Approved: March 23, 2004 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:05 a.m. on March 11, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Senator Stan Clark
Bernard Nordling, Southwest Kansas Royalty Owners Assn.
Tom Schnittker
Alan Cobb, Tallgrass Ranchers Coalition
Doug Smith, Southwest Kansas Royalty Owners Assn.
Don Schnacke, Kansas Independent Oil & Gas Assn.
Scott Schneider, Kansas Wind Coalition

Others attending: See Attached List

SB 331 - Recording leases or easements related to wind resources or technologies

Chairman Holmes opened the hearing on **SB 331**.

Senator Stan Clark, Chairman of the Senate Utilities Committee and sponsor of the bill, testified in support of **SB 331** (Attachment 1). Senator Clark explained that the bill addressed two specific topics: wind energy leases and easements and a remedy for removing clouds on land titles. Senator Clark told the committee that the long-term goal is to increase the level of knowledge to where a standard legal form will be accepted by parties entering wind lease agreements that provide equitable terms and conditions that everyone accepts in common usage. As for the land titles, it is important that the land description be accurate and that any new drilling can involve additional abstracting and title examination expense before the title is clear and drilling can commence. Without the changes, getting clear title to land, completing abstracting for oil and gas exploration, and figuring accurate tax statements will become almost impossible. Senator Clark responded to questions from the committee.

Bernard Nordling, Assistant Executive Secretary of the Southwest Kansas Royalty Owners Association, appeared as a proponent of **SB 331** (Attachment 2). Mr. Nordling told the committee that wind energy is just now developing in Kansas and will have a significant impact on farm land in the stated for many years. He said that it was important to have information available in which to protect the landowner's interest and this can be accomplished by having the pertinent terms and conditions of wind energy leases filed of record as intend in the bill. Mr. Nordling also addressed the issue of land titles and the company, Cobra Petroleum, was soliciting offers to purchase mineral interests in specific quarter sections and the description on the paperwork included more land than the owner actually had possession. These types of conveyances cloud titles and create problems with the royalty rights and ownership. Mr. Nordling also referenced a publication sent out to the Swouthwest Kansas Royalty Owners Association Membership that explained many of the concerns raised in his testimony (copy available from Kansas Legislative Research). Additionally, Mr. Nordling drew the committee's attention to written testimony submitted by Amanda Spikes (Attachment 3) which detailed South Dakota's statutes regarding the recording of wind energy leases or easements.

Thomas Schnittker, Pratt, Kansas, addressed the committee in support of **SB 331** (Attachment 4). Mr. Schnittker is a real estate salesman dealing primarily with agricultural and recreational investment types of property. Mr. Schnittker told the committee that recording wind generation leases in their entirety is in the best interests of all parties.

Alan Cobb, representing the Tallgrass Ranchers, appeared in support of **SB 331** (Attachment 5). Mr. Cobb told the committee that, as the wind industry develops, a whole range of improper and questionable conduct could appear. This bill will not completely clean up the problems, but it does aid the cause of good government.

Doug Smith, appearing on behalf of the Southwest Kansas Royalty Owners Association, directed the committee's attention to written testimony submitted by John Crump (Attachment 6), Phil Ridenour (Attachment 7), and James Yoxall (Attachment 8).

Mr. Don Schnacke, for the Kansas Independent Oil and Gas Association, addressed the committee as an opponent to section of **SB 331** dealing with the oil and gas leases (Attachment 9). Mr. Schnacke stated that the language, as amended, appears to address the issue at stake, but may not fully resolve it.

Scott Schneider, on behalf of the Kansas Wind Coalition, testified in opposition to **SB 331** (Attachment 10). Mr. Schneider told the committee they opposed the bill for two reasons. The first because they believe current law is sufficient and second that the state should not be in the business of writing leases. Mr. Schneider included a copy of a Memorandum of Wind Farm Easements that was file in Gray County with his testimony.

The conferees responded to questions from the committee.

Chairman Holmes closed the hearing on **SB 331**.

The meeting adjourned at 10:27 a.m.

The next meeting will be Friday, March 12, 2004.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 11, 2004

NAME	REPRESENTING
Scott Schneider	KS WIND COALITION
Alan Cobb	Tallgrass Ranchers
Stan Clark	Sonte
Schnitker, Thomas G	SWKROA
Doug Smith	SWKROA
Bernie Nordling	"
Marilyn Nichols	Register of Deeds Assoc.
Erick Nordling	SWKROA
David Bleakley	EKOGA
Claudia J. L. Glass	SWKROA / Royalty owner
James R. Glass JR	" "
Keith Nettles	Guest Rep. Sloan
Tom Bruno	EKOGA
Dan Holthaus	KEC
Tom Day	KCC
Mike Hein	Hein Law Firm
Jim Gartner	SBC

40TH DISTRICT

KANSAS SENATE

Stan Clark

COMMITTEE ASSIGNMENTS
CHAIR: UTILITIES
MEMBER: ASSESSMENT & TAXATION
ELECTIONS & LOCAL GOVERNMENT
ORGANIZATIONS, CALENDAR, & RULES
RULES & REGULATIONS

Testimony before the House Utilities Committee
Senate Bill 331
March 11, 2004

Chairman Holmes and members of the committee:

Senate bill 331 addresses two specific topics. Wind energy leases and easements in section 2 and a remedy for removing clouds on land titles in section 3.

Last fall a constituent called me and asked, "Stan, what do you know about wind leases?" Well, I know this constituent quite well (he does display a 'Clark for Senate' yard sign near election day) and knew there was more behind this question than idle talk. He said that he was negotiating to purchase a pasture but the owner wants to reserve any and all income from a contract the owner and a wind energy company had signed for as long as the contract is in force. Now, I knew of many instances where mineral rights had been separated from the surface rights but this was the first instance where I had heard of separating the 'wind rights' from the surface.

I told him of a bill that was sponsored by Rep. Larry Powell that you took action on last year that required a "Memorandum of Lease" be filed with the Register of Deeds. That the Senate Utilities Committee had held a hearing on the bill and that several attorneys were working on language for this session. I asked him if he had a copy of the lease; his answer was no. I asked if the realtor had a copy; again the answer was no.

I told him that he had to get a copy of the lease; he had to know the extent of his liability, particularly if a fire damaged any wind related equipment when he was burning off the pasture; he had to know what the terms and conditions were during the construction phase of the wind farms, would he be able to graze cattle in the same area during this time, what say he would have in the location of the service roads; what limitations might be imposed on any improvements that he might want to make to the property; he would have to know what limitations might be in the contract that would limit hunting, or mining any minerals.

205 U.S. 83
OAKLEY, KANSAS 67748
785-672-4280
FAX 801-457-9064
E-Mail sclark@ink.org

HOUSE UTILITIES
DATE: 3-11-04
ATTACHMENT 1

We have kept in contact, his parents attended some of the hearings in the Senate earlier this session and the more that I wrestle with the issue, the more I am convinced that everything is so much simpler when the entire lease or easement is recorded in the Register of Deeds office. The greatest benefit is that the landowner and his attorney can start to educate themselves on the options available. There are no standard lease and easement terms and conditions in the industry.

In the oil and gas industry leases have been filed with the Register of Deeds and there has developed a common body of knowledge and standard practices. With wind energy the industry is in its infancy you need legal advice before signing any lease or purchasing land that has an existing lease. The leases that are offered to individuals contain clauses that prohibit the landowner from disclosing the contents to any third party and are to remain confidential. I have copies of two leases and can make one of the contracts available to your committee. They are 30 – 35 pages in length and very one-sided. Presenting testimony today are 3 attorneys with over 140 years of experience whose law practices specialize in oil and gas issues.

Section two of this bill is modeled after statutes from Nebraska, South Dakota and Minnesota. All three of these states used identical language. In our proposed language there is one key difference which is on page 2, line 16. The other states require leases and easement to be recorded and state: "shall be recorded" but Kansas historically has been a "may be recorded" state. Page 1, line 25 has been part of the statutes since statehood. In the 1930's, Kansas Courts ruled that when more than one lease is signed for an oil and mineral lease, the first one recorded in the Register of deeds' office is the controlling lease, so the policy will be that all leases and easements will be recorded. The goal of Section 2 in this bill is not only to make public the terms and conditions so that I can compare wind leases, but that future owners, title examiners and lenders know exactly what agreements have been entered into and for what length of time. Companies change hands, land is passed from generation to generation or sold and if the full lease is not recorded it becomes more difficult to know what the restrictions might be, and what benefits exist. This hinders everyone in providing a valid estimate of the value of the property and simply increases the costs of abstracting, appraisals and title insurance. Simply filing the lease provides the necessary information for an intelligent and knowledgeable decision.

Our long-term goal is to increase the level of knowledge to where a standard legal form will be accepted by parties entering wind lease agreements that provide equitable terms and conditions that everyone accepts in common usage. When that point arrives, hopefully, many

landowners Kansas will be able to enjoy some of the profits in providing electricity to fuel our nations growing energy needs.

Section 3 seeks to remedy clouded titles. After consulting with the Attorney General, several attorneys, abstractors, the land title association, oil and gas attorneys, legislators, and the Register of Deeds association, Sen. Ed Pugh suggested that we pattern a statute after the existing mortgage release statute and that is the language before you today. Starting on page 2, line 41, when a mistake is discovered, then any party with an interest in the real estate may make demand on the offending party. The offending party has 20 days to correct the mistake and if there isn't an agreement in writing for an extension of time then a court action can start with damages allowed up to $10,000 per title affected plus attorney fees. Sen. Pugh has a title business with his law practice. He told me that he has used the mortgage release statute over 90 times within the past year to complete the paperwork on many homes that were refinanced due to the current low interest rates.

To understand the history and background on this section, I need to define two terms: a *mineral deed* is a legal document that conveys ownership of minerals (usually oil and gas) from one person to another; minerals are real property in Kansas. *Royalty and overriding royalty interests* are ownership interests in producing gas and oil wells; royalty interests are personal property in Kansas. Several times over the past four or five years Cobra Petroleum Company of Ft. Worth, Texas has purchased mineral and royalty interests and filed a mineral and royalty deed on land within my legislative district. It is not uncommon that an oil firm or lease hound would lease land for oil exploration purposes but to purchase minerals or royalty interests with a deed is not common practice.

See my attachment for a recent example in Rooks County where a person had a 1.3% working royalty ownership interest in the wells on an 80 acre parcel of land. This person sold his interest to Cobra but the document that he signed covered not only the 1.3% royalty interest but the mineral interest and oil and gas royalty interest on the entire 640 acre section of land.

When documents like this are brought to the county Register of Deeds little can be done except file the deed and collect a filing fee.

Because the land description was not accurate, a cloud on the title has been created on the entire section where the royalty interest was located. Any new or additional oil drilling will involve additional abstracting and title examination expense to clear the title before drilling will commence. Frequently these costs will be greater than the purchase price offered on the particular tract. This also creates a headache for the operator of the lease as small fractional interests are further divided in the distribution of income

from the oil and gas that is pumped on the parcel and can become a nightmare for the county treasurer and clerk in determining the taxes due from the various parties.

Another example, also in Rooks County involves royalty interests on 8 oil wells within the City of Stockton. This person owns no land in Stockton, just a fractional interest on 8 producing oil wells. When this person sold his interest to Cobra (which then sold part of its new interest to two additional parties) the former owner conveyed all his interest in all oil and gas properties in the entire county and clouded the title to all owners of real estate in a four square mile area that includes all real estate in the city limits of Stockton.

Rooks County is only being used as an example but I am aware of similar situations in 8 other counties in western Kansas. Mr. Nordling, who is also testifying today, has contacted a number of Register of Deeds offices in western Kansas. While I don't know the number of Mineral and Royalty Deeds filed, it is important that you understand that each Deed filed clouds the titlesof numerous land owners.

If we don't stop these filings; getting clear title to land; completing abstracting for oil and gas exploration; and figuring accurate tax statements will become almost impossible. Unitizing wells for water or carbon dioxide injection and distributing the appropriate share of income to all the ownership interests in the wells within the defined recovery unit will be impossible to clear up.

Mr. Chairman, I will stand for questions.

MINERAL AND ROYALTY DEED

THE STATE OF KANSAS)(KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF ROOKS)(

1. That ISSINGHOFF, LINUS OR MARTHA hereinafter referred to as Grantor (whether one or more), for Ten Dollars ($10.00) and other valuable consideration paid by, COBRA PETROLEUM COMPANY, P.O. Box 136355, Fort Worth, Texas 76136, SOUTHWEST PETROLEUM COMPANY, P.O. Box 702377, Dallas, Texas 75370-2377, and S&C PROPERTIES, P.O. Box 601295, Dallas, Texas 75360-1295 hereinafter referred to as Grantee (whether one or more), the receipt of which is hereby acknowledged, has GRANTED, SOLD, and CONVEYED, and by these presents does hereby GRANT, SELL, and CONVEY unto Grantee, (Cobra Petroleum Company, owning 30.00%; Southwest Petroleum Company, owning 60.00%; and S&C Properties, owning 10.00%) its heirs, successors and assigns, forever, subject to the matters stated below, all of Grantor's undivided interest in and to all of the oil, gas, and other minerals, including without limitation, all of the oil royalty, gas royalty, overriding royalty, royalty in casinghead gas and gasoline in, on and under, and that may be produced from, the following lands (the "Lands") in the County of Rooks, State of Kansas, to wit:

ALL OIL, GAS AND OTHER MINERAL INTERESTS OWNED BY GRANTOR IN ROOKS COUNTY, KANSAS, INCLUDING WITHOUT LIMITATION, ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND, WELLS, LEASES AND/OR UNITS REFERENCED, DESCRIBED AND/OR PLATTED AS FOLLOWS:

Well/Lease:	Section/Township/Range:	Operator:
SMITH A	All Sec-11, Twp-9, Rng-20	THOMASON PETROLEUM INC

STATE OF KANSAS } SS
ROOKS COUNTY
This instrument was filed for record in my office at 11:00 o'clock A M. on this 16 day of Oct. 20 03 and is duly recorded in Book 332 of ______ records at page 4
Rodes Spaick
Register of Deeds

NOT WITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LANDS INDIVIDUALLY DESCRIBED ABOVE ARE SET OUT FOR THE CONVENIENCE OF THE PARTIES AND SHALL NOT BE INTERPRETED AS LIMITING THIS GRANT, IT BEING THE INTENT OF THE PARTIES THAT THIS DEED COVER ALL OIL, GAS AND OTHER MINERAL INTERESTS OF EVERY KIND AND DESCRIPTION OWNED BY GRANTOR AND LOCATED IN ROOKS COUNTY, KANSAS, WHETHER OR NOT PARTICULARLY DESCRIBED ABOVE;

The "Lands" subject to this conveyance also includes all strips, gores, roadways, water bottoms, and other lands adjacent to or contiguous with the lands specifically described above and owned or claimed by Grantor. If the description above proves incorrect in any respect or does not include these adjacent or contiguous lands, Grantor shall without additional consideration, execute, acknowledge, and deliver to Grantee its successors and assigns, such instruments as are useful or necessary to correct the description and evidence such correction in the appropriate records.

FOR THE SAME CONSIDERATION, Grantor also sells, assigns, transfers, and conveys to Grantee, its successors and assigns, by this deed (i) the rights of ingress, egress, and possession at all times to ... drill, and explore the Lands for oil, gas, and other minerals, and to produce, store, dehydrate, compress, treat, process, transport, market and remove them from the Lands, and all other rights lawfully belonging to the oil, gas, and mineral estate; (ii) each valid and subsisting oil, gas, and/or other mineral lease (the "Lease," whether one or more) evidenced in the records of the above-named county, insofar as it covers the Lands (and this conveyance is made subject to each such Lease, insofar as it covers the Lands), together with all royalties, ... delay rentals paid to extend the term within which operations may be conducted on the Lands, and other rights and interests under each such Lease, insofar as it covers the Lands; (iii) without limitation, all royalties, oil payments, gas payments, production payments, revenues, payments, accounts, suspended funds, refunds, interest on overdue payments, and other ... payable by any lessee, operator, purchaser of production, seller of production, or other parties or party whatsoever, with respect to any oil, gas, and/or other minerals produced ... attributable to the Lands before the date of this conveyance (including all such production in any tank, truck, rail car, or pipeline); (iv) all liens and security interests securing the payment ... and (v) all rights, claims, and causes of action of Grantor with respect to such sums, including, without limitation, claims for the underpayment of past royalties; (vi) all of Grantor's ... and after acquired title in and to the above described mineral and royalty interests, insofar as they cover said Lands.

Grantee may, at its option and in addition to any other rights or remedies available to Grantee, pay all or part of any tax, note, or other obligation secured by a lien on the Lands, or any part of them or interest in them. If Grantee ever makes any such payment, or if any production, royalties, delay rentals, or other economic benefits of the estate conveyed by this instrument are ever applied by any lessee, purchaser of production, or other person to pay or discharge, in whole or in part, any tax, note, or other obligation secured by a lien on the Lands, or any part of them or any interest in them, Grantee shall be subrogated to, shall succeed to, and may enforce all of the rights of the affected lien holder to secure the recovery of the amounts paid, together with interest and attorney's fees.

Without impairment of Grantee's rights under the warranty in event of failure of title, it is agreed that if this conveyance covers less interest in the oil, gas, sulphur, or other minerals in all or any part of said Lands than the entire and undivided fee simple estate (whether Grantor's interest is herein specified or not), or no interest therein, then the consideration shall be paid only in the proportion which the interest therein, if any, covered by this conveyance, bears to the whole and undivided fee simple estate therein.

In this instrument, "including" means "including, but not limited to"; "other minerals" include coal, lignite, uranium, sulphur, iron ore, and every other "mineral" now or hereafter recognized as such under the laws of Kansas; the plural includes the singular, and vice versa; each gender includes the others; and references to "Grantor" includes "Grantors, or any of them".

By execution of this instrument, Grantor also authorizes and directs all persons responsible for paying and/or delivering the royalties subject to this instrument (the "subject royalties") to commence paying and/or delivering the subject royalties to Grantee in accordance with this instrument. Grantor warrants and represents to each such person and to that person's heirs, successors, assigns, and legal representatives that prior to making this conveyance, Grantor was the lawful owner of the subject royalties and that Grantor has not heretofore conveyed the subject royalties to any other person. Grantor shall indemnify and hold each person responsible for paying and/or delivering the subject royalties, and that person's heirs, successors, assigns, and legal representatives harmless from and against any lawful claims to the subject royalties by, through, or under Grantor.

8. POWER OF ATTORNEY: Coupled with the interest herein conveyed, Grantor does hereby irrevocably appoint and constitute Cobra Petroleum Company as Grantor's Agent and Attorney-in-Fact for the limited purpose only of executing division orders, transfer orders, correction deeds or conveyances, amendments of description, amendments of Grantor's capacity, including typographical errors, and all other instruments as may be necessary for this conveyance of interest, so that Cobra Petroleum Company may act in Grantor's place and stead for this limited purpose only. Cobra Petroleum Company is also given, through this provision, the authority to correct the description of the property being conveyed, if necessary, to show the actual description of the property as reflected by the County Records in which the property is located. This is a Durable Power of Attorney and is not affected by the subsequent disability or incapacity of the principal.

9. Grantor acknowledges and agrees that Grantee has made no representation or warranty of any kind to Grantor to entice or encourage Grantor to execute this instrument and to receive consideration therefore. Grantor recognizes and acknowledges that the interest herein conveyed may be worth more than the consideration received by Grantor therefore, particularly in the event that drilling or production activity on the interest conveyed herein or in the vicinity thereof proves to be successful. Grantor recognizes and agrees that Grantor has been given the opportunity to ask questions Grantor may desire of Grantee and that the responses thereto given by Grantee were satisfactory to Grantor. If any provision(s) of this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall remain valid.

10. PARTIES AGREEMENT TO MEDIATION AND/OR ARBITRATION: IN THE EVENT OF ANY DISPUTE (AS DEFINED HEREIN BELOW) ARISING OUT OF OR RELATING TO THIS CONTRACT, OR THE BREACH THEREOF, THE PARITES FIRST AGREE TO PARTICIPATE IN AT LEAST FOUR (4) HOURS OF MEDIATION IN ACCORDANCE WITH THE COMMERCIAL MEDIATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, BEFORE HAVING RECOURSE TO ARBITRATION. If the mediation procedure provided for herein does not resolve any such dispute, the parties agree that all disputes between the parties shall be resolved by binding arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules and pursuant to the Federal Arbitration Act, 9 U.S.C. Sections 1-14. Judgment upon the award rendered by the arbitrator may be entered in any Court having Jurisdiction. The term "disputes" shall include, but is not limited to, all claims, demands and causes of action of any nature, whether in contract or in tort, in law or in equity, or arising under or by virtue of any statute or regulation or judicial reason, that are now recognized by law or that may be created or recognized in the future, for ... and future personal injuries, contract damages, intentional and/or malicious conduct, actual and/or constructive fraud, statutory and/or common law fraud, class action suit, ... any kind and/or character, libel, slander, negligence, gross negligence, and/or deceptive trade practices/consumer protection act damages, and for all other losses, damages ... including without limitation, all actual damages, exemplary and punitive damages, all attorneys' fees, all penalties of any kind, prejudgment interest ... between the parties. The award of the arbitrator issued pursuant hereto shall be final, binding and non-appealable.

1-5

EXEMPLARY & PUNITIVE DAMAGES: Parties hereby waive any rights to punitive or exemplary damages and the Arbitrator(s) will not have the authority to award exemplary or punitive damages to either party.

11. CHOICE OF VENUE: This contract is performable in Tarrant County, Texas. Any and all claims arising out of Grantor's execution of this contract shall be resolved in Tarrant County, Texas.

12. This instrument may be executed in multiple counterparts. Each counterpart is an original, and all counterparts together are one and the same instrument. This instrument binds each person who executes it, regardless of whether any other person executes it.

13. TO HAVE AND TO HOLD the above-described property and rights, together with all and singular the rights and appurtenances thereto in any wise belonging, unto said Grantee, and the Grantee's heirs, successors, administrators, executors and assigns forever, and the Grantor does hereby bind himself and his, herself and her, itself and its, and/or themselves and their (as the case may be) heirs, successors, administrators, executors, and assigns to warrant and forever defend all and singular, the said property and rights unto the said Grantee, and Grantee's heirs, successors, administrators, executors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

THIS DOCUMENT AFFECTS YOUR LEGAL RIGHTS, PLEASE READ CAREFULLY OR SEEK LEGAL COUNSEL PRIOR TO SIGNING. GRANTOR REPRESENTS AND WARRANTS THAT HE/SHE/IT HAS READ THE ENTIRE CONTRACT, OR HAS HAD IT READ TO HIM/HER/IT AND UNDERSTANDS AND AGREES TO THE TERMS OF THIS CONTRACT.

Witness the following signatures, this 8th day of, October, 20 03

x Linus Issinghoff — x [signature] WITNESS

ISSINGHOFF, LINUS OR MARTHA
S.S. #/TAX I.D.#

x Martha E. Issinghoff — x [signature] WITNESS

S.S. #/TAX I.D. # 562-26-8568
521-24-1448

THE STATE OF KANSAS)(
COUNTY OF SHAWNEE)(ACKNOWLEDGEMENT
)(

BEFORE ME, the undersigned authority, on this day personally appeared LINUS ISSINGHOFF personally known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she, being informed of the contents of same, executed the foregoing instrument for the purpose and consideration therein expressed and appeared to be of sound mind and under no fraud, duress or undue influence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 8th day of OCTOBER A.D. 20 03

My Commission Expires: 12/10/06

[signature]
Notary Signature Here
Notary Public in and for the State of

(Notary seal here)
NATALIE SAVAGE
Notary Public
State of Kansas
My Appointment Expires 12/10/06

THE STATE OF KANSAS)(
COUNTY OF SHAWNEE)(ACKNOWLEDGEMENT
)(

BEFORE ME the undersigned authority, on this day personally appeared MARTHA E. ISSINGHOFF personally known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she, being informed of the contents of same, executed the foregoing instrument for the purpose and consideration therein expressed and appeared to be of sound mind and under no fraud, duress or undue influence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 8th day of OCTOBER A.D. 20 03

My Commission Expires: 12/10/06

[signature]
Notary Signature Here
Notary Public in and for the State of

(Notary seal here)
NATALI[illegible]
Notary [illegible]
State of [illegible]
My Appointment E[illegible] 12/10/06

Pursuant to K.S.A. 79-1437e,
a real estate validation questionnaire
is not required due to Exemption No. 6

This document prepared by, and
after recording please return to:

[illegible] Petroleum Company
[illegible]355
[illegible]6136

9.00
4.00
13.00

1-6

(For Filing Only)

Kansas Blue Print Co Inc.

BOOK 0217 PAGE 194

ASSIGNMENT OF OVER-RIDING ROYALTY

KNOW ALL MEN BY THESE PRESENTS:

That Gregory J. Issinghoff, 402 Ash, Hays Kansas 67601

Social Security # 478-76-4249

hereinafter called Assignor (whether one or more) for and in consideration of the sum of One and Other Dollars cash in hand paid and other good and valuable considerations, the receipt of which is hereby acknowledged, do so hereby, grant, bargain, sell, convey, transfer, assign and deliver unto

Linus C. Issinghoff
2017 Bullinger
Wichita, Kansas 67203
Social Security # 512-26-8508

STATE OF KANSAS } SS.
ROOKS COUNTY }
This instrument was filed for record in my office at 8:00 o'clock A. M. on this 14th day of Feb 1986, and is duly recorded in Book 217 of records at page 194
Rosalee Spreib
Register of Deeds

, hereinafter called Assignee (whether one or more) an over-riding royalty in the amount of an undivided 0.01367187 interest in and to all of the oil, gas and other minerals in and under and that may be produced from the following described lands situate in Rooks County, State of Kansas, to-wit:

The Smith Lease
W/2 NE/4 and SE/4 Sec. 11-9S-20W

Effective Date: February 10, 1936

During the term of the present valid and subsisting oil and gas lease thereon, free and clear of any and all expenses of any nature whatsoever, except State and Federal Taxes.

TO HAVE AND TO HOLD The above described property and easement with all and singular the rights, privileges, and appurtenances thereunto or in any wise belonging to the said Assignee herein his heirs, successors, personal representatives, administrators, executors, and assigns forever.

WITNESS his hand this 11th day of February, 19 86

Gregory J. Issinghoff

STATE OF Kansas }
COUNTY OF Ellis } ss. ACKNOWLEDGMENT FOR INDIVIDUAL (Kans. Okla. and Colo.)

Before me, the undersigned, a Notary Public, within and for said County and State, on this 11 th day of February, 19 86, personally appeared Gregory J. Issinghoff and

to me personally known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

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

My commission expires 4-3-88

Leila J. Montoia
NOTARY PUBLIC
State of Kansas
My Appt. Expires

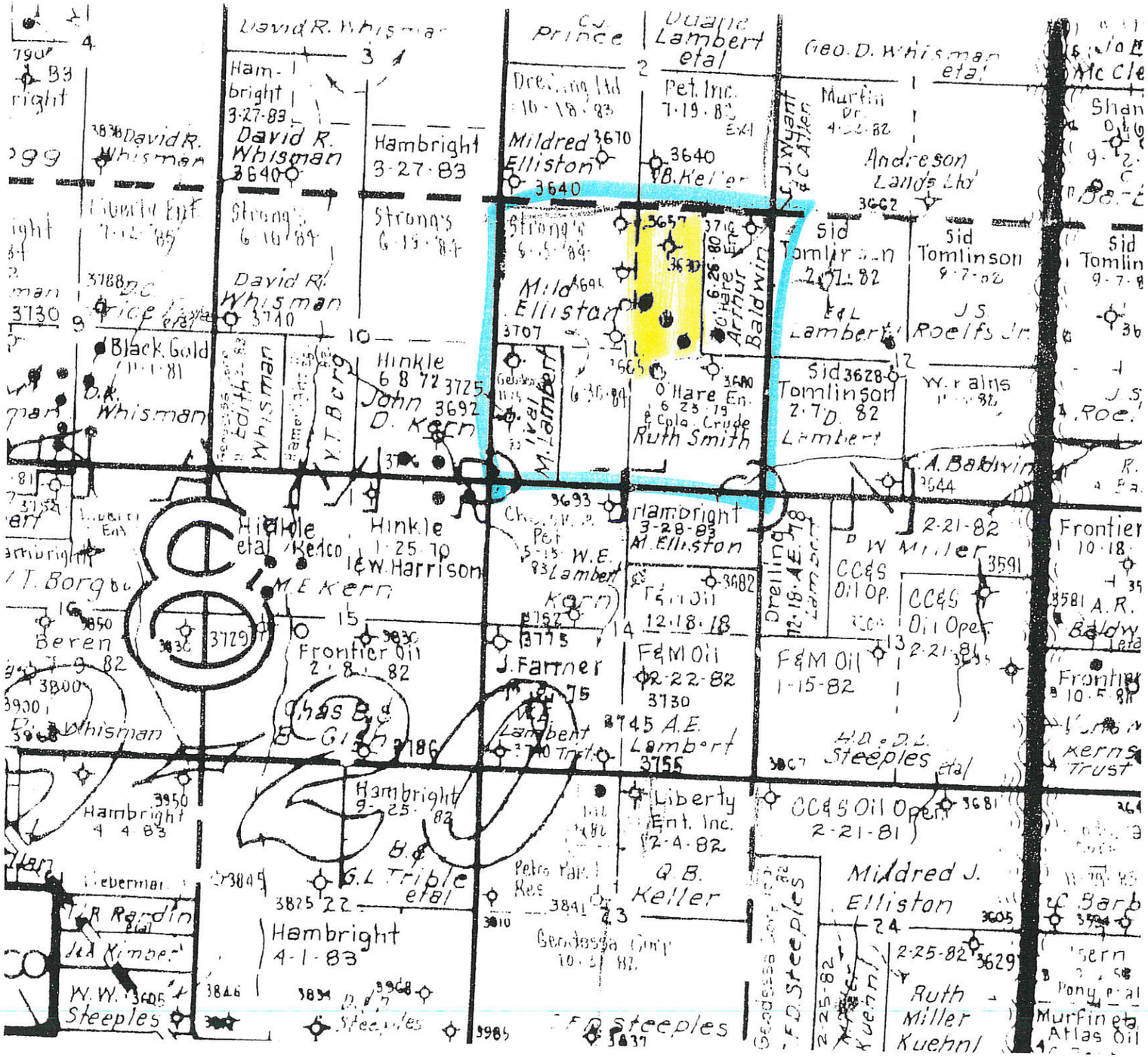
Leila J. Montoia
Notary Public

STATE OF }
COUNTY OF } ss. ACKNOWLEDGMENT FOR CORPORATION

Be it remembered that on this day of , 19 , before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came , president of a corporation of the State of personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

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

1-7



Actual Lease

Legal Description On Cobra Deed

8-1

MINERAL AND ROYALTY DEED

THE STATE OF KANSAS)(**KNOW ALL MEN BY THESE PRESENTS:**
)(
COUNTY OF ROOKS)(

1. That **THIES, ANTOINETTE** hereinafter referred to as Grantor (whether one or more), for Ten Dollars ($10.00) and other valuable consideration paid by, **COBRA PETROLEUM COMPANY**, P.O. Box 136355, Fort Worth, Texas 76136, **SOUTHWEST PETROLEUM COMPANY**, P.O. Box 702377, Dallas, Texas 75370-2377, and **S&C PROPERTIES**, P.O. Box 601295, Dallas, Texas 75360-1295 hereinafter referred to as Grantee (whether one or more), the receipt of which is hereby acknowledged, has GRANTED, SOLD, and CONVEYED, and by these presents does hereby GRANT, SELL, and CONVEY unto Grantee, **(Cobra Petroleum Company, owning 30.00%; Southwest Petroleum Company, owning 60.00%; and S&C Properties, owning 10.00%)** its heirs, successors and assigns, forever, subject to the matters stated below, all of Grantor's undivided interest in and to all of the oil, gas, and other minerals, including without limitation, all of the oil royalty, gas royalty, overriding royalty, royalty in casinghead gas and gasoline in, on and under, and that may be produced from, the following lands (the "Lands") in the County of Rooks, State of Kansas, to wit:

ALL OIL, GAS AND OTHER MINERAL INTERESTS OWNED BY GRANTOR IN ROOKS COUNTY, KANSAS, INCLUDING WITHOUT LIMITATION, ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND, WELLS, LEASES AND/OR UNITS REFERENCED, DESCRIBED AND/OR PLATTED AS FOLLOWS:

Well/Lease:	Section/Township/Range:	Operator:
HAYDEN/ONDRAS	All Sec=5, Twp=9, Rng=19	KNIGHTON OIL CO INC

STATE OF KANSAS } SS
ROOKS COUNTY
This instrument was filed for record in my office at 11:15 o'clock A. M. on this 3 day of October 2003 and is duly recorded in Book 331 of records at page 492
Lasslee Spriick KA
Register of Deeds

NOT WITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LANDS INDIVIDUALLY DESCRIBED ABOVE ARE SET OUT FOR THE CONVENIENCE OF THE PARTIES AND SHALL NOT BE INTERPRETED AS LIMITING THIS GRANT, IT BEING THE INTENT OF THE PARTIES THAT THIS DEED COVER ALL OIL, GAS AND OTHER MINERAL INTERESTS OF EVERY KIND AND DESCRIPTION OWNED BY GRANTOR AND LOCATED IN ROOKS COUNTY, KANSAS, WHETHER OR NOT PARTICULARLY DESCRIBED ABOVE;

2. The "Lands" subject to this conveyance also includes all strips, gores, roadways, water bottoms, and other lands adjacent to or contiguous with the lands specifically described above and owned or claimed by Grantor. If the description above proves incorrect in any respect or does not include these adjacent or contiguous lands, Grantor shall without additional consideration, execute, acknowledge, and deliver to Grantee its successors and assigns, such instruments as are useful or necessary to correct the description and evidence such correction in the appropriate public records.

3. **FOR THE SAME CONSIDERATION**, Grantor also sells, assigns, transfers, and conveys to Grantee, its successors and assigns, by this deed (i) the rights of ingress, egress, and possession at all times to mine, drill, and explore the Lands for oil, gas, and other minerals, and to produce, store, dehydrate, compress, treat, process, transport, market and remove them from the Lands, and to exercise all other rights lawfully belonging to the oil, gas, and mineral estate; (ii) each valid and subsisting oil, gas, and/or other mineral lease (the "Lease," whether one or more) evidenced in the public records of the above-named county, insofar as it covers the Lands (and this conveyance is made subject to each such Lease, insofar as it covers the Lands), together with all royalties, shut-in royalties, delay rentals paid to extend the term within which operations may be conducted on the Lands, and other rights and interests under each such Lease, insofar as it covers the Lands; (iii) without limitation, all royalties, oil payments, gas payments, production payments, revenues, payments, accounts, suspended funds, refunds, interest on overdue payments, and other things of value payable by any lessee, operator, purchaser of production, seller of production, or other parties or party whatsoever, with respect to any oil, gas, and/or other minerals produced from, or attributable to the Lands before the date of this conveyance (including all such production in any tank, truck, rail car, or pipeline); (iv) all liens and security interests securing the payment of such sums; and (v) all rights, claims, and causes of action of Grantor with respect to such sums, including, without limitation, claims for the underpayment of past royalties; (vi) all of Grantor's future interests and after acquired title in and to the above described mineral and royalty interests, insofar as they cover said Lands.

4. Grantee may, at its option and in addition to any other rights or remedies available to Grantee, pay all or part of any tax, note, or other obligation secured by a lien on the Lands, or any part of them or interest in them. If Grantee ever makes any such payment, or if any production, royalties, delay rentals, or other economic benefits of the estate conveyed by this instrument are ever applied by any lessee, purchaser of production, or other person to pay or discharge, in whole or in part, any tax, note, or other obligation secured by a lien on the Lands, or any part of them or any interest in them, Grantee shall be subrogated to, shall succeed to, and may enforce all of the rights of the affected lien holder to secure the recovery of the amounts paid, together with interest and attorneys' fees.

5. Without impairment of Grantee's rights under the warranty in event of failure of title, it is agreed that if this conveyance covers less interest in the oil, gas, sulphur, or other minerals in all or any part of said Lands than the entire and undivided fee simple estate (whether Grantor's interest is herein specified or not), or no interest therein, then the consideration shall be paid only in the proportion which the interest therein, if any, covered by this conveyance, bears to the whole and undivided fee simple estate therein.

6. In this instrument, "including" means "including, but not limited to"; "other minerals" include coal, lignite, uranium, sulphur, iron ore, and every other "mineral" now or hereafter recognized as such under the laws of Kansas; the plural includes the singular, and vice versa; each gender includes the others; and references to "Grantor" includes "Grantors, or any of them".

7. By execution of this instrument, Grantor also authorizes and directs all persons responsible for paying and/or delivering the royalties subject to this instrument (the "subject royalties") to commence paying and/or delivering the subject royalties to Grantee in accordance with this instrument. Grantor warrants and represents to each such person and to that person's heirs, successors, assigns, and legal representatives that prior to making this conveyance, Grantor was the lawful owner of the subject royalties and that Grantor has not heretofore conveyed the subject royalties to any other person. Grantor shall indemnify and hold each person responsible for paying and/or delivering the subject royalties, and that person's heirs, successors, assigns, and legal representatives harmless from and against any lawful claims to the subject royalties by, through, or under Grantor.

8. **POWER OF ATTORNEY:** Coupled with the interest herein conveyed, Grantor does hereby irrevocably appoint and constitute Cobra Petroleum Company as Grantor's Agent and Attorney-in-Fact for the limited purpose only of executing division orders, transfer orders, correction deeds or conveyances, amendments of description, amendments of Grantor's capacity, including typographical errors, and all other instruments as may be necessary for this conveyance of interest, so that Cobra Petroleum Company may act in Grantor's place and stead for this limited purpose only. Cobra Petroleum Company is also given, through this provision, the authority to correct the description of the property being conveyed, if necessary, to show the actual description of the property as reflected by the County Records in which the property is located. This is a Durable Power of Attorney and is not affected by the subsequent disability or incapacity of the principal.

9. Grantor acknowledges and agrees that Grantee has made no representation or warranty of any kind to Grantor to entice or encourage Grantor to execute this instrument and to receive consideration therefore. Grantor recognizes and acknowledges that the interest herein conveyed may be worth more than the consideration received by Grantor therefore, particularly in the event that drilling or production activity on the interest conveyed herein or in the vicinity thereof proves to be successful. Grantor recognizes and agrees that Grantor has been given the opportunity to ask questions Grantor may desire of Grantee and that the responses thereto given by Grantee were satisfactory to Grantor. If any provision(s) of this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall remain valid.

10. **PARTIES AGREEMENT TO MEDIATION AND/OR ARBITRATION:** IN THE EVENT OF ANY DISPUTE (AS DEFINED HEREIN BELOW) ARISING OUT OF OR RELATING TO THIS CONTRACT, OR THE BREACH THEREOF, THE PARITES FIRST AGREE TO PARTICIPATE IN AT LEAST FOUR (4) HOURS OF MEDIATION IN ACCORDANCE WITH THE COMMERCIAL MEDIATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, BEFORE HAVING RECOURSE TO ARBITRATION. If the mediation procedure provided for herein does not resolve any such dispute, the parties agree that all disputes between the parties shall be resolved by binding arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules and pursuant to the Federal Arbitration Act, 9 U.S.C. Sections 1-14. Judgment upon the award rendered by the arbitrator may be entered in any Court having Jurisdiction. The term "disputes" shall include, but is not limited to, all claims, demands and causes of action of any nature, whether in contract or in tort, at law or in equity, or arising under or by virtue of any statute or regulation or judicial reason, that are now recognized by law or that may be created or recognized in the future, for resulting past, present and future personal injuries, contract damages, intentional and/or malicious conduct, actual and/or constructive fraud, statutory and/or common law fraud, class action suit, misrepresentations of any kind and/or character, liable, slander, negligence, gross negligence, and/or deceptive trade practices/consumer protection act damages, and for all other losses, damages and/or remedies of any kind and/or character, including without limitation, all actual damages, exemplary and punitive damages, all attorneys' fees, all penalties of any kind, prejudgment interest and costs of court by virtue of the matters alleged and/or matters arising between the parties. The award of the arbitrator issued pursuant hereto shall be final, binding and non-appealable.

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EXEMPLARY & PUNITIVE DAMAGES: Parties hereby waive any rights to punitive or exemplary damages and the Arbitrator(s) will not have the authority to award exemplary or punitive damages to either party.

11. **CHOICE OF VENUE:** This contract is performable in Tarrant County, Texas. Any and all claims arising out of Grantor's execution of this contract shall be resolved in Tarrant County, Texas.

12. This instrument may be executed in multiple counterparts. Each counterpart is an original, and all counterparts together are one and the same instrument. This instrument binds each person who executes it, regardless of whether any other person executes it.

13. TO HAVE AND TO HOLD the above-described property and rights, together with all and singular the rights and appurtenances thereto in any wise belonging, unto said Grantee, and the Grantee's heirs, successors, administrators, executors and assigns forever, and the Grantor does hereby bind himself and his, herself and her, itself and its, and/or themselves and their (as the case may be) heirs, successors, administrators, executors, and assigns to warrant and forever defend all and singular, the said property and rights unto the said Grantee, and Grantee's heirs, successors, administrators, executors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

THIS DOCUMENT AFFECTS YOUR LEGAL RIGHTS, PLEASE READ CAREFULLY OR SEEK LEGAL COUNSEL PRIOR TO SIGNING. GRANTOR REPRESENTS AND WARRANTS THAT HE/SHE/IT HAS READ THE ENTIRE CONTRACT, OR HAS HAD IT READ TO HIM/HER/IT AND UNDERSTANDS AND AGREES TO THE TERMS OF THIS CONTRACT.

Witness the following signatures, this 22 day of, September, 20 03

x Antoinette S Thies

THIES, ANTOINETTE S
S.S. # / TAX I.D.#

x Denise L Meyers
WITNESS Notary Public

x _____

S.S. # / TAX I.D. # 541-50-1398

x _____
WITNESS

DENISE L. MEYERS
Commission # 1325951
Notary Public - California
Riverside County
My Comm. Expires Oct 19, 2005

THE STATE OF California)
)
COUNTY OF Riverside) ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this day personally appeared Antoinette S. Thies proved to personally known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she, being informed of the contents of same, executed the foregoing instrument for the purpose and consideration therein expressed and appeared to be of sound mind and under no fraud, duress or undue influence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 22 day of September A.D. 20 03

My Commission Expires: 19 OCT. 2005

Denise L Meyers
Notary Signature Here
Notary Public in and for the State of

(Notary seal here)

THE STATE OF)
)
COUNTY OF) ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this day personally appeared _____ personally known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she, being informed of the contents of same, executed the foregoing instrument for the purpose and consideration therein expressed and appeared to be of sound mind and under no fraud, duress or undue influence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____ A.D. 20____

My Commission Expires: _____

_____
Notary Signature Here
Notary Public in and for the State of

(Notary seal here)

Pursuant to K.S.A. 79-1437e, a real estate validation questionnaire is not required due to Exemption No. 6

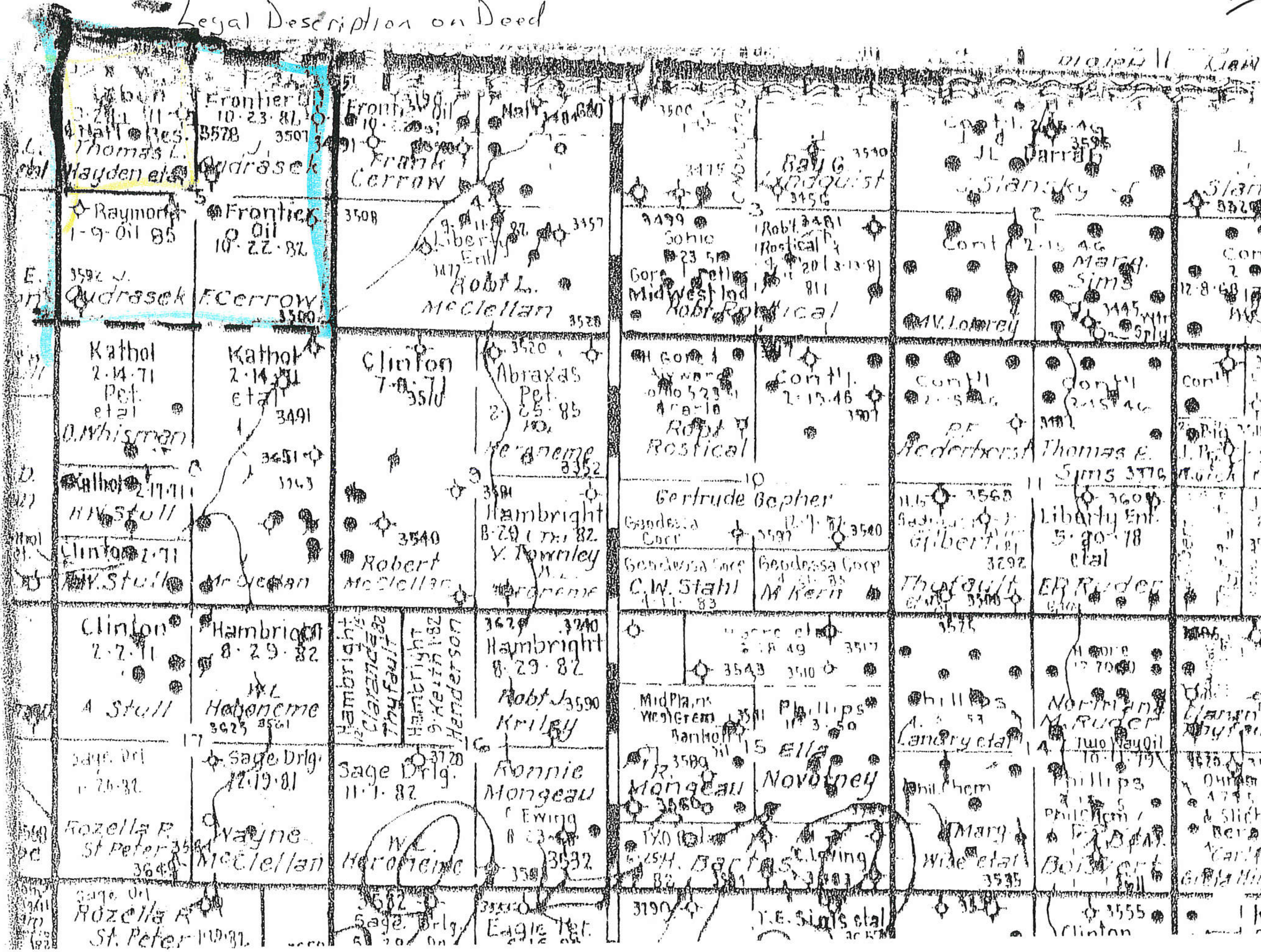
This document prepared by, and after recording please return to:

Cobra Petroleum Company
P.O. Box 136355
Fort Worth, Texas 76136

1-10

Actual Lease Boundries
Legal Description on Deed

11-1



Crown @ KsAg.org

BK0333PG022

MINERAL AND ROYALTY DEED

THE STATE OF KANSAS)(
)(**KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF ROOKS)(

1. That **CLEMENT, WILLIAM G**
hereinafter referred to as Grantor (whether one or more), for Ten Dollars ($10.00) and other valuable consideration paid by, **COBRA PETROLEUM COMPANY**, P.O. Box 136355, Fort Worth, Texas 76136, **SOUTHWEST PETROLEUM COMPANY**, P.O. Box 702377, Dallas, Texas 75370-2377, and **S&C PROPERTIES**, P.O. Box 601295, Dallas, Texas 75360-1295 hereinafter referred to as Grantee (whether one or more), the receipt of which is hereby acknowledged, has GRANTED, SOLD, and CONVEYED, and by these presents does hereby GRANT, SELL, and CONVEY unto Grantee, **(Cobra Petroleum Company, owning 30.00%; Southwest Petroleum Company, owning 60.00%; and S&C Properties, owning 10.00%)** its heirs, successors and assigns, forever, subject to the matters stated below, all of Grantor's undivided interest in and to all of the oil, gas, and other minerals, including without limitation, all of the oil royalty, gas royalty, overriding royalty, royalty in casinghead gas and gasoline in, on and under, and that may be produced from, the following lands (the "Lands") in the County of Rooks, State of Kansas, to wit:

ALL OIL, GAS AND OTHER MINERAL INTERESTS OWNED BY GRANTOR IN ROOKS COUNTY, KANSAS, INCLUDING WITHOUT LIMITATION, ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND, WELLS, LEASES AND/OR UNITS REFERENCED, DESCRIBED AND/OR PLATTED AS FOLLOWS:

Well/Lease:		Section/Township/Range:	Operator:
COLBURN		Sec – 18, Twp – 7, Rng – 17	CASTELLI EXPLORATION INC
#3-18 UNIT G		Sec – 18, Twp – 7, Rng – 17	ARGENT ENERGY INC
RUPP-EGGERS		Sec – 24, Twp – 7, Rng – 18	LIBERTY OPERATIONS & COMPLETIONS
#2-19 UNIT I		Sec – 19, Twp – 7, Rng – 17	PRIDE ENERGY CO
KOPE UNIT G-	All of	Sec –, Twp – 7, Rng – 17	MAHER, THOMAS M
#3-13 UNIT E		Sec – 13, Twp – 7, Rng – 18	ARGENT ENERGY INC
SMITH UNIT E		Sec – 13, Twp – 7, Rng – 18	MERIT ENERGY
ANSPACH UNIT		Sec – 18, Twp – 7, Rng – 17	PRIDE ENERGY CO

State of Kansas) Received for record at 12:15 o'clock P. M. on 15 day
Rooks County) December 20 03, and recorded in Book 333 of ______
Records at page 22
Register of Deeds [signature] RD

NOT WITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LANDS INDIVIDUALLY DESCRIBED ABOVE ARE SET OUT FOR THE CONVENIENCE OF THE PARTIES AND SHALL NOT BE INTERPRETED AS LIMITING THIS GRANT, IT BEING THE INTENT OF THE PARTIES THAT THIS DEED COVER ALL OIL, GAS AND OTHER MINERAL INTERESTS OF EVERY KIND AND DESCRIPTION OWNED BY GRANTOR AND LOCATED IN ROOKS COUNTY, KANSAS, WHETHER OR NOT PARTICULARLY DESCRIBED ABOVE;

2. The "Lands" subject to this conveyance also includes all strips, gores, roadways, water bottoms, and other lands adjacent to or contiguous with the lands specifically described above and owned or claimed by Grantor. If the description above proves incorrect in any respect or does not include these adjacent or contiguous lands, Grantor shall without additional consideration, execute, acknowledge, and deliver to Grantee its successors and assigns, such instruments as are useful or necessary to correct the description and evidence such correction in the appropriate public records.

3. **FOR THE SAME CONSIDERATION,** Grantor also sells, assigns, transfers, and conveys to Grantee, its successors and assigns, by this deed (i) the rights of ingress, egress, and possession at all times to mine, drill, and explore the Lands for oil, gas, and other minerals, and to produce, store, dehydrate, compress, treat, process, transport, market and remove them from the Lands, and to exercise all other rights lawfully belonging to the oil, gas, and mineral estate; (ii) each valid and subsisting oil, gas, and/or other mineral lease (the "Lease," whether one or more) evidenced in the public records of the above-named county, insofar as it covers the Lands (and this conveyance is made subject to each such Lease, insofar as it covers the Lands), together with all royalties, shut-in royalties, delay rentals paid to extend the term within which operations may be conducted on the Lands, and other rights and interests under each such Lease, insofar as it covers the Lands; (iii) without limitation, all royalties, oil payments, gas payments, production payments, revenues, payments, accounts, suspended funds, refunds, interest on overdue payments, and other things of value payable by any lessee, operator, purchaser of production, seller of production, or other parties or party whatsoever, with respect to any oil, gas, and/or other minerals produced from, or attributable to the Lands before the date of this conveyance (including all such production in any tank, truck, rail car, or pipeline); (iv) all liens and security interests securing the payment of such sums; and (v) all rights, claims, and causes of action of Grantor with respect to such sums, including, without limitation, claims for the underppayment of past royalties; (vi) all of Grantor's future interests and after acquired title in and to the above described mineral and royalty interests, insofar as they cover said Lands.

4. Grantee may, at its option and in addition to any other rights or remedies available to Grantee, pay all or part of any tax, note, or other obligation secured by a lien on the Lands, or any part of them or interest in them. If Grantee ever makes any such payment, or if any production, royalties, delay rentals, or other economic benefits of the estate conveyed by this instrument are ever applied by any lessee, purchaser of production, or other person to pay or discharge, in whole or in part, any tax, note, or other obligation secured by a lien on the Lands, or any part of them or any interest in them, Grantee shall be subrogated to, shall succeed to, and may enforce all of the rights of the affected lien holder to secure the recovery of the amounts paid, together with interest and attorneys' fees.

5. Without impairment of Grantee's rights under the warranty in event of failure of title, it is agreed that if this conveyance covers less interest in the oil, gas, sulphur, or other minerals in all or any part of said Lands than the entire and undivided fee simple estate (whether Grantor's interest is herein specified or not), or no interest therein, then the consideration shall be paid only in the proportion which the interest therein, if any, covered by this conveyance, bears to the whole and undivided fee simple estate therein.

6. In this instrument, "including" means "including, but not limited to"; "other minerals" include coal, lignite, uranium, sulphur, iron ore, and every other "mineral" now or hereafter recognized as such under the laws of Kansas; the plural includes the singular, and vice versa; each gender includes the others; and references to "Grantor" includes "Grantors, or any of them".

7. By execution of this instrument, Grantor also authorizes and directs all persons responsible for paying and/or delivering the royalties subject to this instrument (the "subject royalties") to commence paying and/or delivering the subject royalties to Grantee in accordance with this instrument. Grantor warrants and represents to each such person and to that person's heirs, successors, assigns, and legal representatives that prior to making this conveyance, Grantor was the lawful owner of the subject royalties and that Grantor has not heretofore conveyed the subject royalties to any other person. Grantor shall indemnify and hold each person responsible for paying and/or delivering the subject royalties, and that person's heirs, successors, assigns, and legal representatives harmless from and against any lawful claims to the subject royalties by, through, or under Grantor.

8. **POWER OF ATTORNEY:** Coupled with the interest herein conveyed, Grantor does hereby irrevocably appoint and constitute Cobra Petroleum Company as Grantor's Agent and Attorney-in-Fact for the limited purpose only of executing division orders, transfer orders, correction deeds or conveyances, amendments of description, amendments of Grantor's capacity, including typographical errors, and all other instruments as may be necessary for this conveyance of interest, so that Cobra Petroleum Company may act in Grantor's place and stead for this limited purpose only. Cobra Petroleum Company is also given, through this provision, the authority to correct the description of the property being conveyed, if necessary, to show the actual description of the property as reflected by the County Records in which the property is located. This is a Durable Power of Attorney and is not affected by the subsequent disability or incapacity of the principal.

9. Grantor acknowledges and agrees that Grantee has made no representation or warranty of any kind to Grantor to entice or encourage Grantor to execute this instrument and to receive consideration therefore. Grantor recognizes and acknowledges that the interest herein conveyed may be worth more than the consideration received by Grantor therefore, particularly in the event that drilling or production activity on the interest conveyed herein or in the vicinity thereof proves to be successful. Grantor recognizes and agrees that Grantor has been given the opportunity to ask questions Grantor may desire of Grantee and that the responses thereto given by Grantee were satisfactory to Grantor. If any provision(s) of this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall remain valid.

10. **PARTIES AGREEMENT TO MEDIATION AND/OR ARBITRATION:** IN THE EVENT OF ANY DISPUTE (AS DEFINED HEREIN BELOW) ARISING OUT OF OR RELATING TO THIS CONTRACT, OR THE BREACH THEREOF, THE PARITES FIRST AGREE TO PARTICIPATE IN AT LEAST FOUR (4) HOURS OF MEDIATION IN ACCORDANCE WITH THE COMMERCIAL MEDIATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, BEFORE HAVING RECOURSE TO ARBITRATION. If the mediation procedure provided for herein does not resolve any such dispute, the parties agree that all disputes between the parties shall be resolved by binding arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules and pursuant to the Federal Arbitration Act, 9 U.S.C. Sections 1-14. Judgment upon the award rendered by the arbitrator may be entered in any Court having Jurisdiction. The term "disputes" shall include, but is not limited to, all claims, demands and causes of action of any nature, whether in contract or in tort, at law or in equity, or arising under or by virtue of any statute or regulation or judicial reason, that are now recognized by law or that may be created or recognized in the future, for resulting past, present and future personal injuries, contract damages, intentional and/or malicious conduct, actual and/or constructive fraud, statutory and/or common law fraud, class action suit, misrepresentations of any kind and/or character, liable, slander, negligence, gross negligence, and/or deceptive trade practices/consumer protection act damages, and for all other losses, damages and/or remedies of any kind and/or character, including without limitation, all actual damages, exemplary and punitive damages, all attorneys' fees, all penalties of any kind, prejudgment interest and costs of court by virtue of the matters alleged and/or matters arising between the parties. The award of the arbitrator issued pursuant hereto shall be final, binding and non-appealable.

1-12

EXEMPLARY & PUNITIVE DAMAGES: Parties hereby waive any rights to punitive or exemplary damages and the Arbitrator(s) will not have the authority to award exemplary or punitive damages to either party.

11. CHOICE OF VENUE: This contract is performable in Tarrant County, Texas. Any and all claims arising out of Grantor's execution of this contract shall be resolved in Tarrant County, Texas.

12. This instrument may be executed in multiple counterparts. Each counterpart is an original, and all counterparts together are one and the same instrument. This instrument binds each person who executes it, regardless of whether any other person executes it.

13. TO HAVE AND TO HOLD the above-described property and rights, together with all and singular the rights and appurtenances thereto in any wise belonging, unto said Grantee, and the Grantee's heirs, successors, administrators, executors and assigns forever, and the Grantor does hereby bind himself and his, herself and her, itself and its, and/or themselves and their (as the case may be) heirs, successors, administrators, executors, and assigns to warrant and forever defend all and singular, the said property and rights unto the said Grantee, and Grantee's heirs, successors, administrators, executors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

THIS DOCUMENT AFFECTS YOUR LEGAL RIGHTS, PLEASE READ CAREFULLY OR SEEK LEGAL COUNSEL PRIOR TO SIGNING. GRANTOR REPRESENTS AND WARRANTS THAT HE/SHE/IT HAS READ THE ENTIRE CONTRACT, OR HAS HAD IT READ TO HIM/HER/IT AND UNDERSTANDS AND AGREES TO THE TERMS OF THIS CONTRACT.

Witness the following signatures, this 22 day of September, 20 03

x William G. Clement

CLEMENT, WILLIAM G
S.S. # / TAX I.D.#

x 439-12-1538

x [illegible]
WITNESS

x Carly Mudd
WITNESS

S.S. # / TAX I.D. #

THE STATE OF Kansas)(
)(**ACKNOWLEDGEMENT**
COUNTY OF Sedgwick)(

BEFORE ME, the undersigned authority, on this day personally appeared William G. Clement personally known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she, being informed of the contents of same, executed the foregoing instrument for the purpose and consideration therein expressed and appeared to be of sound mind and under no fraud, duress or undue influence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 22 day of September A.D. 2003

My Commission Expires: 7/27/05

(Notary seal here)

Notary Signature Here
Notary Public in and for the State of

SHANDY STEGMAN
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. _____

THE STATE OF)(
)(**ACKNOWLEDGEMENT**
COUNTY OF)(

BEFORE ME, the undersigned authority, on this day personally appeared _____ personally known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she, being informed of the contents of same, executed the foregoing instrument for the purpose and consideration therein expressed and appeared to be of sound mind and under no fraud, duress or undue influence.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____ A.D. 20____

My Commission Expires: _____

(Notary seal here)

Notary Signature Here
Notary Public in and for the State of

Cobra
9.00
4.00
13.00

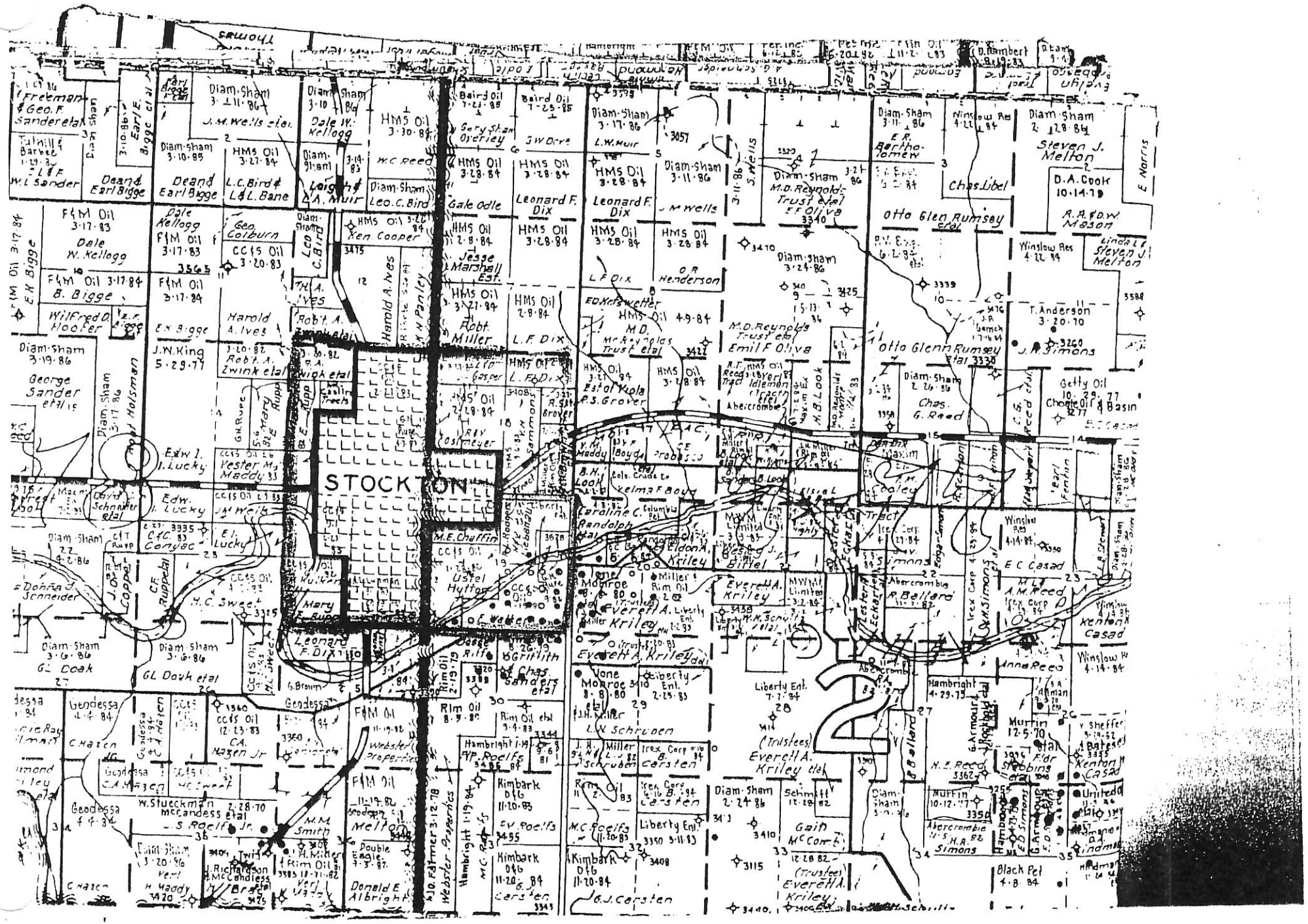
Pursuant to K.S.A. 79-1437e, a real estate validation questionnaire is not required due to Exemption No. 6

This document prepared by, and after recording please return to:

Cobra Petroleum Company
P.O. Box 136355
Fort Worth, Texas 76136

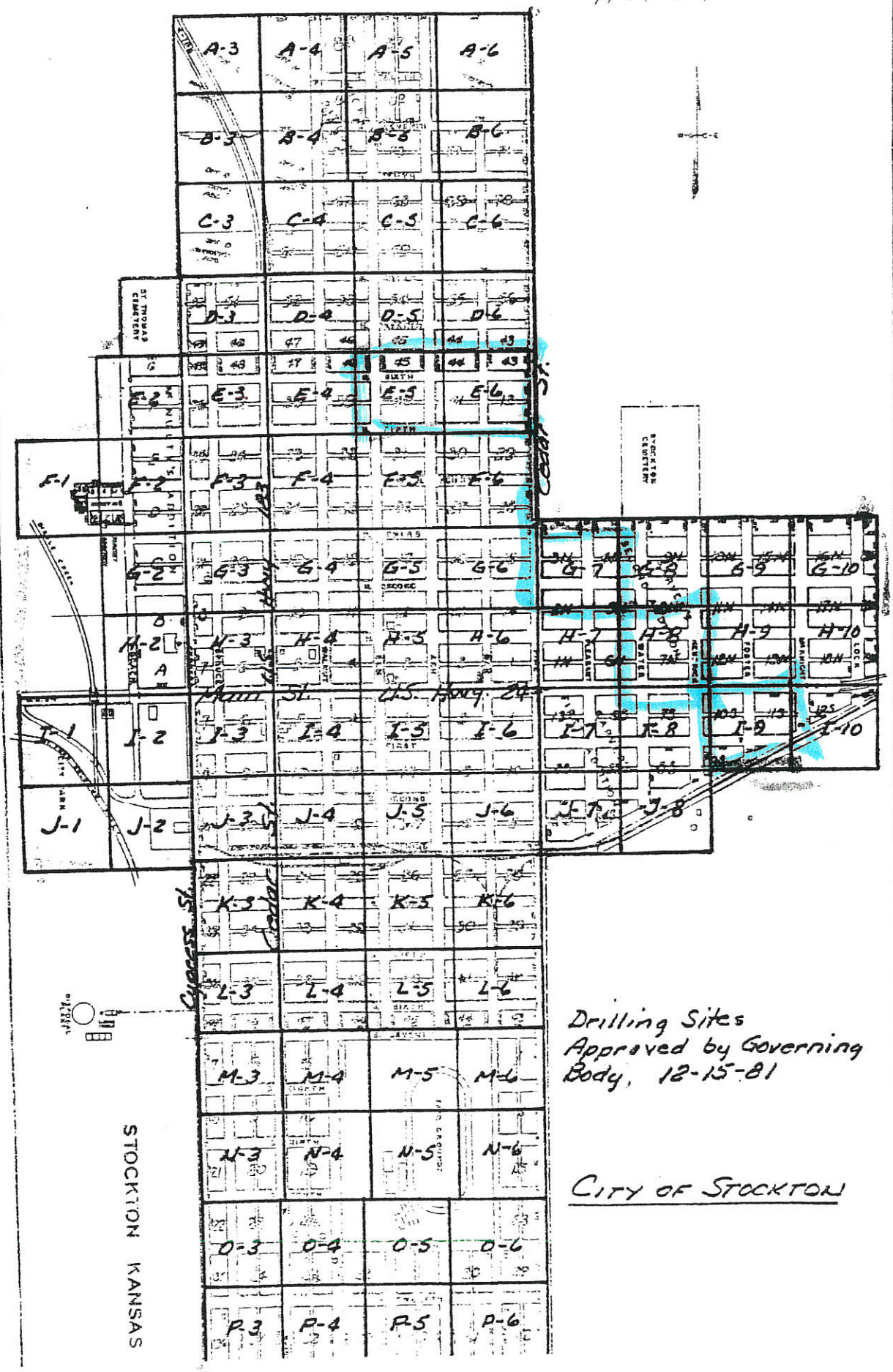
1-13

1 — Legal Description on Cobra Deed



Cobra Dead

Actual



Drilling Sites Approved by Governing Body, 12-15-81

CITY OF STOCKTON

I-15

Mr. Glenn Lambert
2060 6 Road Zurich, Kansas 67663
785-737-2146 or 785-737-6146 cell phone

January 7, 2004

Office of the Attorney General Phill Kline
120 SW 10th Street, 2nd Floor
Topeka, Kansas 66612-1597

Dear Attorney General Kline:

I have been visiting with Senator Stan Clark regarding a company that has been filing titles with improper legal descriptions on mineral and royalty deeds in our area. After visiting with Senator Clark, he recommended that I compile all information regarding this situation to help show how it affects not only the title of my property but also the title of other properties in Rooks County.

While researching an oil lease on my property at the Rooks County Register of Deeds Office, I became aware of the problem of improper legal descriptions on mineral and royalty deeds. I discovered that Cobra Petroleum Company, a company based out of Ft. Worth, Texas, had purchased a .01367187 overriding royalty in the Smith "A" Lease located on my property in the W1/2 of NE1/4 of Sec 11-9-20, being 80 acres, more or less. In filing the Mineral and Royalty Deed, they filed on the entire section of land instead of the .01367187 overriding royalty they had purchased on an 80-acre lease. On land owned by my brother, a small share of a producing well was sold to the same company and on the deed it named the entire section instead of the NW1/4 of Sec 5-9-19. I have mailed a letter to Cobra Petroleum Company requesting that they clear the title on my land. I have not had any response and have been unable to find a telephone listing for this company.

While trying to find other information at the Rooks County Register of Deeds Office, I found another deed that literally named all land that was under and around Stockton, Kansas. Cobra Petroleum Company had only purchased six 10-acre locations within the city and 2 other locations outside the city limits. I have enclosed a copy of this deed. Please note that the 5th entry on the deed does not even show what section is involved.

These are only three of the examples I have found in my research. It should be noted that at least 60 deeds have been filed in Rooks County by this company. To me this shows that approximately 240 or more parcels of property now have clouds on their titles. How can these be proper deeds?

The Register of Deeds in Ellis and Russell Counties has faced the same situation with Cobra Petroleum Company within the last 18 months. Russell County stated that they had at least 64 deeds filed in the same manor.

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My attorney, Terry Cikanek of Stockton, Kansas, has advised me that this has created a cloud on other property that I own in this section as well as with the other 3 persons owning property in that section. Mr. Cikanek stated that he had run into problems with this company before and that it was a much larger problem than this one instance. It was his recommendation that I contact your office.

I have visited with Bernard Nordling, retired council for the Southwest Kansas Royalty Owners Association. I have also enclosed a copy of the newsletter from the Southwest Kansas Royalty Owners Association with the dissection of the contract by Mr. Nordling. This newsletter was dated October 2002 when the past Attorney General was in office. It was noted in this newsletter that the Attorney General's office was looking into the contract. Mr. Nordling was not aware of the results of that investigation. He advised that this should be taken to you first and legislation could be written to correct the matter, if necessary.

I contacted your office regarding the matter of improper filing of Mineral and/or Royalty Deeds on December 12, 2003. Your staff informed me that a verbal complaint could not be made. They sent me the proper form to fill out and I received it on December 15, 2003. Even though I do not feel that this form works well for this complaint, I have filled it out with the information that applies. I am sending this form to your office with Senator Clark, along with copies of other pertinent information.

Letters are also enclosed from my banker, my primary land lender, my personal attorney, and the Rooks County Attorney to help explain their problem with this improper filing of deeds and how it affects each of them.

Thank you for taking the time to read and process the complaint and information I have sent you regarding improper filing of Mineral and/or Royalty Deeds by Cobra Petroleum Company. As you can see I feel this is a matter of significant importance to numerous landowners and myself. If there is any other information you might need from me or if you would like to contact me, please do not hesitate to do so. I look forward to hearing from your office.

Sincerely yours,

Mr. Glenn Lambert

Cc: Sen. Stan Clark
Rep. Dan Johnson
Sen. Janis Lee
Sen. Larry Salmons
Rooks County Attorney, Ed Hageman
Terry Cikanek, Attorney
Bernard Nordling

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Enclosed documents:

1 Deed filed on 11-9-20 by Cobra Petroleum Company
Deed filed by the former owners listing proper legal description
Copy of map to show the actual lease location within the section

2 Deed filed on 5-9-19 by Cobra Petroleum Company.
Copy of map to show lease location within the section.

3 Deed filed on leases within the city of Stockton, Kansas by Cobra Petroleum Company
Map showing the area covered by Cobra Petroleum Company's Deed
Map showing the actual leases within the city limits of Stockton, Kansas

4 Letter from Terry Cikanek Stockton Attorney

5 Letter from Tim Thompson, Vice President, Farmers & Merchants Bank Bogue, Kansas

6 Letter from Charlie Shippers, loan officer, High Plains Farm Credit, Hays, Kansas

7 Copy of letter sent to Cobra Petroleum Company by Rooks County Attorney, Ed Hageman

8 Copy of letter sent to Cobra Petroleum Company by Glenn L. Lambert (self)

9 Article in Stockton Sentinal by Rooks County Attorney, Ed Hageman

10 Newsletter from SWKROA (Southwest Kansas Royalty Owners Association) with their interpretation of Cobra Petroleum Company's contract dated October 2002

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TERRY L. CIKANEK
ATTORNEY AT LAW

PHONE NO. (785) 425-6731
FAX NO. (785) 425-6732

CIKANEK LAW OFFICE
P.O. BOX 517
405 Main Street
STOCKTON, KANSAS 67669

January 5, 2004

Glenn Lambert
2060 6 Road
Zurich Rt.
Plainville, Kansas 67663

RE: Cobra Petroleum Company Mineral Deeds

Dear Glenn:

You asked that I outline for you a title problem which I have discovered regarding mineral and royalty deeds prepared by Cobra Petroleum Company. In the process of doing a title opinion for landowners covering a quarter section and an 80 acre tract in the same section, I discovered a blanket quitclaim mineral deed from three different owners. The quitclaim mineral deed quitclaimed the owners interest in all of the section to Cobra Petroleum and two associated companies. The description on the quitclaim deed conveyed an interest in 640 acres. The title examination that I completed did not show that the parties conveying the interest ever had an interest in the quarter section and the 80 that I was doing the title work on. Therefore, their conveyance of all property in the section to Cobra created a cloud on the mineral ownership on the property of my client.

I undertook on November 11th to write Cobra Petroleum and explain to them the title problem that they had created. I have recently followed up another letter requesting that they file a quitclaim release or mineral deed on the quarter section and the 80. To date, they have ignored my request. At the present time, my clients should be enjoying clear title to all of the minerals under the quarter and 80 covered by my opinion. However, due to the filing of the quitclaim mineral deeds, Cobra Petroleum created a cloud on the title.

This is a serious matter and it appears to me that Cobra Petroleum has been extremely negligent in their title work. Rather than attempting to convey only the mineral rights on certain properties in a particular section, it appears they have drafted their documents to cover the entire section. Therefore, they have created numerous clouds on title with their reckless descriptions in the quitclaim deeds. It would appear to me that the State should get involved and file some sort of cease and desist suit against them to prohibit them from doing business in the State of Kansas unless they do proper and diligent title work on the conveyances they are dealing with.

1-9

In addition, it would appear to me there should be some sanction for the clouds they are creating on numerous land titles within this county due their poor title work. It is apparent that they are disregarding any request for solving the problems which they have created. I trust this helps outline the situation that presently exists in this county.

Very truly yours,

CIKANEK LAW OFFICE

By: Terry L. Cikanek

Terry L. Cikanek

TLC/dew

1-20

FARMERS MERCHANTS

FARMERS STATE BRANCH

December 30, 2003

Senator Stan Clark
205 US Hwy 83
Oakley, KS 67748

Dear Senator Clark:

We are writing to express our concern with the actions of a company called Cobra Resources. It has come to our attention that they are purchasing royalty and overriding royalty interests in mineral leases in Graham, Rooks and other counties in Kansas. As they purchase these interests, they file a blanket mineral deed covering the entire section, not just the acres under the lease. This blanket filing impairs the title on all land in said section and effects landowners and mineral owners other than the original seller. Cobra Resources has ignored all requests to release these blanket deeds.

We would appreciate it if you would look into this matter. If you need additional details, please contact our attorney, Terry Cikanek, Stockton, KS, at 785-421-6731.

Sincerely yours,

Timothy C. Thompson
Vice President

High Plains Farm Credit

2[illegible] e Street
Box 836
Hays, KS 67601
785-625-2110
Toll Free: 1-800-369-9625
Fax: 785-625-4309

December 31, 2003

To Whom It May Concern:

This letter is in regards to incomplete and inaccurate documents filed at the Register of Deeds offices at the local county courthouses. For example, we have had several occurrences when a deed is filed on the complete section of land and the grantor only owns an interest in an 80-acre tract within the section. We have also seen mortgages and oil leases filed on land that the grantor has no ownership in the property.

We have found these documents can place an undue hardship on the rightful property owners and mortgage lenders. In most cases, title attorneys require the incorrect document be released or cleared up to make sure no interest is being contested. The rightful owners may sometimes have a difficult time locating and obtaining the correcting paperwork. The additional expenses for attorneys, the paperwork and loss of time usually fall on the rightful property owners. It would be extremely upsetting if the documents were being prepared with the originators knowing the documents were inaccurate.

Anything that can be done to discourage inaccurate documents from being filed and assist with correcting mistakes would be very helpful to property owners and mortgage lenders.

Sincerely,

Charles Schippers

Charles Schippers
Vice President

CS/ss

1-22 1-23

Glenn L. Lambert
2060 6 Road
Zurich, KS. 67663

12-17-03

Cobra Petroleum Company
Box 136335
Fort Worth, Texas 76136

Dear Sirs:

I own land in Section 11-9-20 Rooks Co. Kansas. I was checking records at the courthouse and came across a Mineral and Royalty Deed that your company has of record that is incorrect and creating a cloud on the title of other property that I own in said section. This is a request to cause a release to be filed on the SE ¼ of Section 11-9-20 and all other property NOT involved in the transaction. I would appreciate your prompt attention.

Sincerely,

Glenn L. Lambert

cc. GLL file

1-24

Stockton Sentinel
785-425-6354 - FAX: 785-425-7292 Stockton, Kansas 67669
e-mail: stkpaper@ruraltel.net

lot of people out in a big way.

LETTER TO THE EDITOR

Dear Editor:

Some area citizens have received notices from the following oil companies, to-wit: Cobra Petroleum; Southwest Petroleum Company; and S & C Properties.

The notices from these companies are an offer to purchase an individual's royalty or mineral interests and usually describe a particular lease or drilling unit. However, if you read the assignment the owner must sign it states they are actually selling ALL of his/her royalty or mineral interest in Rooks County, not just the property listed.

There is nothing illegal about the offer. Because the offer is somewhat misleading, it is necessary to inform the public. I would urge anyone contemplating the offer to CAREFULLY review the letter and be sure they are FULLY aware of what exactly they are conveying. If anyone has any question, they should contact his/her attorney before making a final decision.

Thank you for your kind attention.

Sincerely,
Edward C. Hageman
Rooks County Attorney

Rooks Co. youth winners honored at Jr. Livestock Show

■ CONTINUED FROM PAGE ONE

Gelbvieh Breeding Heifer.

From Plainville:

• Amy Keas, 15th in class 3, Duroc Market Barrow; and 9th in class 6, Yorkshire Market Barrow.

• Seth Keas, 10th in class 11, Crossbred Market Barrow; and

Graduated

By Gri;

A couple of years ago, since ossible to hold things far enough away m and

class 8, Crossbred Market Lamb; and 15th in class 7, Crossbred Market Lamb.

KCC to approve DSL service to rural areas

David Kerr, President of SBC Kansas, issued the following statement on September 18. "Late yesterday, SBC Kansas, the Kansas Corporation Commission staff and the Citizens' Utility Ratepayer Board reached an agreement relating to an important broadband investment issue. We commend the KCC staff and CURB for providing the leadership to resolve this issue in a way that benefits Kansans through expanded deployment of high-speed Internet service. It helps signify this state's commitment to delivering the best technology available—expeditiously—and making it available to as many Kansans as possible. We at SBC share that commitment.

"Pending approval by the KCC, SBC's Digital Subscriber Line (DSL) service will be avail-

NOVA NEWSREEL

...A Review Of This Weekend's Movie

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

SWKROA IS A PUBLICATION OF THE SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

 October 2002

SWKROA MEMBERS ALERTED TO DANGER OF MINERAL AND ROYALTY DEED OFFERS

From time to time over the years, we have cautioned our members about the need to be alert about offers being made by various investors to purchase minerals in the Hugoton Field. Frequently, such offers have been unrealistically low as to value and, in some instances, misleading and deceptive as to the documents presented to the prospective seller for execution.

In recent months, your Secretary's office has received numerous inquiries from members requesting information about a current offer being made by **Cobra Petroleum Company** of Fort Worth, Texas, to purchase mineral and royalty interests. Members have wanted to know whether the company is legitimate, if the offer is a scam, whether the offer is fair and reasonable, and whether they should sign the deed enclosed with Cobra's letter. Cobra has made solicitations to purchase minerals in at least five counties within the Hugoton Field, namely, **Grant, Hamilton, Haskell, Kearny and Stanton counties.**

Vicki Cole, Hamilton County Register of Deeds, of Syracuse, Kansas, called your Executive Secretary a few days ago also expressing her personal concern about the filing of mineral and royalty deeds that in her judgment are too broad in scope and could cover lands not described in the conveyance.

Cobra's solicitation to purchase minerals has caused enough interest and concern that a news article written by **Kathy Hanks** has recently appeared in the October 8, 2002, issue of The Garden City Telegram under the headline, **"Owners Claim Misdeeds Over Drafts."** The article indicates that "A difference of opinion in how a mineral and royalty deed should be interpreted has landowners in Hamilton and Kearny counties being urged to seek legal advice before cashing unsolicited bank drafts received in the mail."

In the article **Vicki Cole**, Hamilton County Register of Deeds, **Wayne Westblade**, a Syracuse attorney, and Hamilton County Attorney **Robert Gale** are quoted as saying that the Cobra mineral and royalty deed is misleading as to what it purports to convey. On the other hand, **Mark Beattie**, with Cobra Petroleum and author of Cobra's solicitation letter, claims the conveyance is not trying to take the landowner's property and is only a mineral and royalty deed.

The article also states that the matter has been called to the attention of the Kansas Attorney General's Office. Mark Ohlemeier, public information officer with the Attorney General, indicates they will be looking at the document but his office needs time to investigate whether the document can be characterized as a scam.

Observations Relative to Cobra's Offer to Purchase Minerals

We feel it might be of benefit to our members to review and dissect Cobra's offer. In its cover letter to the mineral owner, Cobra states that the company and its partners are currently purchasing mineral and royalty interests in several areas in a particular county and want to purchase the interests owned by the royalty owner and described in the Mineral and Royalty Deed enclosed with the letter. **The cover letter specifically provides that "The enclosed deed and draft payment are intended to convey to our company any and all of the mineral interest that you own" in the county described in the cover letter and deed.**

Some deeds reviewed by your Secretary describe certain wells in the which the royalty owner owns an interest, the name of the operator, the section, township and range, but in some documents it describes only the section number and fails to list any township and range. Attached to the letter is a 30-day bank draft made payable to the royalty owner in the amount of the offer.

We have found that bank drafts accompanying a letter are confusing to the royalty owner and are often misinterpreted by the royalty owner. He or she may think the draft is a check to be cashed while in fact **the draft only represents an offer submitted by the company to purchase the minerals but the draft does not become money until the conveyance is approved by the purchaser and authorization given by the purchaser to its bank to clear the draft within a given number of days.** In this instance, Cobra has 30 days in which to approve title after arrival of the draft at the collecting bank before the draft becomes money to the royalty owner.

An examination of the proposed mineral and royalty deed presented by Cobra with its cover letter reveals

P.O. Box 250, Hugoton, Kansas 67951 Phone (620) 544-4333 Fax (620) 544-2230

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numerous provisions which would be considered objectionable as far as the mineral owner is concerned. These objectionable provisions are listed as follows in the order in which they appear in the conveyance but not necessarily in the order of importance to the mineral owner:

1. **The name of the Grantee to whom the mineral owner would be conveying his or her interest includes not only Cobra Petroleum Company owning 34.00%, but Southwest Petroleum Company, 51.00%; S&C Properties, 5.00%; and Barbara L. Wiley, 10.00% as well.** If a landowner owns a small fractional mineral interest, this means the interest is divided into even smaller interests and will be a nightmare for the local county authorities and the gas companies to figure out how to assess these small interests for tax purposes and to whom royalties should be paid. Also, it would add to the cost of abstracting and title examination with so many small interest owners to identify in the chain of title.

2. The mineral and royalty deed purports to be a mineral and royalty conveyance only but the instrument provides that the conveyance includes, as shown in bold print in the deed, "ALL LANDS OWNED BY GRANTOR IN ..... COUNTY, KANSAS, INCLUDING WITHOUT LIMITATION, ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND REFERENCED, DESCRIBED AND/OR PLATTED AS FOLLOWS: ....."

   The deed then lists the well/lease name, the section/township/range, and the operator in some instances but in some of the deeds examined by the author, Cobra fails to list the township and range, as stated above, thus obviously creating a cloud on the title on any township and range within the county other than the township and range within which the well is located. **The Cobra deed does not specifically describe a mineral interest but only a royalty interest at best.**

   The question arises as to whether the deed purports to cover only a royalty interest and not a mineral interest. If the intent is to cover a mineral interest, the instrument must describe not only the section, township and range but the fractional quarter section as well. **Otherwise, a cloud on the title has been created on the entire section in which the mineral interest is located. The expense of removing the cloud on title could be more than the purchase price offered for a particular tract.**

   Secretary's Note: In Kansas, a royalty interest is considered personal property and can be transferred by assignment without the necessity of recording the conveyance. However, minerals in Kansas are considered real property and must be transferred by deed. If an instrument describes an interest in a certain well or lease, it would seem that the intent is to convey royalty interest only unless the instrument describes the specific quarter section, the section, township, and range, and the fractional mineral interest therein owned.

   For example, an instrument that describes the interest as "1/8th royalty or .031250 royalty in Section 15-31S-38W, Stevens County, Kansas," conveys only a royalty interest. An instrument that described the interest as being "all the oil, gas and other minerals lying in and under the SE/4 of Section 15-31S-38W, Stevens County, Kansas," obviously properly describes a mineral interest.

3. Perhaps the most misleading and objectionable provision in the deed is the paragraph immediately below the legal description which reads as follows:

   "NOT WITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LANDS INDIVIDUALLY DESCRIBED ABOVE ARE SET OUT FOR THE CONVENIENCE OF THE PARTIES AND SHALL NOT BE INTERPRETED AS LIMITING THIS GRANT, IT BEING THE INTENT OF THE PARTIES THAT THIS DEED COVER ALL LANDS OF EVERY KIND AND DESCRIPTION OWNED BY GRANTOR AND LOCATED IN (NAME OF COUNTY), KANSAS, WHETHER OR NOT PARTICULARLY DESCRIBED ABOVE." (Emphasis ours).

   Thus, if a person owns the surface of the particular tract or tracts described in the deed or owns an interest in the surface and/or mineral interests in other lands in the county, **it seems quite clear that the conveyance would include all lands, both surface and minerals, owned by the seller in the county without additional consideration.** It does not seem possible to arrive at any other conclusion.

4. **The next provision in the deed verifies the intent of the parties to say that "lands" subject to the conveyance also includes all strips, gorges, roadways, water bottoms, and other lands adjacent to or contiguous with the lands specifically described.** It further provides that Grantor, **without additional compensation**, shall execute such instruments as may be necessary to correct the description.

5. The next provision gives the Grantee, among other things and **without additional consideration**, the right to all royalties, suspended funds, and any and all payments of whatsoever kind due and payable to the Grantor (landowner) **prior to the conveyance**, including claims for underpayment of past royalties. **This provision would preclude, for example, the seller from receiving the benefits resulting from royalty class litigation currently pending against several major companies operating in the Hugoton Field for underpayment of royalties if such litigation is**

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successful. It is also possible the producer may be holding suspended royalties on a new well while waiting on division orders to be circulated or for title work.

6. The conveyance is not just limited to oil and gas but **includes coal, lignite, uranium, iron ore, and every other "mineral" now or hereafter recognized as such under the laws of Kansas!** Surely, the royalty owner would not intend to sell more than an interest in oil and/or gas so it is hard to understand why the deed is so overreaching.
7. **By the deed, the Grantor (landowner) gives Cobra Petroleum a power of attorney** to execute on behalf of the Grantor any division or transfer order, corrective deeds, amendments of description, and any other instruments necessary to reflect the property conveyed. This obviously could be a dangerous provision as well as those provisions above.
8. **In the event of litigation, the contract provides that "any and all claims shall be resolved in Terrant County, Texas." In other words, the landowner, upon signing the deed, has agreed that any disputes over the conveyance must be litigated in Texas and not in the county in which the property is located.**

There are other provisions in the deed subject to question but the ones listed above should call attention to the danger of executing any document without reading the fine print and fully understanding its terms. The deed does caution the Grantor to read the document carefully or seek legal counsel prior to signing but an instrument should not be so misleading and difficult to understand the true intent of the parties.

The bottom line is that it is important for you to understand fully what you are signing and by far the best way to do that is to seek the advice of your attorney on matters affecting your mineral and royalty interest. Otherwise, you may later regret having signed a given document which takes away rights you did not intend to convey, requiring you to have to litigate the matter to establish the true intent of the parties with reference to the conveyance.

Very truly yours,

B E Nordling

Bernard E. Nordling
Assistant Executive Secretary

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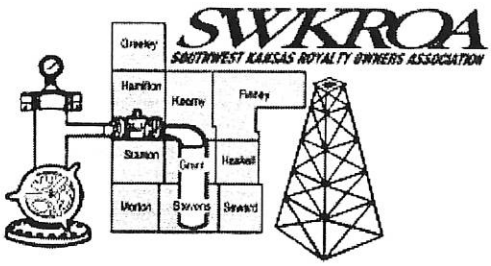


Southwest Kansas Royalty Owners Association•209 East Sixth Street•Hugoton•Kansas•67951

Testimony before the House Utilities Committee

Senate Bill 331, Section 1 and New Section 2

March 11, 2004

Chairman Holmes and Members of the Committee:

Introduction

My name is Bernard E. Nordling, formerly of Hugoton, Kansas, and now a permanent resident of Lawrence, Kansas. I am a lawyer and a member of the Hugoton law firm of Kramer, Nordling, & Nordling, LLC. I have practiced law since 1949 and have spent my entire legal career representing landowners. I am currently serving as Assistant Executive Secretary of the Southwest Kansas Royalty Owners Association.

While the Southwest Kansas Royalty Owners Association is mainly concerned with the protection of the rights of royalty owners in the Hugoton Gas Field in southwest Kansas, nevertheless, many of our more than 2,600 members own the surface interest in their land as well and would be affected by any wind energy leases or easements on land in the southwest Kansas area so suitable for wind energy development.

Let me say at the outset that I feel wind energy in Kansas offers a tremendous economic benefit to the citizens of Kansas, particularly in western Kansas, and its development should be encouraged. As an aside, I don't know how many members of this committee has seen the Gray County (Montezuma) Wind Farm, but I personally think the farm is attractive and my wife, Barbara describes the Montezuma wind towers as "awesome." Regardless of their appeal, I think there should be an opportunity for a level playing field for our Kansas landowners in dealing with the wind energy companies and it is the purpose of my testimony and other proponents of Senate Bill No. 331 to create that level playing field.

I am appearing on behalf of the Association and on behalf of Kansas landowners to testify in support of Senate Bill No. 331, as amended by the Senate Committee of the Whole. SB 331makes provisions to take care of two critical issues. Sections 1 and New Section 2 deal with the recording of documents affecting real estate, including wind energy leases and easements, and New Section 3 deals with the recording of documents creating a cloud on title to real estate. The first part of my testimony deals with recording of wind energy leases and easements and the second part of my testimony deals with what may be referred to as the "Cobra" situation.

HOUSE UTILITIES

DATE: 3-11-04

ATTACHMENT 2

Background of SB 331

By way of background in explaining the introduction of SB 331 this legislative session, House Bill No. 2280 was introduced in last year's session to address the issue of requiring the filing of record any lease or easement involving wind resources and technologies to produce and generate electricity.

Because of the newness in Kansas of wind energy as an energy source, it is my opinion, as well as the opinion of others, that this legislation is appropriate to be consistent with the requirement of the filing of oil and gas leases, as well as deeds, mortgages, water rights and other instruments of record for the proper notification to prospective purchasers and mortgagees of lands of any documents affecting property rights. However, by action of the House Utilities Committee, the bill was amended to permit the filing of a memorandum of lease or easement and not the full lease agreement or easement, and therein lies a critical problem for prospective purchasers or mortgagees, and for future generations.

I personally had not been aware of HB 2280 last legislative session until it appeared on the calendar of the Senate Utilities Committee. Up until then, I had only a passing interest in wind energy leases, having had the opportunity to examine a couple of wind energy leases and one wind energy easement. I was absolutely shocked at the one-sidedness and overreaching of those agreements and had told more than one person that the documents examined were the most one-sided I had ever examined in my fifty some years of law practice!

Wind Energy Lease Terms

Those wind leases had numerous objectionable provisions insofar as the landowner was concerned. The ones I examined were for 20 and 30 year terms with options to renew, with no way to terminate the lease by the landowner without going to court. Among other objectionable features, there was no inflationary factors built into the lease, it was impossible to determine the compensation being paid under the lease, the rights of the landowner were subservient to the rights of the wind energy lessee, and notice had to be given by the landowner to the wind lessee to use the property other than for "hunting, ranching and agricultural purposes." In addition, the landowner had to indemnify the wind lessee for any damage that might be caused to the wind towers and wind facilities.

Also, the lease and easement terms were confidential. The agreements I examined were 20 to 30 pages long with a lot of obligations and restrictions on the use of the property by the landowner. Yet the landowner had to agree that the only instrument to be placed of record was a Memorandum of Lease and not the full document itself.

It was because of this latter provision that I felt compelled to file testimony with the Senate Utilities Committee in opposition to HB 2280. In my testimony, I pointed out, among other things, that wind energy leases were no different than oil and gas leases and the full document should be placed of record for obvious reasons. It is absolutely essential that any prospective

purchaser or mortgagee of lands covered by a wind energy lease or easement be fully apprized of the rights and obligations of the parties with respect to the agreement.

In my testimony on HB 2280, I suggested that the legislature might consider including wind energy leases and easements as a part of K.S.A 58-2221, the same as the 1953 Kansas Legislature did to include any estate or interest created by an oil and gas lease. Senate Bill 331 does that by amending the provisions of K.S.A. 58-2221 to include any estate or interest created by a wind energy lease or easement.

Intent of Recording Statute

The obvious intent of the recording statute is that the full document be placed of record. If a memorandum of lease could be filed of record in place of the full lease, the statute would have so provided. A perfect example is the amendment by the House Utilities Committee of House Bill 2280 to replace the words "Any lease" by the words "A memorandum of any lease or easement."

For years, in compliance with the recording statute, oil and gas companies, pipeline companies, and electric utilities have been filing with the appropriate register of deeds office complete instruments of conveyance affecting real estate, including oil and gas leases, lease modification agreements, unitization agreements, affidavits of production, pipeline easements, road easements, water line easements, electric utility line easements, mortgages, any other document of record affecting title to real estate or creating an encumbrance on the land. The full instrument is of record and any interested person has easy access to determine the rights and obligations of the respective parties in a particular tract of land.

It is important to note that under K.S.A. 58-2221, as amended by Senate Bill 331, a wind energy company is not obligated to file a wind energy lease or easement of record but if anything is filed of record, it must be pertinent portions of the full document and not just a memorandum of lease.

Wind energy has great potential in Kansas as a fuel source and its development should be encouraged. What is happening though, contrary to the intent of the recording statute, as wind development progresses in Kansas, the wind energy companies operating in Kansas are filing of record only memorandums of lease and not the full document. This creates serious problems for obvious reasons.

If a title examiner makes the requirement that the full document be furnished to determine the rights and obligations of the parties under the lease or easement, it will be impossible to obtain that information from the courthouse records if only and a memorandum of lease is of record, and it creates the undue burden of having to contact either the lessee or the lessor for a copy of the document.

The problem of having to contact either the lessee or the lessor to examine the full lease or easment is amplified as time passes. Perfect examples are the many old oil and gas leases of record executed fifty, sixty, and seventy years ago in the Hugoton Gas Field. There have been many changes of ownership, both as to the lessor and the lessee, during that time, and it would be

practically impossible to obtain a full copy of the lease after all these years had not the lease been filed of record in the first instance.

As mentioned above, the wind energy leases I have examined have varied in length of time anywhere from 20 years with options to renew, to 30 years, to practically perpetual with no right on the part of the landowner to terminate except to go to court. The length of time wind leases and easements will be in effect and an encumbrance on the land should be sufficient reason for the full document to be placed of record and not just a memorandum of lease.

Knowing the amount of consideration being paid under a wind energy lease or easement is not that important to me. It is easy enough to go on internet and research the question as I did for my wind energy speech to members of the Southwest Kansas Royalty Owners Association at its annual meeting last spring. I learned the compensation ranged anywhere from $2,000 per tower to as high as $7,000 per tower, depending on wind velocity and other factors.

As I was told recently by a wind energy representative in lease negotiations with his company, it is difficult to keep lease terms quiet and within 30 minutes of disclosing the compensation to one farmer, the whole county will know what is being offered for compensation. What is important is that if the wind energy company decides to place anything of record, the whole document needs to be recorded to carry out the intent of the recording statute.

Information on Wind Leases Important to Protect Landowners

Jim Yoxall, Phil Ridenour and I, with a combined 140 years of experience in representing landowners in western rural Kansas in oil and gas, wind energy, and other energy related matters, have all testified that the full terms and conditions of wind energy leases and easements should be filed of record and not just a memorandum of lease.

Wind energy is just now developing in Kansas and is an entirely new undertaking that will have a significant impact on farm land in Kansas for many, many years. As we all have pointed out in our testimony, wind energy leases and easements have terms and conditions that are long-term and farmers across Kansas are being asked to consider and agree to them when there is very little information available to determine whether the terms being offered are fair or not. Unlike the oil and gas industry, there is no established model or guide to which the landowner can compare the proposal being made by the wind energy company.

It is important to have information available in which to protect the landowner's interest and this can be accomplished in part by having the pertinent terms and conditions of wind energy leases filed of record as intended under SB 331. The legislature is not being asked to regulate or impose any particular terms on the wind lessees. We are simply wanting the landowners to have available information they can use to better protect their interests and level the playing field for the landowners a little in the early stages of the development of wind energy in Kansas. Whatever the outcome will then be up to the bargaining abilities of informed parties.

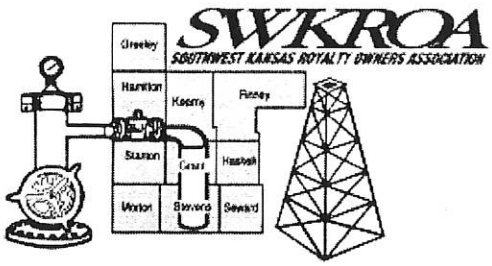
To my knowledge, no public policy supports the withholding of the pertinent terms and conditions of a wind energy lease or agreement from the public. Farmers, landowners and investors of Kansas should be provided with the basic information so they can help themselves to enter into long-terms transactions on terms both informed parties can support. There should be no harm in having the full document placed of record. It merely levels the playing field for the individual landowner dealing with the huge wind energy corporations. That should be a good thing.

Such a requirement would provide incentive for potential wind energy lessees to compete with one another for leases by offering more favorable terms (rent, land use, etc.) than other potential lessees. Knowing what the opposition is offering will promote competition in various ways which could increase income for the landowners, reduce surface obstructions and land restrictions, and benefit the State of Kansas as a whole.

Thank you for this opportunity to be heard on this portion of my testimony on Section 1 and New Section 2 of Senate Bill No. 331.

Respectfully submitted,

Bernard E. Nordling



Southwest Kansas Royalty Owners Association•209 East Sixth Street•Hugoton•Kansas•67951

Testimony before the House Utilities Committee
Senate Bill 331, New Section 3
March 11, 2004

Chairman Holmes and Members of the Committee:

My name is Bernard E. Nordling, Assistant Executive Secretary of the Southwest Kansas Royalty Owners Association (SWKROA), and I am appearing on behalf of the Association in support of Senate Bill 331, as amended by the Senate Committee as a Whole. This is the second portion of my testimony before your honorable committee in support of SB 331 dealing specifically with the provisions of New Section 3 of that bill.

New Section 3 of SB 331 Addresses Problem of Cloud on Title to Real Estate

New Section 3 of SB 331 is intended to address a specific problem arising from the filing of record in the various counties in this state of mineral and royalty deeds and conveyances which create clouds on the title of real estate not owned by the grantor. To my knowledge, the problem first arose in the Hugoton Gas Field as early as the year 2000 but has spread to other parts of the state as well.

It is not unusual that offers to purchase mineral and royalty interests in this state, and particularly in the vast Hugoton Field, have been made from time to time for many years and these offers have been made in good faith and in an appropriate manner. However, in 2000, SWKROA members began reporting to the Executive Secretary's office in Hugoton of offers being made by a Texas company to purchase royalty interests in the Hugoton Gas Field.

The offer was made through a cover letter, proposed royalty conveyance, and bank draft purporting to convey to the grantee not only oil and gas royalty in minerals owned by the grantor in a small tract of land but oil and gas royalty in the entire section in which the grantor owned no interest, thus creating a cloud on the title to real estate not owned by the grantor.

The grantor was also required to execute any supplement instrument requested by the grantee for a more complete or accurate description of the property conveyed and the instrument gave the company a power of attorney to correct the deed. There were other outlandish provisions of the conveyance but suffice to say, any conveyance executed under the proposed offer created a cloud on the title to real estate not owned by the grantor.

The company was successful in purchasing royalty interests from a considerable number of royalty owners but the specific number of actual conveyances is not known.

Cobra Mineral and Royalty Deed Solicitations

Then, beginning in 2002, SWKROA members began reporting to the Executive Secretary's office about another Texas company, Cobra Petroleum Company, of Fort Worth, Texas, on its own behalf and on behalf of its partners, sending out solicitation letters, along with a Mineral and Royalty Deed and bank draft, offering to purchase mineral and royalty interests described in the conveyance. I personally received at least ten of these solicitation letters and not a single one of the conveyances described my fractional mineral interest in a particular quarter section but either described the full section, township and range, and in several instances, described only the section in which my small mineral interest was located, without any reference to township and range.

Any such conveyance executed by any mineral or royalty owner in favor of Cobra and its partners would obviously create a cloud on the title to real estate in which the grantor owned no interest. To make matters worse, in bold print in the Mineral and Royalty Deed was the following provision:

> **"NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LANDS INDIVIDUALLY DESCRIBED ABOVE ARE SET OUT FOR THE CONVENIENCE OF THE PARTIES AND SHALL NOT BE INTERPRETED AS LIMITING THIS GRANT, IT BEING THE INTENT OF THE PARTIES THAT THIS DEED COVER ALL LANDS OF EVERY KIND AND DESCRIPTION OWNED BY GRANTOR AND LOCATED IN _____ COUNTY, WHETHER OR NOT PARTICULARLY DESCRIBED ABOVE."**

The Mineral and Royalty Deed also gives Cobra a Durable Power of Attorney to specifically execute, among other things, correction deeds or conveyances and amendments of description, and Cobra is given the authority to correct the description of the property being conveyed in the place and stead of the grantor!

Cobra's offer to purchase minerals in the Hugoton Field area caused considerable stir as attested by my newsletter to SWKROA members under date of October, 2002, copy of which is attached hereto and by this reference made a part hereof.

Cobra's operations have expanded to northwest Kansas and numerous complaints have been made in that part of the state by mineral owners, county officials, and area newspapers about the problems created by Cobra deeds being filed of record and creating clouds on title to numerous tracts of land within the area.

Contact with Register of Deeds Offices

To give members of this committee the extent of the problem, I have contacted the Register of Deeds office in several counties in western Kansas to determine the number of conveyances filed of record by Cobra and other companies which create clouds on title. You should find the following survey of much interest:

Register of Deeds Office	Companies Involved	Number of Conveyances Recorded
Ellis County	Cobra Petroleum, et al	93
Morton County	Cobra, et and Portales	92
Russell County	Cobra, et al	69
Rooks County	Cobra, et al	60
Finney County	Cobra and Kansas Royalty Trust	33
Stevens County	Cobra and Kansas Royalty Trust	31

Every single Register of Deeds office contacted was pleased that some effort was being made to stop this major problem and each office was extremely helpful in compiling this information.

New Section 3 of SB 331 Gives Tools Necessary to Eliminate Clouds on Title to Real Estate

New Section 3 of SB 331 authorizes any party with an interest in real estate included in a recorded deed or conveyance covering mineral or royalty rights not owned by the grantor to make demand upon either the grantor or grantee to reform the deed or conveyance by excluding the property not owned by the grantor. New Section 3 also authorizes a party owning such an interest to make demand when the grantor believes there was a mistake of fact by including the general conveyance provision, such as the one found in the Cobra conveyance quoted above, in the deed or conveyance.

New Section 3 further provides that any grantee or grantor refusing or neglecting to correct or reform the legal description in the register of deeds office within a specified time shall be subject to damages to the party for whom the demand was made up to $10,000 per title affected, and reasonable attorney's fees. These provisions, if enacted, will go a long way in eliminating clouds on title caused by improper and incomplete legal descriptions of the mineral or royalty interest actually intended to be conveyed.

Obviously, something needs to be done to resolve the problem of these clouds on title created by royalty and mineral conveyances like those described above, and I submit on behalf of the Southwest Kansas Royalty Owners Association and landowners in Kansas, with the encouragement of the Register of Deeds offices in western Kansas, the favorable support of your honorable committee of New Section 3 of Senate Bill No. 331.

Presuming Cobra and other companies making offers to purchase minerals and royalties from Kansas mineral and royalty owners are acting in good faith in their solicitations, New Section 3

of SB 331 should work no hardship on them except to require them to properly check the court house records to determine the specific mineral or royalty interest intended to be conveyed and not describe the interest in a general nature so as to cloud title to real estate not owned by the prospective grantor.

I apologize for the length of my testimony on Senate Bill No. 331 but hope your honorable committee realizes the importance of providing landowners with sufficient information to intelligently make decisions in negotiating leases with wind energy companies and in preventing companies like Cobra from taking advantage of innocent mineral and royalty owners.

Respectfully submitted,

B E Nordling

Bernard E. Nordling

Attachment

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SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

SWKROA IS A PUBLICATION OF THE SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

 October 2002

SWKROA MEMBERS ALERTED TO DANGER OF MINERAL AND ROYALTY DEED OFFERS

From time to time over the years, we have cautioned our members about the need to be alert about offers being made by various investors to purchase minerals in the Hugoton Field. Frequently, such offers have been unrealistically low as to value and, in some instances, misleading and deceptive as to the documents presented to the prospective seller for execution.

In recent months, your Secretary's office has received numerous inquiries from members requesting information about a current offer being made by **Cobra Petroleum Company** of Fort Worth, Texas, to purchase mineral and royalty interests. Members have wanted to know whether the company is legitimate, if the offer is a scam, whether the offer is fair and reasonable, and whether they should sign the deed enclosed with Cobra's letter. Cobra has made solicitations to purchase minerals in at least five counties within the Hugoton Field, namely, **Grant, Hamilton, Haskell, Kearny and Stanton counties.**

Vicki Cole, Hamilton County Register of Deeds, of Syracuse, Kansas, called your Executive Secretary a few days ago also expressing her personal concern about the filing of mineral and royalty deeds that in her judgment are too broad in scope and could cover lands not described in the conveyance.

Cobra's solicitation to purchase minerals has caused enough interest and concern that a news article written by **Kathy Hanks** has recently appeared in the October 8, 2002, issue of The Garden City Telegram under the headline, **"Owners Claim Misdeeds Over Drafts."** The article indicates that "A difference of opinion in how a mineral and royalty deed should be interpreted has landowners in Hamilton and Kearny counties being urged to seek legal advice before cashing unsolicited bank drafts received in the mail."

In the article **Vicki Cole**, Hamilton County Register of Deeds, **Wayne Westblade**, a Syracuse attorney, and Hamilton County Attorney **Robert Gale** are quoted as saying that the Cobra mineral and royalty deed is misleading as to what it purports to convey. On the other hand, **Mark Beattie**, with Cobra Petroleum and author of Cobra's solicitation letter, claims the conveyance is not trying to take the landowner's property and is only a mineral and royalty deed.

The article also states that the matter has been called to the attention of the Kansas Attorney General's Office. Mark Ohlemeier, public information officer with the Attorney General, indicates they will be looking at the document but his office needs time to investigate whether the document can be characterized as a scam.

<u>Observations Relative to Cobra's Offer to Purchase Minerals</u>

We feel it might be of benefit to our members to review and dissect Cobra's offer. In its cover letter to the mineral owner, Cobra states that the company and its partners are currently purchasing mineral and royalty interests in several areas in a particular county and want to purchase the interests owned by the royalty owner and described in the Mineral and Royalty Deed enclosed with the letter. **The cover letter specifically provides that "The enclosed deed and draft payment are intended to convey to our company any and all of the mineral interest that you own" in the county described in the cover letter and deed.**

Some deeds reviewed by your Secretary describe certain wells in the which the royalty owner owns an interest, the name of the operator, the section, township and range, but in some documents it describes only the section number and fails to list any township and range. Attached to the letter is a 30-day bank draft made payable to the royalty owner in the amount of the offer.

We have found that bank drafts accompanying a letter are confusing to the royalty owner and are often misinterpreted by the royalty owner. He or she may think the draft is a check to be cashed while in fact **the draft only represents an offer submitted by the company to purchase the minerals but the draft does not become money until the conveyance is approved by the purchaser and authorization given by the purchaser to its bank to clear the draft within a given number of days.** In this instance, Cobra has 30 days in which to approve title after arrival of the draft at the collecting bank before the draft becomes money to the royalty owner.

An examination of the proposed mineral and royalty deed presented by Cobra with its cover letter reveals

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rous provisions which would be considered objectionable as far as the mineral owner is concerned. These objectionable provisions are listed as follows in the order in which they appear in the conveyance but not necessarily in the order of importance to the mineral owner:

1. **The name of the Grantee to whom the mineral owner would be conveying his or her interest includes not only Cobra Petroleum Company owning 34.00%, but Southwest Petroleum Company, 51.00%; S&C Properties, 5.00%; and Barbara L. Wiley, 10.00% as well.** If a landowner owns a small fractional mineral interest, this means the interest is divided into even smaller interests and will be a nightmare for the local county authorities and the gas companies to figure out how to assess these small interests for tax purposes and to whom royalties should be paid. Also, it would add to the cost of abstracting and title examination with so many small interest owners to identify in the chain of title.

2. The mineral and royalty deed purports to be a mineral and royalty conveyance only but the instrument provides that the conveyance includes, as shown in bold print in the deed, **"ALL LANDS OWNED BY GRANTOR IN ..... COUNTY, KANSAS, INCLUDING WITHOUT LIMITATION, ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND REFERENCED, DESCRIBED AND/OR PLATTED AS FOLLOWS: .....**

   The deed then lists the well/lease name, the section/township/range, and the operator in some instances but in some of the deeds examined by the author, Cobra fails to list the township and range, as stated above, thus obviously creating a cloud on the title on any township and range within the county other than the township and range within which the well is located. **The Cobra deed does not specifically describe a mineral interest but only a royalty interest at best.**

   The question arises as to whether the deed purports to cover only a royalty interest and not a mineral interest. If the intent is to cover a mineral interest, the instrument must describe not only the section, township and range but the fractional quarter section as well. Otherwise, a cloud on the title has been created on the entire section in which the mineral interest is located. **The expense of removing the cloud on title could be more than the purchase price offered for a particular tract.**

   Secretary's Note: In Kansas, a royalty interest is considered personal property and can be transferred by assignment without the necessity of recording the conveyance. However, minerals in Kansas are considered real property and must be transferred by deed. If an instrument describes an interest in a certain well or lease, it would seem that the intent is to convey a r interest only unless the instrument describes the specific quarter section, the section, township, and range, and the fractional mineral interest therein owned.

   For example, an instrument that describes the interest as "1/8th royalty or .031250 royalty in Section 15-31S-38W, Stevens County, Kansas," conveys only a royalty interest. An instrument that described the interest as being "all the oil, gas and other minerals lying in and under the SE/4 of Section 15-31S-38W, Stevens County, Kansas," obviously properly describes a mineral interest.

3. Perhaps the most misleading and objectionable provision in the deed is the paragraph immediately below the legal description which reads as follows:

   "NOT WITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LANDS INDIVIDUALLY DESCRIBED ABOVE ARE SET OUT FOR THE CONVENIENCE OF THE PARTIES AND SHALL NOT BE INTERPRETED AS LIMITING THIS GRANT, IT BEING THE INTENT OF THE PARTIES THAT THIS DEED COVER ALL LANDS OF EVERY KIND AND DESCRIPTION OWNED BY GRANTOR AND LOCATED IN (NAME OF COUNTY), KANSAS, WHETHER OR NOT PARTICULARLY DESCRIBED ABOVE." (Emphasis ours).

   Thus, if a person owns the surface of the particular tract or tracts described in the deed or owns an interest in the surface and/or mineral interests in other lands in the county, **it seems quite clear that the conveyance would include all lands, both surface and minerals, owned by the seller in the county without additional consideration.** It does not seem possible to arrive at any other conclusion.

4. **The next provision in the deed verifies the intent of the parties to say that "lands" subject to the conveyance also includes all strips, gorges, roadways, water bottoms, and other lands adjacent to or contiguous with the lands specifically described.** It further provides that Grantor, **without additional compensation**, shall execute such instruments as may be necessary to correct the description.

5. The next provision gives the Grantee, among other things and **without additional consideration**, the right to all royalties, suspended funds, and any and all payments of whatsoever kind due and payable to the Grantor (landowner) **prior to the conveyance**, including claims for underpayment of past royalties. **This provision would preclude, for example, the seller from receiving the benefits resulting from royalty class litigation currently pending against several major companies operating in the Hugoton Field for underpayment of royalties if such litigation is**

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successful. It is also possible the producer may be holding suspended royalties on a new well while waiting on division orders to be circulated or for title work.

6. **The conveyance** is not just limited to oil and gas but **includes coal, lignite, uranium, iron ore, and every other "mineral" now or hereafter recognized as such under the laws of Kansas!** Surely, the royalty owner would not intend to sell more than an interest in oil and/or gas so it is hard to understand why the deed is so overreaching.
7. **By the deed, the Grantor (landowner) gives Cobra Petroleum a power of attorney** to execute on behalf of the Grantor any division or transfer order, corrective deeds, amendments of description, and any other instruments necessary to reflect the property conveyed. This obviously could be a dangerous provision as well as those provisions above.
8. **In the event of litigation, the contract provides that "any and all claims shall be resolved in Terrant County, Texas." In other words, the landowner, upon signing the deed, has agreed that any disputes over the conveyance must be litigated in Texas and not in the county in which the property is located.**

There are other provisions in the deed subject to question but the ones listed above should call attention to the danger of executing any document without reading the fine print and fully understanding its terms. The deed does caution the Grantor to read the document carefully or seek legal counsel prior to signing but an instrument should not be so misleading and difficult to understand the true intent of the parties.

The bottom line is that it is important for you to understand fully what you are signing and by far the best way to do that is to seek the advice of your attorney on matters affecting your mineral and royalty interest. Otherwise, you may later regret having signed a given document which takes away rights you did not intend to convey, requiring you to have to litigate the matter to establish the true intent of the parties with reference to the conveyance.

MAJORITY OF ROYALTY OWNERS ABSOLVED OF KANSAS AD VALOREM TAX LIABILITY

While the issue of Kansas ad valorem tax refund claims by the producers against the royalty owners has not been completely resolved, **it would appear that a majority of Kansas royalty owners have been relieved of liability from the Kansas ad valorem tax refund obligations imposed by the Federal Energy Regulatory Commission (FERC) for the period from 1983 to 1988. However, it is almost impossible to determine with any accuracy which royalty owners are relieved of the ad valorem tax liability without knowing the pipeline system through which the natural gas flowed during the period in question.**

Primarily, relief for royalty owners from liabili[illegible]s been made possible through settlement agreements entered into by certain Kansas producers, pipeline companies, utilities and other affected parties and approved by FERC. **It has also been made possible through the efforts of the Association to free royalty owners from liability with the help of State Senator Stephen Morris, R-Hugoton, State Representative Carl Holmes, R-Liberal, Governor Bill Graves, Attorney General Carla Stovall, Senators Pat Roberts and Sam Brownback, and Congressman Jerry Moran.**

These settlements have been fully reported in previous SWKROA newsletters, specifically the January 2001, August 2001, and March 2002 newsletters. The settlements have included natural gas flowing through the pipelines systems of **Northern Natural Gas Company (Northern), Colorado Interstate Pipeline Company (CIG), Panhandle Eastern Pipeline Company (Panhandle Eastern), ANR Pipeline Company (ANR), El Paso Natural Gas Company (El Paso), and Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan), successor to KN Energy.** Partial settlement has also been reported with reference to natural gas flowing through the pipeline system of **Williams Gas Pipelines Central, Inc., formerly Williams Natural Gas Company (Williams).**

FERC has approved a partial settlement that has eliminated all but 41.1038% of the ad valorem tax refund claims by Williams against Amoco Production Company, Pioneer Natural Resources, Inc., Mobil Oil Corporation, OXY USA, Inc., and Union Pacific Resources Company. The 41.1038% remains in litigation between certain utility companies, large producers and Williams. The Williams pipeline system covers portions of Grant, Stanton, Hamilton, Kearny, Finney, Haskell, Morton and Stevens County.

Gregory J. Stucky, Association General Counsel, has described the Williams pipeline system as being in the form of an inverted "U" with the bottom of the "U" located north of Hugoton. The top of the east side ends about 10 miles south of Garden City and the top of the west side ends at a point southeast of Syracuse. The east side of the "U" extends north along US Highway 83 and has a width of about ten miles while the west side of the "U" extends from west of Rolla north toward a point southeast of Syracuse and has a width of about 15 miles. Natural gas flows into the Williams system from wells located within the vicinity of the "U".

Secretary's Note: It would seem that any royalty owners **whose mineral interests lie outside the boundaries of the Williams pipeline system have been relieved of liability for claims by the producers for refund of the Kansas ad valorem tax during the period in question. Those royalty owners whose lands produced gas which flowed into the Williams system during the period in question have been freed of liability on at least 58.8962% of the claim for refund.**

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It is our understanding that relief from ad valorem tax liability has been obtained for all small producers and their royalty owners in the FERC proceedings, including those involved in the Williams case. To our knowledge, the only remaining unsolved issue is that portion of the Williams case discussed above involving the dispute between the referenced major companies, Williams, and certain utilities.

Refund Obligations of Producers to Royalty Owners in FERC Settlement Cases

In all of the FERC settlement cases involving the pipeline systems of Northern, Colorado Interstate, Panhandle Eastern, ANR, El Paso, and Kinder Morgan, and 58.8962% of the Williams system, royalty owners have been relieved of all liability of claims for Kansas ad valorem tax refunds covering the period from 1983 to 1988, as stated above.

In addition, there are provisions in the settlement agreements approved by FERC in at least two of the cases which specifically provide that the producers have the obligation to refund to any royalty owner any amounts paid by the royalty owner on the claim for ad valorem tax reimbursement prior to the effective date of the settlement agreement. The two cases in which there was this specific provision for refund to the royalty owners were the Kinder Morgan and Northern cases. The Northern case provides that the refund be made without interest while the Kinder Morgan order is silent as to payment of interest.

While the other settlement cases are silent as to the obligation of the producer to refund any amounts paid by its royalty owners, it appears clear that such a refund is due the royalty owner if he or she has paid the claim. IF YOU HAVE PAID SUCH A CLAIM FOR REFUND TO YOUR PRODUCER AT ANY TIME PRIOR TO THE EFFECTIVE DATE OF THE SETTLEMENT AGREEMENT IN ANY CASE INVOLVING YOUR ROYALTY INTEREST AND HAVE NOT BEEN REFUNDED SUCH PAYMENT, YOU SHOULD DIRECT A LETTER TO YOUR PRODUCER DEMANDING THE REFUND. IT WOULD ALSO SEEM PRUDENT TO SEEK INTEREST ON YOUR MONEY HELD IN SUSPENSE PRIOR TO THE EFFECTIVE DATE OF THE PARTICULAR SETTLEMENT AGREEMENT INVOLVING YOUR PRODUCER.

Other Kansas producers may have made the ad valorem tax refunds to their royalty owners as required by the various FERC settlement agreements **but the only company actually making the refund, to our knowledge, is Kansas Natural Gas Company.** An official with Kansas Natural has furnished to us copies of two transmittal letters sent to its royalty owners on the ad valorem tax issue. The first letter was sent under date of January 30, 2001, refunding to the royalty owner the amount of ad valorem tax paid by the royalty owner to Kansas Natural, plus interest earned while the funds were held in suspense pending negotiations in the **Colorado Interstate Gas** and **Northern Natural Gas** cases. The second letter is dated June 4, 2002, and enclosed to its royalty owner a refund check representing ad valorem taxes on the **Kinder Morgan** system paid to Kansas Natural by the royalty owner, again with interest. **The total amount of refund paid by Kansas Natural to its royalty owners, including interest, is $249,227.95.**

Secretary's Note: In the past, we feel that Kansas Natural has done a good job of keeping its royalty owners advised of matters affecting their rights and has been most helpful to the Secretary's office in furnishing information upon request. It would be of tremendous help and benefit to the royalty owners and other gas companies as well for other companies to keep their royalty owners better informed on such matters affecting the interests of the royalty owners. For example, few, if any, of the producers operating in the Hugoton Field alerted their royalty owners to the problems arising from the ad valorem tax refund issue and the litigation that followed came out of the clear blue to most royalty owners.

Status of Kansas Consolidated Cases

As noted in July 2002 SWKROA newsletter, on July 12, 2002, the Kansas Supreme Court handed down its decision dismissing the appeals of the producers and cross-appeals of the royalty owners in the consolidated ad valorem tax cases on the ground that the decision by the Honorable **Tom R. Smith**, Stevens County, Kansas, District Court Judge, was not a final order and that the Supreme Court did not have jurisdiction over the appeals or cross-appeals.

The matter has now been set for a case management conference before Judge Smith to be held on November 4, 2002, at 1:30 p.m., at the Stevens County Courthouse in Hugoton. In his letter to Judge Smith setting up the hearing, one of Amoco's attorneys, Steven D. Gough, has advised the Court that Counsel involved in the *Plains Petroleum Company, et al, v, First National Bank of Lamar, et al,* (Kearny County Case No. 99-CV-13) were not contacted because a settlement was reached in that case and the appeal was dismissed. **This obviously means that Plains will no longer be seeking reimbursement from its royalty owners of ad valorem taxes paid during the period from 1983 to 1988.**

We will keep you posted on the Consolidated Cases ad valorem tax litigation as it progresses.

NIMUM ROYALTY AND OTHER LEASE PROVISIONS

Many of our members have inherited their royalty interests from which they are receiving royalties and have never seen the instrument that has created the relationship between them and their lessee-producer. **This primary relationship has been established through an instrument designated as an oil and gas lease.** Basically, among other things, the lease sets forth the names of the parties, contains a granting clause stating the purpose of the lease (i.e., exploring for and producing oil and gas, etc.), provides for a primary and secondary term, provides for payment of royalty for oil and gas, for payment of delay rentals under certain conditions, gives the lessee several rights, including the right to consolidate the gas leasehold estate with other lands. The lease also contains numerous other provisions dealing with the rights and obligations of the respective parties in their relationship with each other.

The landowner who executes the oil and gas lease is, of course, referred to as the **"lessor"** and the person or company to whom the lease is given is the **"lessee."** Oftentimes, reference is made to the landowner interchangeably as **"lessor,"** as **"royalty owner,"** or **"mineral owner,"** and in some instances as the **"surface owner"** if the minerals have been severed from the surface by deed, will or otherwise. The lessee is often referred to as the **"producer"** and sometimes as the **"operator"** if the lessee has the responsibility of operating the well.

In the Hugoton Field, most of the oil and gas leases were executed years ago, as early as the late 1920s, and many of them in the 1930s and 1940s, and normally remain binding on the landowner and mineral owner as long as there is gas or oil production. Provisions of these old leases cannot be changed without express consent of both parties.

Many of these old leases were silent as to the right of the lessee to unitize the land with other lands to form a gas unit of 640 acres or less, as authorized in the early 1940s by the Kansas Corporation Commission (KCC) to prevent waste and protect correlative rights. Consequently, the gas companies sought and gained permission from the landowners to unitize their land with other acreage, usually in the same section, through a document referred to as a **"unitization agreement."** This allowed the gas company to increase production from an existing well by as much as four times (unitizing four quarter sections) without having to drill another well.

If the company already had that right under the terms of the oil and gas lease to consolidate or unitize the land for production of gas, a document designated as **"consolidation agreement"** would be filed of record by the producer specifying the acreage to be included in the gas unit. Once oil or gas production was obtained, the producer would then file of record an **Affidavit of Production**, giving notice to the world that the lease from which production was had would remain in full force and effect as long as there is oil or gas production.

In some instances in the Hugoton Field, consolidation or unitization of lands for gas production was obtained through **lease modification agreements** which gave the right of unitization and sometimes changed the percentage of royalty to which each tract in the gas unit would be entitled. Lease modification agreements were used in creating a significant number of gas units involving Mobil Oil Corporation and its landowners during the 1940s.

Steps to Take in Obtaining Copies of Lease Documents

We would venture to guess that most of our royalty owner members, whether you have inherited or purchased your mineral interests, in all probability do not have a copy of your oil and gas lease and will not be familiar with the lease terms. **We are not necessarily recommending that you do so but in the event you are interested in what your lease says, you can write to the Register of Deeds or a local abstracter in the county in which you own a mineral interest and request a copy.** You will need to furnish to the Register of Deeds or the abstracter with an accurate description of your mineral interest. The best source for this information will be the instrument by which you acquired title, whether by deed, journal entry of final settlement or decree of descent, or otherwise.

If you are interested in knowing the lands included in the gas unit or units in which you have an interest, you will also need to request a copy of the unitization agreement, or consolidation agreement, or lease modification agreement, whichever document applies in your particular case. You would not need the Affidavit of Production unless you want to know when the well was drilled or completed.

Once you have a copy of your lease, you may be surprised at the number of rights given to the lessee under the lease without corresponding protection to the landowner, particularly under the old leases executed years ago. You may need a magnifying glass to read the "fine print" of the lease.

Experience can be a good teacher and after living with these old leases for years and seeing the many problems and misunderstandings arising between the landowner and lessee relative to lease terms, the undersigned authored an article published in **The Journal of the Kansas Bar Association, Volume 52, Number 1 (1983), entitled, "Landowners' Viewpoints in Pipeline Right-of-Way and Oil and Gas Lease Negotiations," to help resolve some of those problems.** The article outlines problems arising between the landowner and the lessee over the terms of the oil and gas lease and possible solutions to those problems. **The Secretary's office has a limited number of reprints of the article available upon request.**

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Mi[illegible]n Royalty Provision in a Lease

One good reason for knowing the terms of your lease, with the declining production in the Hugoton Field, is that it may contain a minimum royalty provision. This is probably not true with most old leases in the Field but some, and particularly those executed in fairly recent years, contain a minimum royalty provision which provides basically as follows:

> "Lessee agrees that at no time during the life of this lease shall the royalty paid to the Lessor for a yearly period commencing with first production from the well..... be less than $5.00 per acre. Such deficiency, if any, shall be paid to Lessor by Lessee within thirty (30) days after notice and written demand thereof is made by Lessor."

The purpose of this provision is obvious. If the company is producing the well and royalties drop below $5.00 per mineral acre per year, the Lessor is entitled to more money. The burden is on the royalty owner to determine this fact and this behooves you to know the provisions of your lease to determine if you are entitled to additional royalties. **We caution our members that a minimum royalty provision is not included in most old oil and gas leases in the Hugoton Field** but a person will not know unless he or she is able to read the lease to determine the applicability of a minimum royalty provision in the lease.

Discussion of Other Lease Provisions in Future Newsletters

There are other provisions in your oil and gas lease that might have similar impact. We will try to address some of these issues that may arise in subsequent newsletters. Hopefully, the above dissertation will help our members become aware of provisions in oil and gas leases which may affect your rights as a royalty owner.

PRESIDENT'S CORNER

As you will see reported elsewhere in this newsletter, your Association has played an important role in seeking relief for royalty owners from the ad valorem liability. It is worth remembering that issues presently under litigation (the continuing ad valorem cases, the deductions cases, and the measurement case) would have been of considerable interest to royalty owners at any time. However, they are particularly important to us as royalty owners now, as the Hugoton Field is playing out. Your Association is determined to do what it can to ensure that royalty owners are treated fairly, especially now as production declines.

In that regard, we need to hear from you. As I noted in the last newsletter, it is important for the Board of Directors to know of your concerns and I suggested that you be in touch with your county directors to make your views known. However, there is another channel of communication available to you. The Board meets quarterly and any member of the Association is welcome to attend those meetings. The Board meets the last Thursday of October, January, March and July, either in Hugoton or one of the surrounding towns, although those dates are flexible and may be changed from time to time. Check with the Association office to confirm the date and place of a meeting and come along and join us.

Best regards,

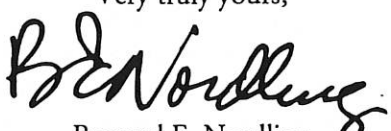
/s/ John Crump

DUES PAYMENTS

Over 98% of our more than 2,477 members have paid their 2002-2003 dues. It has been extremely helpful that most SWKROA members are paying their dues promptly. We very much appreciate this cooperation. If you have not paid your dues, we would appreciate your doing so at your earliest convenience.

The invitation remains open that if you have any questions at any time, please feel free to call or write.

Very truly yours,



Bernard E. Nordling
Assistant Executive Secretary

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TESTIMONY BEFORE THE HOUSE UTILITIES COMMITTEE

SENATE BILL 331

March 11, 2004

Chairman Holmes and Members of the Committee:

My name is Amanda Spikes, and I am currently a law student at the University Kansas School of Law. I periodically do research for Bernard E. Nordling on energy related matters. It was in doing such research for Mr. Nordling that I came across some state statutes referencing wind energy easements. I wish to bring attention to the following state statutes regarding the recording of wind energy leases or easements.

South Dakota made the below provisions in reference to recording a wind easement.
S. D. Codified Laws §§ 43-13-17 (2003)

> Any property owner may grant a wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easement **shall be created in writing and shall be filed, duly recorded, and indexed** in the office of the register of deeds of the county in which the easement is granted.

Minnesota as well as Nebraska have nearly identical language in their statutes regarding wind easement recordation. Minn. Stat. Ann.§ 500.30 (2003); Neb. Rev. Stat. Ann. § 66-910 (2003).

All three states also have similar requirements for the contents of instruments creating wind easements. These requirements include, but are not limited to, a description of the real property affected, any terms or conditions under which the easement is granted or terminated, and provisions for compensation of the owner of the real property for interference of enjoyment of the easement or maintenance of the easement. Minn. Stat. Ann. § 500.30 (2003); Neb. Rev. Stat. Ann. § 66-911 (2003); S. D. Codified Laws §§ 43-13-18 (2003). Copies of the referenced statutes are attached hereto and hereon made part of this testimony.

Respectfully submitted,

Amanda Spikes,
Research Assistant

Attachments

HOUSE UTILITIES
DATE: 3-11-04
ATTACHMENT 3

SOUTH DAKOTA CODIFIED LAWS

TITLE 43. PROPERTY
CHAPTER 43-13. EASEMENTS AND SERVITUDES

S.D. Codified Laws § 43-13-17 (2003)

§ 43-13-17. Creating and granting wind easements -- Filing written agreement -- Maximum term -- Development of energy potential required

Any property owner may grant a wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easement shall be created in writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the easement is granted. Any such easement runs with the land or lands benefited and burdened and terminates upon the conditions stated in the easement, except that the term of any such easement may not exceed fifty years. Any such easement is void if no development of the potential to produce energy from wind power associated with the easement has occurred within five years after the easement began. Any payments associated with the granting or continuance of any such easement shall be made on an annual basis to the owner of record of the real property at the time the payment is made.

HISTORY: Source: SL 1996, ch 260, § 2; 2003, ch 227, § 1.

S.D. Codified Laws § 43-13-18 (2003)

§ 43-13-18. Required terms and provisions of wind easements

Any deed, will, or other instrument that creates a wind easement shall include:

(1) A description of the real property subject to the easement and a description of the real property benefiting from the wind easement;

(2) A description of the vertical and horizontal angles, expressed in degrees, and distances from the site of the wind power system in which an obstruction to the wind is prohibited or limited;

(3) Any terms or conditions under which the easement is granted or may be terminated;

(4) Any provisions for compensation of the owner of the real property benefiting from the easement in the event of interference with the enjoyment of the easement, or compensation of the owner of the real property subject to the easement for maintaining the easement; and

(5) Any other provisions necessary or desirable to execute the instrument.

HISTORY: Source: SL 1996, ch 260, § 3.

LEXIS (TM) MINNESOTA ANNOTATED STATUTES
CHAPTER 500 ESTATES IN REAL PROPERTY
USE OF AGRICULTURAL LAND BY BUSINESS ORGANIZATIONS
Minn. Stat. § 500.30 (2003)

500.30 Solar or wind easements

Subdivision 1. Solar easement. "Solar easement" means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or solar skyspace for the purpose of ensuring adequate exposure of a solar energy system as defined in section 216C.06, subdivision 17, to solar energy.

Subd. 1a. Wind easement. "Wind easement" means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or air space for the purpose of ensuring adequate exposure of a wind power system to the winds.

Subd. 2. Like any conveyance. Any property owner may grant a solar or wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easements shall be created in writing and shall be filed, duly recorded, and indexed in the office of the recorder of the county in which the easement is granted. No duly recorded easement shall be unenforceable on account of lack of privity of estate or privity of contract; such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that an easement may terminate upon the conditions stated therein or pursuant to the provisions of section 500.20.

Subd. 3. Required contents. Any deed, will, or other instrument that creates a solar or wind easement shall include, but the contents are not limited to:

(a) a description of the real property subject to the easement and a description of the real property benefiting from the solar or wind easement; and

(b) for solar easements, a description of the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar easement extends over the real property subject to the easement, or any other description which defines the three dimensional space, or the place and times of day in which an obstruction to direct sunlight is prohibited or limited;

(c) a description of the vertical and horizontal angles, expressed in degrees, and distances from the site of the wind power system in which an obstruction to the winds is prohibited or limited;

(d) any terms or conditions under which the easement is granted or may be terminated;

(e) any provisions for compensation of the owner of the real property benefiting from the easement in the event of interference with the enjoyment of the easement, or compensation of the owner of the real property subject to the easement for maintaining the easement;

(f) any other provisions necessary or desirable to execute the instrument.

Subd. 4. Enforcement. A solar or wind easement may be enforced by injunction or proceedings in equity or other civil action.

Subd. 5. Depreciation, not appreciation counted for taxes. Any depreciation caused by any solar or wind easement which is imposed upon designated property, but not any appreciation caused by any easement which benefits designated property, shall be included in the net tax capacity of the property for property tax purposes.

HISTORY: *1978 c 786 s 21; 1981 c 356 s 248; 1982 c 563 s 16; 1987 c 312 art 1 s 10; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20*

REVISED STATUTES OF NEBRASKA ANNOTATED

CHAPTER 66. OILS, FUELS, AND ENERGY

ARTICLE 9. SOLAR ENERGY AND WIND ENERGY

R.R.S. Neb. § 66-910

§ 66-910. Solar skyspace easement; wind energy easement; how executed; effect

Any property owner may grant a solar skyspace easement or wind energy easement in the same manner and with the same effect as a conveyance of any other interest in real property. The easement shall be created in writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the easement is located. No duly recorded easement shall be unenforceable on account of lack of privity of estate or privity of contract. Such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that a solar skyspace easement or wind energy easement may terminate upon the conditions stated therein or by agreement of the owners of the lands benefitted and burdened.

HISTORY: Laws 1979, LB 353, § 10; Laws 1997, LB 140, § 6.

R.R.S. Neb. § 66-911 (2003)

§ 66-911. Easement; document that creates; contents

Any deed, will, or other instrument that creates a solar skyspace easement or wind energy easement shall include, but the contents are not limited to:

(1) A description of the real property subject to the solar skyspace easement or wind energy easement and a description of the real property benefiting from the easement;

(2) A description of (a) the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar skyspace easement extends over the real property subject to the solar skyspace easement, (b) the dimensions of the wind energy easement sufficient to determine the horizontal space across and the vertical space above the burdened property that must remain unobstructed, or (c) any other description which defines the three-dimensional space or the place and times of day in which an obstruction to solar energy or wind energy is prohibited or limited;

(3) Any terms or conditions under which the easement is granted or may be terminated;

(4) Any provisions for compensation of the owner of the real property benefiting from the easement in the event of interference with the enjoyment of the easement or compensation of the owner of the real property subject to the easement for maintaining the easement; and

(5) Any other provisions necessary or desirable to effect the purpose of the instrument.

HISTORY: Laws 1979, LB 353, § 11; Laws 1997, LB 140, § 7.

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STATEMENT OF
THOMAS G. SCHNITTKER, REAL ESTATE SALESMAN
FOR GENE FRANCIS & ASSOCIATES
445 SE PARK HILLS DR.
PRATT, KANSAS 67124-8230

TESTIMONY BEFORE THE HOUSE UTILITIES COMMITTEE
Senate Bill No. 331
March 11, 2004

Chairman Holmes and Members of the Committee:

INTRODUCTION AND BACKGROUND

My name is Thomas G. Schnittker, a resident of Pratt, Kansas. I am a real estate salesman, farm manager and farmer. Currently, I operate land in Ford and Stevens Counties in Kansas. Since 1975, I have been a licensed real estate salesman (License No. SP00014277) in the State of Kansas. From 1981 through 1998, I was the principal of a farm management company, Schnittker Ag. Services of Winfield, Kansas. Under Schnittker Ag. Services, I managed over 25,000 acres of land in southwest Kansas, eastern Colorado and the Texas and Oklahoma Panhandles. From 1998 through 2000, I worked for Farmers National Company as a farm manager in the Kansas City area.

Since 2000, I have been a resident of Pratt County, Kansas and marketing real estate principally in Kansas and Oklahoma. The real estate properties our firm, Gene Francis & Associates, markets is primarily agricultural and recreational investment types of properties. Gene Francis & Associates has office in Pratt, Wichita and Anthony, Kansas.

CONCERNS OVER FAILURE TO RECORD FULL LEASE OR EASEMENT

I am in favor of wind energy. Wind energy is a renewable resource and has many benefits to local landowners and the State of Kansas. I would like to enter this written testimony in favor of passage of Senate Bill No. 331 to amend the recording requirements to include wind energy leases. In my opinion, all wind energy leases must be recorded for the protection of the Grantor and the Grantee. If the wind energy lease is not recorded, either party could be subject to unfair practices by the other party. If the Grantor (landowner) grants a lease to a wind energy company, the entire lease should be recorded for the protection of both parties. In this example, the Grantee (wind energy company) takes a lease from the landowner and only files a memorandum concerning the lease. If the Grantee does not record the lease and a tragic event (such as the destruction of the Twin Towers in New York City) occurs, the Grantee then has

no written record to protect their successors in interest. The Grantor could claim that the payment for the wind towers could be two or three times higher than the original amount called for in the original lease document. Without the lease being recorded, there is no way the Grantee could prove "beyond a reasonable doubt" the original lease called for an annual payment of "X dollars" per year for "X" years. In this example, the original document was destroyed and now the Grantor has the only signed copy and could demand additional fees of the Grantee that would be unreasonable and very costly for the Grantee to disprove in a court of law.

To protect the Grantor, the wind energy leases must be recorded. The Grantor is allowing for specific uses of his land for the generation of wind energy. This is not unlike the granting of an oil and gas lease for the exploration of oil and gas. Under the terms of the oil and gas lease, the Grantee is receiving only specific rights to the property. These rights are spelled out in the lease that is of public record in the courthouse. If the wind generators are to be in place for 30-60 years, it would be possible that the lease could pass through to 2 or 3 generations. By the time 50 years has passed, it would be very difficult for the Grantor or their heirs to present a bonafided copy of the lease. In this example, the Grantor's heirs would be at a disadvantage---they do not have a recorded copy of the lease. A copy of the lease to the wind generation company might be withheld from the Grantor's heirs in order that the Grantee receives "more favorable" use under the terms of the wind lease.

For the protection of both parties, the wind lease must to be recorded. As a licensed real estate salesman since 1975. I feel it would be imperative for the public to have a copy of the wind lease. A copy of the lease (from the local courthouse) would be available to the public, any future purchasers, and title insurance companies. In today's real estate market, 95% of all real estate transactions convey title through title insurance. If the wind generation lease is not recorded at the courthouse, the lease would be exempted from the title insurance policy. For the protection of the Buyer and Seller in a real estate transaction, it is imperative that a copy of wind generation lease be available in order that the Seller can grant good title to the Buyer and that the Buyer can make an informed, intelligent and knowledgeable decision concerning the purchase of the property that is affected by the wind generation. If the lease is not recorded, a prudent Buyer would discount the price of the land due to the "lack of information" available concerning the wind generation lease.

As per information provided to me, House Bill #2280 was originally drafted to address the issue of requiring the filing of record any leases involving wind resources and/or technologies to produce and generate electricity. As I understand it, House Bill #2280 was amended to permit the filing only of a memorandum of lease or easement and not the full lease agreement. I believe it to be essential that the entire lease agreement be recorded for the protection of all parties, particularly the Grantor, i.e. landowner.

As a licensed real estate salesman, many times I will research the title and/or easements on properties that we are listing or about to sell at auction. Without the entire lease document being put of record, it would be impossible as an agent for the seller to fully inform a buyer of any leases that are pertinent to the sale their land. Certain wind generation leases restrict the land use, i.e. no irrigation because irrigated land has different wind patterns than say dry cropland or pasture.

Many of those opposed to the recording of the entire wind easement feel that recording the entire document would give their competitors an unfair advantage. The amount of compensation in oil leases states "one dollar & other valuable considerations". This has worked well for the oil and gas industry for 100 years and could well serve the Wind Generation Industry.

RECOMMENDATION ON ACTION TO BE TAKEN WITH REFERENCE TO SENATE BILL 331

For the above reasons, I believe it is in the best interests of all parties to have the wind generation lease recorded in its entirety at the Office of the Register of Deeds. The recording of the lease would best serve all parties (present and future) involved in the lease. For this reason, I am in favor of passage of Senate Bill No.331. I would welcome the opportunity to visit with the committee in person and enter personal testimony in favor of Senate Bill No. 331.

Respectfully submitted,

/Thomas G. Schnittker/

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Tallgrass Ranchers
LandOwners, Families & Friends

March 11, 2004

Chairman Holmes and members of the Committee:

I am Alan Cobb, representing the Tallgrass Ranchers, a group of over 250 landowners and ranchers organized to protect the Flint Hills and the Tallgrass Prairie.

I would like to provide an example of why Senate Bill 331 is needed. In the past two years in Butler County, several wind power developers have sought conditional use permits to construct utility scale wind turbine complexes on several thousand acres of tall grass prairie in the Flint Hills. Conditional use permits require review by a planning commission and approval by the county commission.

After the primary election in 2000, it was clear who would be elected as the new county commissioner in Butler County. He was a man whose family controlled substantial land holdings. When the primary was over, one of the wind developers with a proposed project in Butler County, who was aware this man was about to become a county commissioner, approached this future commissioner about using his land for wind development. After the commissioner was sworn into office, and in advance of the developer submitting an application for a conditional use permit which would require the commissioner's approval, the developer and the commissioner signed a lease option under which the commissioner received annual payments and the developer had the right to use the commissioner's property for a utility scale wind turbine complex. Because there was no law like Senate Bill 331, the terms of this lease option were not publicly known or discoverable.

Of course there is nothing wrong with a government official entering into a private contract with respect to his own land. However, there are important reasons why the terms of that contract should not remain secret. The day before the developer's proposal came before the County Commission, the Commissioner filed in the wrong office and in a file not available to the public, a Disclosure of Interest Statement, identifying his relationship with the developer, but substantially mischaracterizing it as something less than what we now know it was. He called it a "Lease of land for wind metering," when, in fact after we are able to review its terms we can see it was an option to allow the developer to build a utility scale wind turbine facility. Again, because Senate Bill 331 was not the law, the public could not know of the mischaracterization.

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When the conditional use application submitted by the developer with whom he had a contract came up for a vote the next day, the commissioner made a procedural motion that prevented the defeat of the application. After a newspaper article later made the Commissioner's relationship with the developer public, the Commissioner made an oral statement recorded in the county commission minutes which again mischaracterized the lease option and made it seem less significant than it was. He said he was not pursuing the venture with the wind company when in fact the lease option provided that he would continue to receive payments and we now know he did continue to receive money from the developer even after saying he was not pursuing the venture. Again, the public could not know that at the time because nothing required the lease option to be filed of record.

Eventually the developer withdrew its application. But the commissioner continued to participate in two other decisions which could have (and one of which still may) set the precedent for allowing wind turbine complexes on land in the same area as his family land which he had granted the wind developer a right to use for a utility scale wind turbine complex. It was not until litigation over one of those decisions that the option agreement was finally obtained and the public could see exactly what the commissioner's personal financial interest in wind development was.

Unfortunately, this incident of questionable dealing is not unique. As a fledgling wind industry develops, we see a whole range of improper conduct. We see the president of one company offering the school board money if, and only if, it will agree to write a letter of support to the planning commission. We see at least three companies offering money (in one case almost $2 million) if the county commissioner will decide cases in front of them in favor of the developer. We see wind development promoters in trouble for selling unregistered securities—telling potential investors that investments from $500 to $50,000 in wind turbines would generate as much as 24% returns per year from the generation and sale of electricity. Senate Bill 331 will not completely clean up the industry. Regulation may be necessary to do that. But I ask you to adopt Senate Bill 331 because good government is not compatible with secrecy. Senate Bill 331 aids the cause of good government.

SWKROA
SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

Greeley
Hamilton
Kearny
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Stanton
Grant
Haskell
Morton
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Hugoton, Kansas 67951

Testimony before the House Utilities Committee
Senate Bill 331
March 11, 2004

Chairman Holmes and members of the Committee:

My name is John Crump and I am President of the Board of Directors of the Southwest Kansas Royalty Owners Association. I appreciate this opportunity to express my views to the Committee on SB 331 regarding the filing of wind energy leases with county Registrers of Deeds.

Our Association believes that all documents pertaining to the land -- deeds, leases, rights of way, easements, etc -- should be filed and made a matter of record. Such recording is necessary so that any party to a future transaction will have access to complete information regarding the land. Wind energy leases will place encumbrances or restrictions on the use of the land and should be fully and accurately recorded, not just for today but for the future. (Most of us royalty owners are accustomed to dealing with leases which are 40 to 50 years old and which are available to us today because someone filed those leases years ago.)

We believe the requirement for filing and recording should apply to wind energy leases just as much as to oil and gas leases. Furthermore, to create the full record, it is imperative that the full text of a lease be recorded and not just a memorandum. To do less with wind energy leases than with oil and gas leases would create an unfavorable precedent; if wind energy companies are permitted to file only memoranda of leases, oil and gas companies would press for the same procedure and we would oppose that. All energy companies should be treated equally.

I urge you to give favorable consideration to SB 331.

Respectfully submitted,

John E. Crump
President, SWKROA

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DATE: 3-11-04
ATTACHMENT 6

Testimony before the House Utilities Committee

Senate Bill 331

March 11, 2004

Chairman Holmes and Members of the Committee:

I appreciate this opportunity to present my testimony before the committee in favor of amending Senate Bill 331 to require the recordation of leases or easements involving wind resources and technology to produce and generate electricity.

I have practiced law for 33 years in Cimarron, Gray County, Kansas. In the last several years on behalf of clients I have reviewed wind generator easements in Gray, Hamilton, Ford, Chase, Butler, and Morris counties in Kansas. Without exception, each of these easements has prohibited the farmer from recording the full easement and has prohibited the farmer from disclosing the contents of the easements to any third party and has required that the easement be maintained as confidential.

I believe that full copies of the wind generator easements should be recorded for several reasons, among which are the following:

1. ***Public Policy.*** The reason we have the recording act and maintain in each county an office for the Register of Deeds is so that we will know who owns our lands and the burdens to which they are subject. Occasionally we as a state have departed from this goal; for example, we allow people to transfer real estate by deed to trusts and do not require the recordation of the trust. In my judgment, that has been an unwise decision; trying to determine who is the Trustee and what are the Trustee's powers and when is a purported conveyance from the trust a violation of the trust consume a great deal of time and energy of the lawyers and title companies across the state. We should not repeat that mistake of allowing unrecorded instruments to control the ownership and disposition of Kansas real estate by permitting wind generation easements to go unrecorded.

2. ***Unfair Advantage.*** My experience in numerous Kansas counties, and in speaking with lawyers and farmers in Iowa and North Dakota that also have wind farms, has been that the power companies absolutely and totally refuse to negotiate or to bargain over the terms of the easements. Their two favorite ploys in negotiations are to claim first, that the banker/lender will not allow any deviation from the standard form of the contract, or to argue that they have a company policy to the effect that all landowners will receive the same treatment and that no landowner will be preferred or treated better than another, so therefore they must keep all of the easement agreements uniform.

My experience with oil and gas lessees over the years has been that while they make the same sorts of argument, I can go to the courthouse and obtain a copy of all of the leases of all of the neighbors and then go to other counties and obtain copies of all of the leases the company has written in other counties, enabling me to see for myself whether they are treating everyone exactly the same, and I can also see what the competition is doing.

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Historically, "secret" deals have not been good for society. I do not see that "secret" wind farm easements will benefit the residents of the state of Kansas.

3. ***Future Events***. Without a recorded easement, future owners and others dealing with the landowner in the future will not be aware of the terms of the unrecorded wind farm easement. This concerns me a great deal, and let me give you but one example of my fears:

Without exception, every one of the wind farm easements I have read contains an indemnification clause. The landowner/farmer agrees to indemnify the owner of the wind generator against anything that occurs on the land as the result of the farmer's actions on the land or the actions of others permitted on the land by the farmer. If the farmer gives permission to someone to hunt pheasants on the real estate and the hunters mistakenly shoot a wind generator rotor, or if the farmer contracts with a custom wheat harvester who inadvertently starts a wheat field fire and the heat warps a rotor, then the farmer is absolutely liable and must reimburse the wind generator owner. There are no exceptions to this clause, and it is a draconian provision that makes the farmer into an insurer and guarantor of the wind generator owner. In all of the oil and gas leases I have read, and in all of the utility easements I have examined, I have never before come across any provision with such far reaching and potentially catastrophic consequences. Nevertheless, the wind generator owners will not negotiate the removal of this clause and refuse to budge on it.

Fifteen years down the road, when farmer Jones wants to sell the quarter of land where the wind generator is situated, do we really want to create a situation where farmer Smith unknowingly purchases the real estate subject to this kind of unrecorded adhesion clause? It seems to me that as a society, if we are going allow third parties to use a farmer's land only if the farmer agrees to insure, indemnify, and guarantee that no harm will come to the third party on the farmer's land, then the least we should do is require public notice so innocent purchasers in the future can make an knowledgeable decision about whether they wish to assume this kind of liability.

Thank you for considering my remarks.

Very truly yours,

Philip Ridenour
P.O. Box 1028
Cimarron, KS 67835
(620) 855-7051

rs

cc: Bernie Nordling

Testimony of James R. Yoxall

House Utilities Committee

Senate Bill No. 331

March 11, 2004

Chairman Holmes and Members of the Committee:

My name is James R. Yoxall. I am a lawyer and have been practicing law in Liberal, Kansas for 53 years. During that period of time, a large part of my practice has been dealing with real estate titles and issues.

I have, within the past two (2) years, negotiated on behalf of certain clients (landowners) wind energy leases both in the State of Oklahoma and the State of Texas. I am currently involved on behalf of a landowner/client with negotiations pertaining to a wind energy lease in Kansas. In the course of my practice over the last 53 years, I have been involved in many property leases involving commercial and oil and gas leases and agricultural.

Most of the wind energy leases are from 25-35 years in length with options for renewal beyond that period. If you compare this to the oil and gas leases, they are somewhat similar in that an oil and gas lease, where production is obtained is perpetuated so long as there is production. The problem is that someplace down the line the details become lost if it is not recorded. The companies change hands as we have in seen the past 50 years. They change very frequently in fact. What is a prospective purchaser to do when they want to find out what the terms are on these leases or easements that go on almost in perpetuity? The prospective purchaser wants to know what he is getting, not just what they can see out there, but what are they actually going to be getting and what are the restrictions.

Another problem involves the lending institutions. Any lending institution wants to know the value of the property. If the appraiser is unable to locate the full lease in the courthouse, they have no way of knowing what the restrictions might be, what the benefits might be and they simply cannot give the lending institution, or any other person, a valid estimate of the value of the property. If the full lease is not recorded, it is not just the landowner and the wind energy people that are affected, it will be the lending institutions, the appraisers, prospective purchasers and I am certain that you can think of many others as well.

I have seen some previous suggestions before the House Utilities Committee that the cost of recording would be astronomical. I would submit to you the cost of

recording the lease might amount to $100-$150. That is nothing more than a drop in the bucket compared to the $800,000-$1,000,000 per tower that the cost of erection of the wind energy towers would be.

I apologize for the length of this statement. I wish to urge you to consider favorably the Amendment as set forth in Senate Bill No. 331 even though in my opinion the bill could be strengthened and be more beneficial to the landowners and businesses in Kansas to require the full lease to be recorded, because I can assure you that anyone having a need to know will discover many, many restrictions in every wind tower energy lease. The restrictions are vital to anyone owning the property, any future owner and any person having any contact with the property, i.e. appraisers, lender, etc.

I would urge your adoption of Senate Bill No. 331, or preferably, I would urge you to strengthen the Bill to require the recording of a document setting forth all of the various restrictions on the use of the lands.

I thank you and the Committee for your time and I would be happy to discuss this personally with you or any Member of the Committee.

/s/ James R. Yoxall

James R. Yoxall

JRY/bjs

8-7

Kansas Independent Oil & Gas Association
800 S.W. Jackson Street, Suite 1400
Topeka, Kansas 66612
www.kioga.org

Testimony to the House Utilities Committee
Senate Bill 331- An Act concerning wind resources and technologies
Don Schnacke for
Kansas Independent Oil & Gas Association
March 11, 2004

My name is Don Schnacke. I am appearing on behalf of the Kansas Independent Oil and Gas Association (KIOGA) regarding Senate Bill 331. My testimony only pertains to the amendment to that bill (Section 3) applicable to oil and gas law. We do not address the wind energy lease provisions of the bill.

As introduced, Senate Bill 331 was a bill pertaining to wind farm leases, and in particular concerning the recording of leases and easements pertaining thereto. In early February, it was suggested to amend that bill to resolve a separate issue which arose in western Kansas out of the land practices of a certain out-of-state oil corporation in purchasing mineral and royalty rights and interests from landowners. KIOGA was informed of the issue and Ed Cross, Executive Vice President of KIOGA, offered to help in its resolution. At the hearing, KIOGA appeared in opposition to the proposed amendments because they appeared to void automatically any mineral or royalty deed merely because it contained a broad general description of lands, notwithstanding whether the land description was intended or was in error. KIOGA did pledge to help to draft an appropriate amendment, although KIOGA stated that any such amendment sought should be as a separate bill to amend the recording statutes and should be the subject of a study by the judiciary committee, with input by the Kansas Bar Association Title Standards Committee, a representative from the Association of the Register of Deeds in Kansas, KIOGA, the Southwest Kansas Royalty Owners Association (SWKROA), and others who may be affected. Despite its testimony at the hearing, KIOGA was instructed to work, in conjunction with SWKROA, to draft new provisions as amendments to Senate Bill 331 in time for the next hearing.

KIOGA drafted language to address the issue, but its draft was not accepted by SWKROA. Indeed, the language which comprises the pertinent amendment was drafted by SWKROA. It was furnished to KIOGA on February 16 about 30 minutes before the hearing. KIOGA reviewed it and determined that the circumstances in which this amendment could be used are extremely narrow. The law of the state of Kansas already allows an action to be brought to reform a deed which grants an interest in land by mutual mistake, and nothing in the amendment changes that right; yet, the amendment provides a $10,000 penalty, plus attorneys fees which can be assessed against persons who refuse to reform any deed which the grantor or grantee believes contains an overly broad legal description allegedly caused by either unilateral or mutual mistake. The amendment presumes that the grantee (and not the grantor, as is usually the case) drafts the mineral or royalty deed which is the subject of the amendment. Moreover, the amendment does not address the rights of a grantee when he or she is brought into an action when a grantor unreasonably determines that any mineral or royalty deed should be reformed. Nonetheless, the amendment appears to address (although it may not fully resolve it) the narrow issue which arose in western Kansas out of the land practices of a certain oil corporation in purchasing mineral and royalty rights and interests from landowners.

In view of the above, KIOGA does not support the amendment contained in the new section 3. However, KIOGA still strongly believes and recommends that any change in Kansas law such as the one sought in the pertinent amendment should be contained in a bill directly amending the recording statutes and should be the subject of a study by the judiciary committee with input from the Kansas Bar Association Title Standards Committee, a representative from the Association of the Register of Deeds in Kansas, KIOGA, the Southwest Kansas Royalty Owners Association (SWKROA), and others who may be affected. KIOGA still remains able and ready to assist in drafting such an amendment to Kansas law, perhaps brought as a subject of an interim study. Thank you for your time and consideration. I would be happy to answer any questions.

March 11, 2004
Testimony before the House Utilities Committee
Regarding SB 331
Presented by Scott J. Schneider J.D.
On behalf of Kansas Wind Coalition

Mr. Chairman and members of the committee, my name is Scott Schneider. I am representing the Kansas Wind Coalition. The Coalition is comprised of wind generation companies and supporters who are seeking to locate wind generation facilities in Kansas. The purpose of the Coalition is to provide decision makers with balanced and accurate information regarding the development of energy policy in Kansas.

We oppose SB 331 for two reasons. First, current law is sufficient. It is in the best interest of both parties to file and secure their interest. Our members currently file with every county a memorandum of lease. This document puts the public on notice that the land is encumbered by possible wind development activity.

Second, it is my belief that the State of Kansas should not be in the business of writing lease agreements. New Section (2)(a) requires that lease agreements contain certain language. This provision treats wind differently than other industries.

To conclude, the emerging wind industry is seeking to make significant investments in the State of Kansas. Kansas is a top tier state in wind energy potential in the United States. It is our hope Kansas will continue to value clean generation of electricity and renewable energy.

Thank you for the opportunity to present our concerns, I will stand for questions.

HOUSE UTILITIES
DATE: 3-11-04
ATTACHMENT 10

When recorded, please return to:
Terry Monson
Nyemaster Law Firm
700 Walnut, Suite 1600
Des Moines, IA 50309

STATE OF KANSAS, Gray County
This instrument was filed for record on
the 25th day of July A.D. 2002
at 3:25 P.M. and duly recorded in Book
99 on Page 436-440
Barbara K. Bostrom
Register of Deeds
140

This Document Was Prepared by: Terry Monson, 700 Walnut, Suite 1600, Des Moines, IA 50309 (515)-283-8024

MEMORANDUM OF WIND FARM EASEMENTS

FPL Energy's "Gray County Wind Energy, LLC," a Delaware limited liability company, and its successors in interest ("FPLE"), and Llewellyn J. Balster Revocable Trust, and its successors in interest ("Owner"), are the parties to the Gray County Wind Farm Easement Agreement (the "Agreement") dated as of April 16, 2001. The Agreement includes a grant of easements and establishes the rights of the parties and their duties to each other with regard to the development, design, financing, construction, operation, repair, maintenance, replacement, and removal of all Wind Farm Improvements in FPLE's Gray County Wind Farm. Owner and FPLE have agreed to record this memorandum of easement ("Memorandum") to give notice of significant provisions of the Agreement.

DEFINED TERMS AND EXHIBITS. Capitalized terms in this Memorandum have the meanings given them in the Agreement. Owner is the owner of the real property described on attached **Exhibit A** ("Owner's Property"). Attached **Exhibit B** shows the approximate planned location of all wind turbine generators ("Turbines"), electrical transmission system facilities ("Transmission Facilities"), meteorological towers ("Met Towers"), access roads, entrances, fences and gates, drainage systems, signs, information kiosk, operations and maintenance building, and other structures, rights and facilities used in the construction, operation and maintenance of the Wind Farm (collectively, "Wind Farm Improvements"). **Exhibit B** also shows the location of the Turbine Site, Access, Transmission Facilities, and Construction Easements as well as any Transmission Line, Met Tower Site and Met Tower Access Easements that may be located on the Owner's Property. **Exhibit C**, which will be recorded separately after construction of the Wind Farm Improvements, will depict the final as-built Easement Plan and shall serve as a replacement for **Exhibit B**. **Exhibit C** will show the exact location of the Wind Farm Improvements, Turbine Site, Access, Transmission Facilities, and Construction Easements as well as any Transmission Line, Met Tower Site and Met Tower Access Easements that may be located on Owner's Property as finally agreed and approved by the parties.

NO INTERFERENCE. Owner's activities and any grant of rights Owner makes to any third party, whether located on the Owner's Property or elsewhere, shall not, now or in the future, interfere in any way with FPLE's exercise of any rights granted under the Agreement. Owner shall not interfere with the wind speed or wind direction over Owner's Property, or engage in any activity that might cause a decrease in the output or efficiency of Turbine or Met Tower in the Wind Farm.

NEGATIVE COVENANT. Owner agrees not to grant, convey, assign or provide any easement, license, permit, lease or other right for access across the Owner's Property for

generation or transmission of power on or across Owner's Property to any third party in connection with the construction or operation of electrical generating or transmission facilities. This covenant shall not be interpreted to deny Owner the right to grant telecommunications providers appropriate rights to construct and maintain telecommunications facilities on or under the Owner's Property so long as the rights are granted in compliance with the requirements of the Agreement.

HUNTING AND FIREARM RESTRICTIONS. The Agreement restricts hunting and the discharge of firearms on the Owner's Property or in the vicinity of the Wind Farm Improvements for the protection of FPLE's site personnel and the Wind Farm Improvements.

CROPS. The Agreement reserves to Owner or Owner's tenants the right to farm areas of the Owner's Property included in the Easements as permitted by FPLE to the extent the farming activities do not and will not interfere with FPLE's operations, as determined by FPLE. FPLE waives any interest, claim or lien in crops grown on the Owner's Property. FPLE's use of the Owner's Property is for Wind Farm purposes and FPLE shall not conduct farming activities on the Owner's Property.

TERM AND RENEWAL:. The term of the Agreement begins upon signing of the Agreement by all parties and satisfaction of the conditions precedent in Section 4 of the Agreement, and shall end June 30, 2030, unless renewed or terminated as provided in the Agreement. Unless extended by written agreement for a different length of time or terminated by action of one or both of the parties, the Agreement shall be perpetually and automatically renewed for additional, consecutive five (5) year terms.

TERMINATION. On termination of the Agreement, FPLE will record a quitclaim deed or release of this Memorandum in the public records.

MECHANIC'S LIENS. Owner gives notice that no mechanic's liens arising out of FPLE's activities on the Owner's Property shall in any manner or degree attach to or affect the rights of Owner in the Owner's Property.

RIGHT TO MORTGAGE AND ASSIGN. FPLE may, upon notice to Owner, without Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Agreement, the Easements, the Easement Properties, or the Wind Farm Improvements (collectively, its "Wind Farm Assets"). FPLE shall also have the right without Owner's consent, to sell, convey, lease, or assign all or any portion of its Wind Farm Assets, or to grant sub-easements, co-easements, separate easements, leases, licenses or similar rights, however denominated, to one or more persons or entities.

NOTICES AND QUESTIONS. All notices or other communications required or permitted by the Agreement shall be in writing. Notices shall be deemed given or made when personally delivered; five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or, one (1) business day after dispatch by Federal

Express or other overnight delivery service of national scope to the addresses below. Any questions regarding the Agreement also should be addressed as follows:

If to Owner:
Llewellyn J. Balster Revocable Trust
c/o Joseph J. Jury
17504 7 Rd.
Ingalls, Kansas 67853
Telephone: (620) 335-5472

If to FPLE:

Gray County Wind Energy, LLC
c/o FPL Energy, LLC
700 Universe Boulevard
Juno Beach, FL 33408-2683
Telephone: (561) 691-7171
Fax: (561) 691-7177
Attn: Business Manager
Property Number: 10

With copies to:

Edward Tancer
FPL Energy, LLC
700 Universe Boulevard
Juno Beach, FL 33408-2683

Dated this _____ day of April, 2001.

GRAY COUNTY WIND ENERGY, LLC
A Delaware Limited Liability Company

By: _____
Name and Title: ROBERT I. MORRISON
VICE PRESIDENT

LLEWELLYN J. BALSTER REVOCABLE TRUST

By: _____
Name and Title: _____

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STATE OF ~~KANSAS~~ ~~GRAY~~ FLORIDA, PALM BEACH COUNTY) ss:

On this 8th day of ~~April~~ June, 2001, before me appeared Robert L. Morrison, to me personally known, who by me was duly sworn and acknowledged that he is Vice President of Gray County Wind Energy, LLC, and that he executed the foregoing on behalf of Gray County Wind Energy, LLC.

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

Holly M Altman
Notary Public

My Commission Expires:
07/28/2003

NOTARY PUBLIC - STATE OF FLORIDA
HOLLY M. ALTMAN
COMMISSION # CC859079
EXPIRES 7/28/2003
BONDED THRU ASA 1-888-NOTARY1

Dawn Dolk

STATE OF ~~KANSAS~~, GRAY COUNTY) ss:

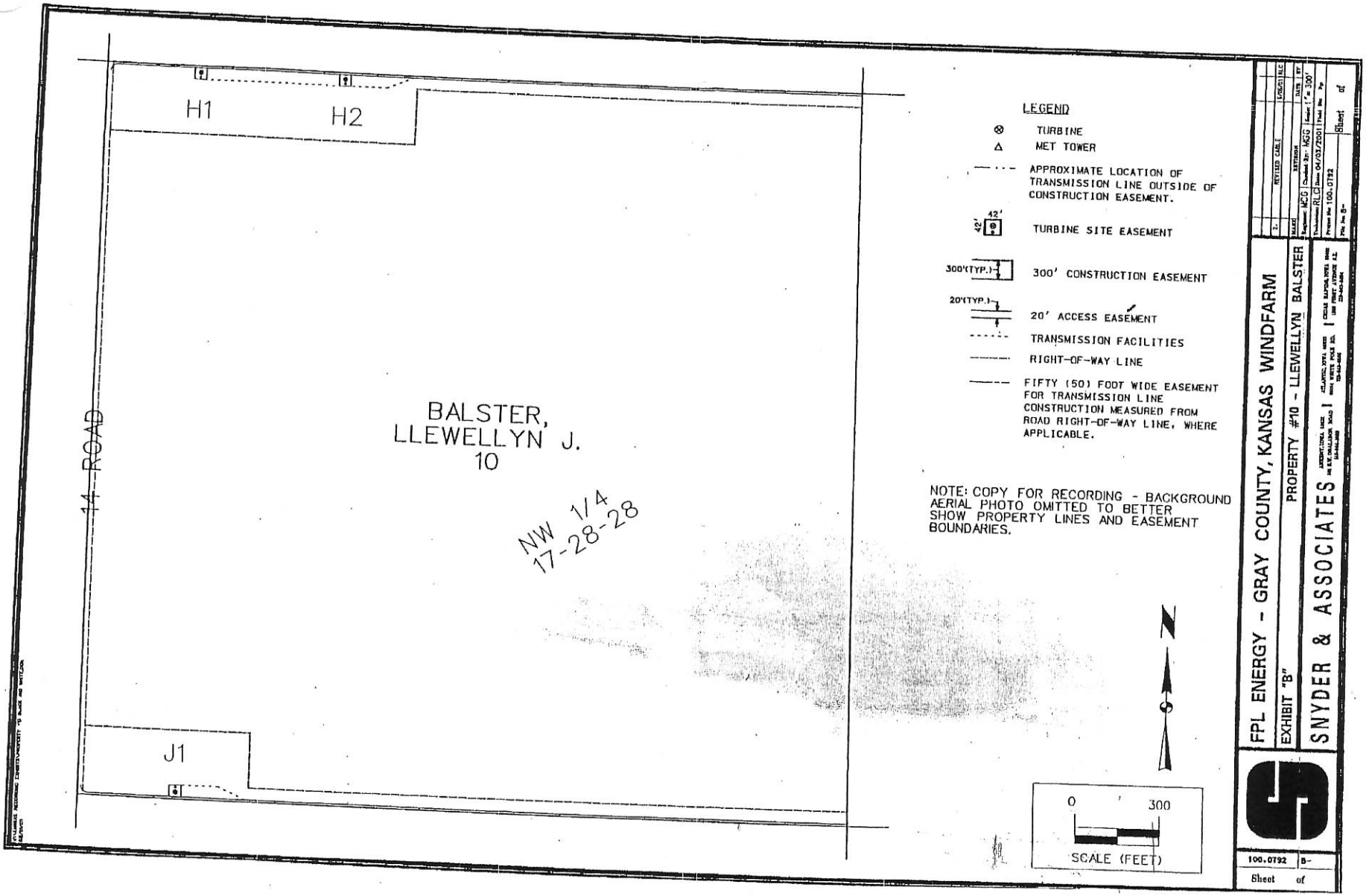
On this 18 day of ~~April~~ May, 2001, before me appeared Llewellyn J. Balster, to me personally known, who by me was duly sworn and acknowledged that she/he is Trustee of Llewellyn J. Balster Revocable Trust, and that he/she executed the foregoing on behalf of Llewellyn J. Balster Revocable Trust.

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

Notary Public

My Commission Expires:
8-26-03

10-5


H1
H2
J1
14 ROAD
BALSTER,
LLEWELLYN J.
10
NW 1/4
17-28-28
LEGEND
TURBINE
MET TOWER
APPROXIMATE LOCATION OF TRANSMISSION LINE OUTSIDE OF CONSTRUCTION EASEMENT.
42'
TURBINE SITE EASEMENT
300'(TYP.)
300' CONSTRUCTION EASEMENT
20'(TYP.)
20' ACCESS EASEMENT
TRANSMISSION FACILITIES
RIGHT-OF-WAY LINE
FIFTY (50) FOOT WIDE EASEMENT FOR TRANSMISSION LINE CONSTRUCTION MEASURED FROM ROAD RIGHT-OF-WAY LINE, WHERE APPLICABLE.
NOTE: COPY FOR RECORDING - BACKGROUND AERIAL PHOTO OMITTED TO BETTER SHOW PROPERTY LINES AND EASEMENT BOUNDARIES.
N
S
0
300
SCALE (FEET)
FPL ENERGY - GRAY COUNTY, KANSAS WINDFARM
EXHIBIT "B"
PROPERTY #10 - LLEWELLYN BALSTER
SNYDER & ASSOCIATES
100.0792
B-
Sheet
of

When recorded, please return to:
Terry Monson
Nyemaster Law Firm
700 Walnut, Suite 1600
Des Moines, IA 50309

STATE OF KANSAS, Gray County
This instrument was filed for record on
the 25th day of JUL A.D. 2002
at 3:25 M. and duly recorded in Book
90 on Page 441-443
Barbara L Southerland
Register of Deeds 10.00

This Document Was Prepared by: Terry Monson, 700 Walnut, Suite 1600, Des Moines, IA 50309 (515)-283-8024

TENANT SUBORDINATION, NON-DISTURBANCE AND CONSENT AGREEMENT

This is an Agreement between Joseph Jury, whose address is 17504 7 Rd., Ingalls, KS 67853 ("Tenant") and FPL Energy's "Gray County Wind Energy, LLC," a Delaware limited liability company, its successors and assigns ("FPLE"), whose address for the purpose of this agreement is 700 Universe Blvd, Juno Beach, FL 33408-2683, Attn. Business Manager.

The parties are making this agreement for the following reasons:

A. The Llewellyn J. Balster Revocable Trust ("Owner"), is the owner of the real property legally described as:

> Northwest Quarter (NW/4) of Section Seventeen (17), Township Twenty-eight (28) South, Range Twenty-eight (28) West of the Sixth Principal Meridian

(the "Property").

B. Tenant leases the Property from Owner for purposes of cultivation and has a farm tenant's interest in the Property.

C. Owner and FPLE are the parties to a Gray County Wind Farm Easement Agreement ("Easement Agreement"), as that document may be amended or supplemented from time to time, pertaining to the parts of the Property (the "Easement Properties"). The Easement Properties are shown on **Exhibit B** (to be replaced by **Exhibit C** at a later date) to a Memorandum of Wind Farm Easements ("Memorandum") that will be recorded in the public records together with this document.

D. Effectiveness of the Easement Agreement is conditioned on receipt by FPLE of all subordination and non-disturbance agreements from tenants, lenders and holders of other liens and encumbrances, necessary to assure FPLE's undisturbed use and enjoyment of the Easement Properties according to the terms of the Easement Agreement. Tenant desires to cooperate with and assist Owner to make the Easement Agreement effective.

E. Tenant and FPLE wish to enter into this Agreement to confirm Tenant's consent to the terms of the Easement Agreement as well as the subordination of Tenant's interest

in the Property to the Easements granted in the Easement Agreement. The parties also wish to confirm neither Tenant's rights in the Property nor FPLE's possession and rights in the Easement Properties will be disturbed by the other except as specifically agreed below.

In consideration of the above and mutual benefit to the parties, Tenant and FPLE agree as follows:

1. **CONSENT AND SUBORDINATION.** Tenant consents to Owner's execution of the Easement Agreement and hereby subordinates Tenant's interest in the Property to FPLE's rights to possession and to the other rights granted FPLE under the Easement Agreement. Except as specifically provided in this Agreement, Tenant's rights in the Property remain unchanged. Nothing in this Agreement shall be construed to affect any rights and remedies existing in any agreements between Owner and Tenant.

2. **NON-DISTURBANCE.** So long as the Easement Agreement is in full force and effect Tenant shall not disturb FPLE's use and possession of the Easement Properties, nor shall Tenant disturb any other rights in the Property granted FPLE in the Easement Agreement. Except to the extent of the rights granted it under the Easement Agreement, FPLE shall not disturb Tenant's use and possession of the Property.

3. **PAYMENTS FOR CROP DAMAGE.** FPLE shall make any payments for crop damage required under the terms of the Easement Agreement to Owner unless Owner in writing directs FPLE to make all or any part of such payments directly to Tenant. This Agreement shall not alter any arrangements between Owner and Tenant pertaining to sharing of crop damage payments, CRP payments or other farm program payments.

4. **NOTICES.** Any notice or communication required or permitted under this Agreement shall be given in accordance with the recorded Memorandum.

5. **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of and shall be binding upon FPLE and Tenant, and their respective heirs, personal representatives, successors and assigns.

Dated this 28th day of April, 2001.

Tenant

Print Name: Joseph J. Jury

10-8

Gray County Wind Energy, LLC

By: _____
Name: ROBERT I. MORRISON
Title: VICE PRESIDENT

STATE OF KANSAS, GRAY COUNTY) ss:

On this 28 day of April, 2001, before me appeared Joseph Jury, to me personally known, who, being by me duly sworn, did say that he was the same person who executed the within instrument and duly acknowledged the execution of the same.

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

DEBBIE WEHKAMP
NOTARY PUBLIC – State of Kansas
My Appt. Exp. 10-02-02

Debbie Wehkamp
Notary Public

STATE OF ~~KANSAS, GRAY~~ FLORIDA, PALM BEACH COUNTY) ss:

On this 8th day of ~~April~~ JUNE, 2001, before me appeared Robert I. Morrison, to me personally known, who by me was duly sworn and acknowledged that he is Vice President of Gray County Wind Energy, LLC, and that he executed the foregoing on behalf of Gray County Wind Energy, LLC.

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

Holly M Altman
Notary Public

NOTARY PUBLIC - STATE OF FLORIDA
HOLLY M. ALTMAN
COMMISSION # CC859079
EXPIRES 7/28/2003
BONDED THRU ASA 1-888-NOTARY1