Natural Resources U.S.A., Inc.
March 1, 2000

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Pioneer Natural Resources USA, Inc. Pioneer is one of the largest independent exploration and production oil and gas companies in North America, with major operations in the United States, Canada, Argentina and South Africa. Pioneer's headquarters are in Irving, Texas.

Pioneer opposes SB 610. Although I am sure the sponsor of this legislation has heard some stories of problems suffered by land owners regarding access to property for drilling oil and gas wells, Pioneer does not believe that SB 610 is the solution to the problems. Although I cannot speak for all producers, I know that Pioneer, and its predecessor MESA, has had an excellent reputation and relationship with land owners in Kansas.

If there have been abuses by other producers, the procedure set out under existing law for the court to remedy issues of damages to property are already sufficient, in our opinion, to deal with those situations that the sponsor is attempting to address. This bill appears to be creating a great deal of bureaucratic and legal processes which all producers with all producing activities will have to follow, in order to address the problems which have occurred in the past as a result of either a few bad producers, or a few bad situations.

Lines 16-24 on page 1 are especially problematic. It appears to state simply that if the parties cannot agree on the damages, only then does the producer have to petition the court. However, everybody is being asked, apparently, to have a crystal ball to determine what the possible damages might be. It also appears that there is no remedy for the producer if there is a recalcitrant land owner other than the filing of a suit, which is an expensive and cumbersome process. Although the bill contains language on page 3, lines 26-28 that seems to negate the entire act as long as there is an existing contract, the language is not clear enough to alleviate our concerns. Under existing contracts, land owners dealing with a company such as Pioneer would well know their rights with regards to damages which occur to the property.

Lastly, this bill is entirely one sided. There appears to be no provisions regarding any damages that might be sustained by producers by actions of land owners, including any actions of land owners that would constitute an infringement upon the producers' right to access the property in order to exercise their mineral interest rights.

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With only the reading of this legislation, and without already having heard the hearing on this issue, it is impossible for us to tell if there is a middle ground on this legislation. We know the sponsor wants to protect land owners, but without more information, we cannot tell if it would be possible to address the concerns without so much cost, litigation, or cumbersome and time consuming effort to merely secure access to a property. Although we would urge the defeat of SB 610, as always, we would be willing to sit down and talk with the sponsor and others to see if the direct problem can be dealt with and possibly solved with less governmental intervention into this contractual relationship between the respective parties.

We would respectfully urge the committee to defeat SB 610.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.