Approved: 2/18/04
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Stan Clark at 9:30 a.m. on February 9, 2004 in Room 526-S of the Capitol.

All members were present.

Committee staff present:
Bruce Kinzie, Revisor of Statutes
Raney Gilliland, Legislative Research
Ann McMorris, Secretary

Conferees appearing before the committee:
Bernie Nordling, Lawrence (Erick Nordling made presentation)
Tom Schnittker, Gene Francis & Associates, Pratt
Alan Cobb, Tallgrass Ranchers
Don Ward, Kansas Wildlife Federation
Scott Schneider, Kansas Wind Coalition

Others attending:
See Attached List.

Chairman Clark opened the hearing on:
SB 331 - Recording leases or easements related to wind resources or technologies

Proponents:
Bernie Nordling, Lawrence (Erick Nordling made presentation)
Tom Schnittker, Gene Francis & Associates, Pratt
Alan Cobb, Tallgrass Ranchers
Don Ward, Kansas Wildlife Federation

Erick Nordling presented the testimony for Bernie Nordling and noted the attachments included (1) B. Nordling's testimony on **HB 2280** when he appeared before the Senate Utilities Committee in 2003 and (2) B. Nordling legal opinion on the recording of leases, based on testimony and questions during the hearing on **HB 2280.** Mr. Nordling noted **SB 331** requires the filing of the whole lease document and not just a memorandum of lease. The current system is to file only memorandums of lease which creates serious problems when information to determine the rights and obligations of the parties under the lease is required by a title examiner. (Attachment 1)

Tom Schnittker, Gene Francis & Associates, Pratt, voiced his concerns over failure to record full lease or easement for the protection of the Grantor and the Grantee. If the lease is not recorded, either party could be subject to unfair practices by the other party. It is in the best interests of all parties to have the wind generation lease recorded in its entirety at the register of deeds. (Attachment 2)

Alan Cobb representing Tallgrass Ranchers, cited instances where landowners have entered into leases with developers where the purpose was mischaracterized and since no lease was required to be filed, the public could not know of the mischaracterization. We support **SB 331** to help clean up the industry. (Attachment 3)

Dan Ward, Kansas Wildfire Federation, voiced his concern over the impact wind turbines sited along bird migration routes would have on ducks, geese, hawks, songbirds and other birds. The KWF feels strongly that the intact heritage grasslands of Kansas are irreplaceable pieces of American history, particularly, the Flint Hills. (Attachment 4)

Written testimony presented by:
John Crump, Southwest Kansas Royalty Owners Assn. SWKROA (Attachment 5)
James Yoxall, Attorney, Liberal (Attachment 6)
Philip Ridenour, Attorney, Cimarron (Attachment 7)
Amanda Spikes, Research Assistant (Attachment 8)

MINUTES OF THE SENATE UTILITIES COMMITTEE at 9:30 a.m. on February 9, 2004 in Room 526-S of the Capitol.

Allie Devine, VP & General Counsel, Kansas Livestock Assn. (Attachment 9)

Opponents:

Scott Schneider on behalf of the Kansas Wind Coalition, opposed **SB 331**. He felt current law is sufficient as it requires filing of a memorandum of lease which puts the public on notice that the land is encumbered by possible wind development activity. (Attachment 10)

Chair opened the floor for questions. Committee members questioned the conferees on names of companies involved in wind development activities, wind rights versus surface rights, filing of complete leases versus memorandum of lease, and consequences of the lack of proper filings.

Information on laws is neighboring states will be provided the committee and discussion will continue at their next meeting.

The next meeting of the Senate Utilities Committee is scheduled for February 10, 2004.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 10

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: **February 9, 2004**

Name	Representing
Doug Smith	SWKROA
Erick Nordling	"
Tom Schnittker	Self
Scott Schneider	Kansas Wind Coalition
Chris J. Nord	Sen. Oleen
JC Long	Aquila, Inc
Alan Cobb	Tallgrass Ranchers
Marilyn Nichols	Register of Deeds Association
Steve Johnson	Kansas Gas Service
Whitney Damron	KS Gas Service
Mark Schreiber	Westar Energy
Ron Gaches	GBBA
Tom Bruno	GBBA

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

Testimony before the Senate Utilities Committee Senate Bill 331
February 9, 2004

Chairman Clark and Members of the Committee:

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.

I am appearing on behalf of the Association and on behalf of Kansas landowners to testify in support of Senate Bill 331. During the past legislative session, I filed a statement in opposition to House Bill 2280, as amended. A copy of that statement is attached and incorporated herein by reference. In addition, I was asked to render an opinion on the question of the necessity of filing oil and gas leases of record with the register of deeds office under the recording statutes. I answered the question in the affirmative with the caveat that an oil and gas lease was not valid, except between the parties to the lease, until it is recorded. A copy of my opinion is also attached and incorporated herein by reference.

In my opinion, I made reference to an article I had written in 1955 for the Kansas Law Review stating that the 1953 Kansas Legislature had amended the recording statute, G.S. 67-221 (now cited as K.S.A. 58-2221), to specifically include "any estate or interest created by an oil and gas lease." The action by the legislature was the result of a court decision dealing with the question as to whether an assignment of production payments under certain oil and leases for mortgage purposes was such an instrument as to come within the meaning of the recording statute.

Later in my opinion, 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 simply include any estate or interest created by a wind energy lease or easement and is good public policy.

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.

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 the whole 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 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 document 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.

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. In conclusion, I urge the passage of Senate Bill 331. Thank you for this opportunity to be heard.

Respectfully submitted,

Bernard E. Nordling

Attachments

Kramer, Nordling & Nordling, LLC
Attorneys-at-Law 209 East Sixth Street Hugoton, Kansas 67951 (620) 544-4333 Fax (620) 544-2230

March 13, 2003

Senator Stan Clark
Chairman, Senate Committee on Utilities
Room 449-N
State Capitol Building
300 SW Tenth Avenue
Topeka, KS 66612

Re: HB 2280

Dear Senator Clark and Honorable Members of the Senate Committee on Utilities:

This letter is in response to your request for an opinion on the question of the necessity to file oil and gas leases of record with the register of deeds office. It is my understanding this question and other questions were raised by members of the committee during the hearing held yesterday on HB 2280. This bill, as originally drafted, required the filing of record any lease involving wind resources to produce electricity given on land situated in this state.

The answer to the question is "Yes," an oil and gas lease must be recorded in the office of register of deeds in which the land covered by the lease is recorded in order to impart notice to all persons and all subsequent purchasers and mortgagees and to protect innocent purchasers, lessees and mortgagees acting in good faith. **No oil and gas lease shall be valid, except between the parties to the lease, until it is recorded.**

RECORDING STATUTES

The pertinent Kansas statutes dealing with recording of instruments conveying or affecting real estate are K.S.A. 58-2221, K.S.A. 58-2222, and K.S.A. 58-2223. The pertinent part of K.S.A. 58-2221 reads as follows:

"Every instrument in writing that conveys real estate, any estate or interest created by an oil and gas lease, or whereby any real estate may be affected, proved or acknowledged, and certified in the manner hereinbefore prescribed, may be recorded in the office of register of deeds of the county in which such real estate is situated.................(emphasis ours)

"The grantor, lessor, grantee or lessee or any other person conveying or receiving real property upon recording the instrument in the office of register of deeds shall furnish the register of deeds the full name and last known post-office address of the person to whom the property is conveyed or his or her designee. **The register of deeds shall forward such information to the county clerk of the county who shall make any necessary changes in address records for mailing tax statements."** (Emphasis ours)

K.S.A. 58-2222 reads as follows:

"Every such instrument in writing, certified and recorded in the manner hereinbefore prescribed, shall, from the time of filing the same with the register of deeds for record, **impart notice to all persons of the contents thereof; and all subsequent purchasers and mortgagees shall be deemed to purchase with notice.**" (Emphasis ours)

K.S.A.58-2223 provides:

"No such instrument in writing shall be valid, except between the parties thereto, and such as have actual notice thereof, until the same shall be deposited with the register of deeds for record." (Emphasis ours)

RESULTS OF FAILURE TO FILE OIL AND GAS LEASE OF RECORD

While it may be argued that K.S.A. 58-2221 provides only that oil and gas leases **may** be filed of record, the failure to file a lease of record proved to be fatal to a lessee which failed to place its prior lease of record in the early Kansas case of *Derby Oil Co. vs. Bell,* 134 Kan. 489, 7 P. 2d 39 (1932).

Briefly stated, the Eastborough Estates Company (Eastborough) owned a tract of land immediately east of Wichita with intent to develop the tract into a high-class residential district. The Company, on April 16, 1930, executed an oil and gas lease to the Derby Oil Company (Derby) on all the land in the original tract which it owned at the time of the lease. This was

termed a community lease and contained a provision that it was contemplated that other lands located in the tract under development might be included in the lease by the owners joining in it.

One of the lots was sold under contract to J. M. Bell. While the facts are not quite clear, Bell executed a consent that his lot come under the community lease. Subsequently, on July 1, 1930, Bell entered into an agreement with Jones to give him a lease on his lot in consideration of Jones paying Eastborough the amount necessary to complete payment on the full purchase price for the lot. **On July 2, 1930, Dr.Bell executed and delivered to Jones an oil and gas lease on the lot in question and the lease was recorded the same day. The Derby lease, although properly executed on April 16, 1930, was not filed of record until July 7, 1930, five days after the Jones lease had been placed of record.**

The facts in the case further disclose that when Jones was about to enter into the contract for a lease with Bell, he examined the records in the office of register of deeds. This examination did not disclose that any person held any lease upon the real estate in question. Jones later assigned the lease to Hedges, and they (Hedges and Jones) commenced the drilling of a well. An action by Derby followed to cancel the lease from Bell to Jones. The Kansas Supreme Court ruled in favor of Bell, Jones, and others.

The Court held that **an ordinary oil and gas lease is a conveyance of such an interest in real property as to be within the recording statutes, as respects the rights of an innocent purchaser for value (Rev. St. 1923, 67-221 and 67-223)** Author's note: These two statutes are currently cited as K.S.A. 58-2221 and K.S.A. 58-2223.
The Court further held that the Bell-Jones lease was recorded prior to the recording of the community lease. **Jones had no actual or constructive notice of facts which would lead a reasonably prudent man to inquire as to adverse claims.** (Emphasis ours)

I agree with Senator Emler's comments in the question and answer period following the testimony on HB 2280 that it is incumbent upon an attorney, in the course of doing "good business," to make sure an oil and gas lease is filed of record. Failing to do so would certainly open of the possibility of a malpractice suit. **Any oil and gas company representative, as well, is going to see that the lease is filed of record for obvious reasons.**

As pointed out above, while K.S.A. 58-2221 does use the words may be

filed and it could be claimed the filing of record of an oil and gas lease is not mandatory, the Kansas courts have held that the recording statutes should be construed together. In *Luthi v. Evans,* 223 Kan. 622, 576 P.2d 1064, the Court stated:

> **"We have concluded that the statutes contained in K.S.A. Chapter 58 pertaining to conveyances of land and the statutes contained in Chapter 19 pertaining to recordation of instruments of conveyance constitute an overall legislative scheme or plan and should be construed together as statutes in *pari materia.*** (*City of Overland Park v. Nikias,* 209 Kan. 642, 498 P.2d 56.) It also seems obvious to us that the purpose of the statutes authorizing the recording of instruments of conveyance is to impart to a subsequent purchaser notice of instruments which might affect the title to a specific tract of land in which the subsequent purchaser is interested at the time."

The bottom line is that while a person may not have to place an oil and gas lease of record, the legislative intent is that oil and gas leases, along with other instruments of conveyance affecting the title to land need to be placed of record, and the penalty for failure to do so is severe in the event of the transfer of property rights by the record owner to a subsequent purchaser or lessee not having knowledge of a prior conveyance.

HISTORY OF RECORDING STATUTES

In recognizing the need to impart notice to innocent purchasers in good faith on transactions involving real estate, Kansas Legislature years ago took care of the problem by passing what we term "the recording statutes." **The Kansas recording statutes have been on the books since 1868.** In *National Bank v. Warren,* 177 Kan. 281, 279 P.2d 262 (1955), a case involving assignments of payments from oil and gas leases, the Court briefly discussed the history of G.S. 1949, 67-221, as follows:

> ".......This definition sends us to an examination of G.S. 1949, 67-221, as it was in 1925 when Chapter 172 was enacted. It provided: 'Every instrument in writing that conveys real estate or whereby any real estate may be affected, proved or acknowledged, and certified in the manner hereinbefore prescribed, may be recorded in the office of register of deeds of the county in which such real estate is situated.....'
>
> **"This section was originally Section 19, G.S. 1868. As much of it as is quoted above contained the same provisions as when it was**

enacted in 1868. The purpose of the statute was and is to impart notice to those interested in any tract of real estate."

By unusual coincidence, in researching the subject of the necessity to record an oil and gas lease, I discovered in the foot notes under K.S.A. 58-2221 an article I had written for the Kansas Law Review in 1955 in which I made specific reference to G.S. 67-221 (now cited as K.S.A. 58-2221). My assignment had been to cover Kansas and federal court cases, Kansasstatutes, and Kansas Corporation decisions from 1953 to 1955, inclusive. In the article, I discussed the *National Bank of Tulsa* case cited above, which dealt with the question as to whether an assignment of production payments under certain oil and gas leases for mortgage purposes was such an instrument as to come within the meaning of Kan. G.S.1949, 67-221, and was subject to the mortgage registration tax required under the provisions of Kan. G.S. 1949, 793102. Quoting fromthe article, I stated:

"The court correctly held that the assignment was such an instrument as to come within the terms of Kan. G.S. 1949m 67-221 and the mortgage registration tax was properly assessed,
As a result of the decision, the 1953 legislature clarified the point by amending 67-221 to specifically include "any estate or interest created by an oil and gas lease." (Emphasis ours) 4 K.L.R. 162, 170 (1955).

Thus, the Kansas legislature confirmed the earlier Kansas court decisions that oil and gas leases and interests created by the oil and gas lease were within the purview of the recording statutes.

Other statutes dealing with the recording of oil and gas leases may be found at K.S.A. 55-201 which defines the duty of a lessee to have a forfeited lease released of record, affidavit to be recorded, notice to landowner, and remedies; K.S.A 55-202 gives the right to sue for failure to release oil and gas lease; K.S.A. 55-205 provides for the recording of an oil and gas lease for a definite term and provides for the filing of an affidavit of production to extend the terms of the lease. Other statutes within Chapter 55 for expunging leases and assignments of record for a given period of time. So obviously, the Kansas legislature has long recognized the importance and necessity of placing oil and gas leases of record.

WIND ENERGY LEASES AND EASEMENTS NO DIFFERENT THAN OIL AND GAS LEASES, PIPELINE AND OTHER UTILITY EASEMENTS

Commenting on the testimony at the Tuesday hearing before your honorable Committee by Scott Schneider, who represents Renewable Energy Systems North America, Mr. Schneider testified that HB 2280 treated one industry engaged in similar activities different than another, and that he had not been able to find any other industry that is required to file a private land contract with the county. I respectfully wish to take exception to Mr. Schneider's statement in that respect. Obviously, oil and gas companies, pipeline companies, and electric utilities are in the same type of energy business.

All these companies, acting responsibly, have all these years and will continue to file in the appropriate register of deeds office instruments of conveyance affecting real estate, including oil and gas leases, lease modification agreements, unitization agreements, affidavits of production, pipeline easement, road easements, water line easements, electric utility line easements, mortgages, and any other document affecting title to real estate or creating an encumbrance on the land.

I do not anticipate the Kansas Legislature making an exception for wind energy companies for the sole and only reason they are fairly new to our state. In fact, it raises a good question as to the need of the legislature to consider including wind energy leases and easements as a part of K.S.A. 58-2221 in the instruments of writing conveying real estate, the same as the 1953 Kansas Legislature did in adding the words, "any estate or interest created by an oil and gas lease," to conform with the existing Kansas law quoted above.

IMPORTANCE OF RECORDING FULL DOCUMENT OF RECORD

I have already stressed in my statement to your honorable Committee the importance of including the full wind energy lease or easement of record. To do so is no different than the thousands upon thousands of oil and gas leases recorded in full throughout the state nor the literally hundreds upon hundreds of pipeline easements and utility easements recorded in full in the register of deeds offices in our state.

I would venture to guess I could go to the courthouse in any of the 11 counties in the Hugoton Gas Field and examine from the courthouse

records the full terms of any oil and gas lease, lease modification agreement, unitization agreement, affidavit of production, pipeline easement, or utility line easement. We are literally talking about thousands of full documents that have been recorded to ensure to an innocent purchaser in good faith the right to determine what encumbrances there may be on the land. These will, of course, be reflected as summaries in any abstract of title or title insurance policy. Any abstracter or title insurance company which fails to show these types of instruments as encumbrances on the land is subject to a malpractice suit.

To give you an example of the thousands of oil and gas leases of record, I have only to refer to the Hugoton Gas Field located in 11 Southwest Kansas counties. The Kansas portion of the field contains some 2,600,000 acres. This computes out to 16,250 quarter sections (160 acres). Even conservatively speaking, there probably are more than 10,000 oil and gas leases of record in the Hugoton Field, and I would venture to guess that I could go to the courthouse and examine the full terms of any of those leases without having to contact the gas company to get a copy of the lease. I see no reason why any wind energy company, acting in good faith, would be reluctant to file the full wind energy lease or easement of record unless they have something to hide.

REMAINING RESPONSES TO QUESTIONS ON HB 2280

In response to Senator Barone's comments about my testimony, I agree wholeheartedly with his statement that if a landowner is not comfortable with the lease, "they should not sign it." That has been my advice to my clients on numerous occasions over the years. However, that is not the issue here. The issue is that a wind energy company needs to make full disclosure of the contents of any wind energy lease or easement as do oil and gas companies in the filing of oil and gas leases of record.

Senator Barone also raised the question whether the Southwest Kansas Royalty Owners Association thought all leases should be recorded with the register of deeds. For example, " if a hunting club from Johnson County that leases several hundred acres of land for hunting rights, should that lease be recorded?" Obviously, it is a matter of common sense as to whether a lease should be placed of record. The Kansas courts

have held that a contract to execute or assign an oil and gas lease is within the contemplation of the statute of frauds and therefore to be valid, such a contract must be in writing. (*Robinson v. Smalley, 102 K*an. 842, 171 P. 1156; *White*
v. Green, 103 Kan. 405, 173 P. 974). For the reasons stated above, the lease should be placed of record. As a matter of clarification, the statute of frauds requires that any lease or interest in land exceeding one year in duration must be in writing

It may surprise Senator Barone to know that my advice to that Johnson County hunting lodge would be to place its hunting lease of record if the lease extends for more than one year and if the lodge might be concerned about the farmer, or a purchaser of the property, subsequently giving similar hunting rights to a group of hunters from Texas or New York, and that group places its lease of record before the Johnson County group records its lease or fails to record it! As mentioned above, it is a matter of common sense as to whether leases affecting real estate should or should not be placed of record under a particular given set of circumstances.

I apologize for the length of this opinion but felt the issue of requiring a wind energy company to file its full lease of record important enough to thoroughly research the subject to assist your honorable Committee to make an informed decision with respect of HB 2280. I also apologize for not having attended the hearing Tuesday. To those who know me realize the difficulty of my being able to get around very well.

Respectfully submitted,

Bernard E. Nordling

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

March 11, 2003

TO THE HONORABLE MEMBERS OF THE SENATE COMMITTEE ON UTILITIES:

Re. House Bill No. 2280, as amended.

Mr. Chairman and Members of the Committee:

INTRODUCTION AND BACKGROUND

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 began practicing law in Hugoton in 1949 with A. E. (Gus) Kramer, the founder of the Southwest Kansas Royalty Owners Association. Mr. Kramer served as its first Executive Secretary from 1948 to 1968. I served in that capacity from 1968 until 1994 when my son, Erick, who is my law partner, assumed responsibility of the Secretaryship. My entire career as a lawyer has been representing landowners in the Hugoton Gas Field area.

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

CONCERNS OVER FAILURE TO RECORD FULL LEASE OR EASEMENT

It is my understanding your honorable Committee has before it today for present consideration and possible action House Bill No. 2280. I wish to make this statement on behalf of Kansas landowners, both as a landowner attorney and as Assistant Executive Secretary of the Southwest Kansas Royalty Owners Association, to express my concern about the passage of HB 2280, as currently amended.

The bill, as originally drafted, addresses the issue of requiring the filing of record any lease involving wind resources and technologies to produce and generate electricity. Because of the newness in Kansas of wind energy as an energy source, this legislation is appropriate to be consistent with the requirement of the filing of oil and gas leases, as well as water rights, of record for the proper notification to prospective purchasers and mortgage of lands of any documents affecting property rights. However, by action of the House Committee on Utilities, the bill was amended to permit the filing only of a memorandum of lease

or easement and not the full lease agreement or easement and therein lies the problem.
It is absolutely essential that any prospective purchaser or mortgagee of the 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. If the full document is not placed of record, the difficulties faced by that prospective purchaser or mortgagee of knowing what the lease or easement provides and having to determine who might have a copy of the full document available for examination are obvious.

I must confess that because of my partial retirement from the practice of law and from the newness of wind energy leases in Kansas, I have only had the opportunity to examine a couple of wind energy leases and one wind energy easement to determine the rights and obligations of the respective parties to the agreement. I was absolutely shocked at the one-sidedness and over reaching of the wind energy lease agreements I examined. At the time, I told my clients the documents examined were the most one-sided I had ever seen in my fifty some years of practice!

For example, one lease in particular I examined was, among other things, 31 pages long, was very complicated and it was almost impossible to determine the compensation to be paid for use of the land. There was no factor to adjust for inflation in the payment of rent, and while for a specified term of thirty years, it could be renewed every 10 years at the option only of the lessee. Basically, the rights of the owner of the property were subservient to the rights of the wind energy lessee and notice had to be given to use the property other than for "hunting, ranching and agricultural purposes." It would seem a document such as I have described should be fully disclosed of record for full examination by an interested party without having to go to the trouble of chasing it down from the current owner or the wind energy lessee.

The argument may be made that filing a memorandum of lease of record rather than the full document is the same as having only to file a memorandum of a shopping center document but that is comparing apples to oranges. A wind energy lease is no different than an oil and gas lease and the full terms of an oil and gas lease must be placed of record, not just a memorandum of lease.

COMMENTS ON FISCAL NOTE FOR HB 2280

In the fiscal note section about HB 2280, it is recited that the bill would have no effect on any state fund. Also, the Kansas Association of Counties determined that the bill could bring some additional revenue to some counties but no estimation of the amount of revenue could be determined.

As a possible aid on that point, it is submitted that if the full lease is filed of record it must necessarily follow there will be additional revenues to the county in which the lease is filed of record. It is my understanding that currently the charge for filing documents of record in the Register of Deeds office is $8.00 for the first page and $4.00 for each additional page. Taking an average of the two wind energy leases I have examined, there would be 25 pages to be recorded. This computes to revenue to the county of that one document of $104.00. The shorter the leases, of course, the less revenue but obviously the recording of a two or three page memorandum of lease would raise only between $12.00 or $16.00 for the county.
At such a critical time as our current budge crisis, the additional revenue to the county in which the leased property is located will be important to that county. However, the need for recording the full wind energy lease or easement for the reasons stated above should be of primary importance.

RECOMMENDATION ON ACTION TO BE TAKEN WITH REFERENCE TO HB 2280

It is respectfully submitted the appropriate action by your honorable Committee to take with reference to HB 2280, as amended, is to **delete from Section 1, Line 1, the following words: "A memorandum of lease or" so that Section 1 of HB 2280 will read as follows: "Any lease or easement** involving wind resources and technologies to produce and generate electricity given on land situated in this state shall be recorded **by the lessee or the grantee of the easement** in the office of the register of deeds of the county in which the land is located **within five business days after the lease or easement is executed."**

Respectfully submitted,

Bernard E. Nordling,
Assistant Executive Secretary
Southwest Kansas Royalty Owners Association

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

TESTIMONY BEFORE THE SENATE UTILITIES COMMITTEE

Senate Bill No. 331

February 9, 2004

Chairman Clark 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 we 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.

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 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
Gene Francis & Associates
445 SE Park Hills Dr.
Pratt, KS 67124-8230
Office: (620) 672-7400
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Fax: (620) 672-1980
E-mail: tschnittker@cox.net

February 6, 2004

Chairman Clark 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.

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.

February 3, 2004

To Whom It May Concern:

My name in Clarence H. Sigle. I live close to Council Grove, Kansas. I have a wife, seven children married, and I have 24 grand children.

I am 89 years old and have been farming all my life. My learning was in the old type school house.

I have land here and there, and before Christmas, I received a call from FPL. A woman was talking to me about wind farms, she told me I had 160 acres of land west of Wilsey they were interested in. I told her, I am an old man. I was 88 years old at that time, and that 160 acres was in a life estate, and I also told her that I wanted to talk it over with my children since Christmas was almost here and I may be able to see most of them there. She told me she was not interested in the children, she wanted to sign me up. I said I didn't know much about wind farms, and I needed to think about it.

After Christmas, she called again, wanted to know if I saw my children, I said I saw some, but they didn't seem interested in them. At that she wanted to sign me up sooner the better, I asked her a few things about wind farms, I told her there was a house on that land, and I didn't own the house and 3.30 acres around the house. There are people living in the house and I know they have a good well. She said they stay 1000 ft from the houses that are lived in. I said what about the water well. I know that in the Flint Hills there can be sold rock below a foot of ground and I also know that you can make a hole big enough even in sold rock to put your pole, but you have to blow it, and you can easily ruin the well, and if that happens, those people in that house is going to be very unhappy. They are going to sue somebody, now, which will be, the landowner or the FPL?

At least she said the FPL. She also said, we have insurance for things like that. I told her if that took place I didn't think there would be any water around there to find. She, no answer. To make a short story from a big one, I will close.

P.S. She wanted to keep the door open, I told her to close the door and keep it closed.

Clarence H. Sigle

I also own 2 farms with the high line going through, and I have land along the high lines in different places.

2-3-04

To whom it may Concern,

My name is Clarence H. Sigle
I live close to Council Grove Ks.
I have a wife, Seven Children
married, and I have 24 Grand Children
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And I also know that you can make a hole big enough even in solid rock, to put your pole, but you have to blow it, and you can easly ruin the well, and if that happens, those people in that house is going to be very unhappy, they are going to sue some body, now which will it be, the landown or the FPL?

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the door, and keep it closed.

Clarence H. Sigle

I also own 2 farms with the
high line going through, and I
have land along the high liens
in diffent places.

My name is Dan Ward, and I'm the Executive Director of the Kansas Wildlife Federation. KWF is a 53-year old organization dedicated to the wise use, conservation, appreciation, and the restoration of our state's wildlife and natural environment. We approach this mission primarily from the perspective of hunting and fishing, which are important traditions in Kansas. Over 500,000 hunters and anglers spend close to one billion dollars in the state each year.

KWF has taken an interest in the issue of commercial wind energy in Kansas for a number of reasons that we feel have been under publicized. Wind turbines sited along bird migration routes have an immense and well-documented impact on ducks, geese, hawks, songbirds, and other birds. Both the greater and the lesser prairie-chicken, birds that are emblematic of the Great Plains, are unable to nest in the shadows of these machines. One commercial scale project could prevent breeding in a 25-square mile area.

In addition, we strongly feel that the intact heritage grasslands of Kansas are irreplaceable pieces of American history. In particular, the Flint Hills are North America's last great tallgrass prairie and converting this land to industrial development makes as little sense as burying Gettysburg under a dam, or building a factory on top of Mount Vernon. KWF does support wind energy projects in cropland areas that are out of the path of migratory bird routes.

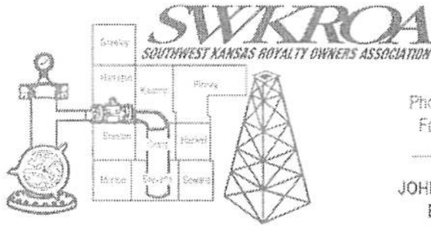
The legislature has delegated decision-making around wind energy to the county level. This means that in order to make effective and smart decisions, Kansans will have to involve themselves in local politics, and will have to arm themselves with the very best information available on commercial wind power, on wildlife, on tourism, and a host of other subjects.

KWF supports SB 331 because its passage will help give local government and local voters a chance to make fully informed decisions. It makes a difference whether there are one or ten proposed projects in a county. It makes a difference if I know whether my neighbor's actions will result in a drop in my property's value.

Democracy works best when the facts are out in the open, and SB 331 will put much-needed sunlight onto the issue of commercial wind development. We hope this committee will take rapid action to pass this bill out onto the Senate floor.

Senate Utilities Committee
February 9, 2004
Attachment 4-1

214 SW 6th Ave., Ste. 205 ♦ Topeka, KS 66603 ♦ (785)



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JOHN CRUMP, President JIM KRAMER, Vice President JOE LARRABEE, Treasurer
ERICK NORDLING, Executive Secretary B.E. NORDLING, Ass't Secretary

Testimony before the Senate Utilities Committee
Senate Bill 331
February 9, 2004

Chairman Clark and Members of the Committee:

As President of the Southwest Kansas Royalty Owners Association, I appreciate this opportunity to express my views on SB-331 regarding the filing of wind energy leases with county Registrars of Deeds. Simply put, 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. (As an example, most of us royalty owners are accustomed to dealing with leases which are 40 to 50 years old and which are available to us because someone filed those leases years ago.)

We believe the filing and recording should apply to wind energy leases just as much as to oil and gas leases. 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. 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.

Respectfully submitted,

John E Crump
President, SWKROA

Testimony before the Senate Utilities Committee
Senate Bill 331
February 9, 2004

Chairman Clark 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 seen the past 50 years. They change very frequently in fact. What is 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 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 # 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, ie. appraisers, lender, etc.

I would urge your adoption of Senate Bill # 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 the Committee for their 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/ksk

Re: Testimony before the Senate Utilities Committee
Senate Bill 331
February 9, 2004

Chairman Clark 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.

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

TESTIMONY BEFORE THE SENATE COMMITTEE ON UTILITES

SENATE BILL 331

February 9, 2004

Chairman Clark 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. § 500.50 (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. § 500.50 (2003); Neb. Rev. Stat. Ann. § 66-911 (2003); S. D. Codified Laws §§ 43-13-18 (2003).

Respectfully submitted,

Amanda Spikes,
Research Assistant

Since 1894

TESTIMONY

To: Senate Utilities Committee
Senator Clark, Chairman

From: Allie Devine, Vice President and General Counsel

Subject: **SB 331** – Concerning wind resources and technologies; relating to the recording of leases or easements.

Date: February 9, 2004

Mr. Chairman and Members of the Committee:

I am writing on behalf of the Kansas Livestock Association. The Kansas Livestock Association is a not for profit trade association representing over 6,000 livestock producers. KLA has a keen interest in issues pertaining to land. We appreciate the committee's interest in and hearing on SB 331 concerning the recording of leases or easements relating to wind energy generating facilities. KLA supports the provisions of SB 331.

Our review of SB 331 indicates this bill does not mandate leases or easements be recorded, but simply authorizes the recording of such documents. We do not support provisions that would require the filing of the entire contract or payment provisions and understand such provisions are not included in this bill.

KLA through educational presentations has encouraged our members to refine what interests in land are being conveyed in wind easements or leases. We have encouraged our members to separate contract provisions from easement or lease language, and file the appropriate documents, so title to the property is clear and all current and future property interest holders know of any encumbrance, such as an easement or long term lease. Many of the easements we have reviewed are long term and we believe it is important these easements be recorded, to assure their acknowledgement in future title searches.

Finally, in supporting this bill, we want to assure that our testimony is not perceived as either opposed to or a proponent of wind developments. We believe this bill is simply an effort to assure that if wind generation facilities are developed; the landowner is protected through the filing of the appropriate legal documents to preserve the title of the property.

Thank you for considering our comments as you deliberate this bill.

Senate Utilities Committee
February 9, 2004
Attachment 9-1

6031 SW 37th Street ◆ Topeka, KS 66614-5129 ◆ (785) 273-5115 ◆ Fax (785) 273-33..

Gaches, Braden, Barbee & Associates

February 9, 2004
Testimony before the Senate Utilities Committee
Regarding SB 331

Presented by Scott J. Schneider J.D., of Gaches, Braden, Barbee & Associates
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 such as you with balanced and accurate information regarding the development of energy policy in Kansas.

We oppose SB 331 for one reason. Current law is sufficient. This bill expands the already broad definition of who may file a document that affects real estate. We 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. We have not had a problem with the register of deeds in any county rejecting our documents. I question the purpose of this legislation.

This statute allows for the option of filing any transaction that might encumber land. It does not require anything be filed. Additionally, the current statute is sufficiently broad enough to cover anything from leases for cell phone towers, electric transmission lines to wind documents. We have not asked for any assistance with filing our documents and do not believe any is needed.

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.