Approved: April 4, 2008
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:37 A.M. on February 19, 2008, in Room 123-S of the Capitol.

All members were present except:
David Haley arrived, 9:40 A.M.

Committee staff present:
Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Eric Noldling, Southwest Kansas Royalty Owners Association
David E. Pierce, Professor of Law, Washburn University
David Dayvault, Kansas Independent Oil and Gas Association
Brent Sonnier, OXY USA, Inc.
Doug Lewis, Kansas Corporation Commission, Conservation Division
Ed Cross, Kansas Independent Oil & Gas Association
David Bleakley, Eastern Kansas Oil & Gas Association

The Chairman opened the hearing on **SB 547–Oil and gas surface owner notice and compensation act**.

Eric Nordling appeared in support, providing background on the development of the bill and results of work from the Special Committee on Judiciary during the interim (Attachment 1). Mr. Nordling addressed his remarks to both **SB 547** and **SB 589**. **SB 547** embodies much of the basic framework offered by industry with several agreed compromises but is still not a fully negotiated bill. The key difference between the two bills is the approach to enforcement. Mr. Nordling presented a list of key provisions which should be included in any surface owner legislation and encouraged the committee to select provisions from both bills in order to provide the best legislation possible on this issue.

David Pierce testified in opposition addressing his remarks to both **SB 547** and **SB 589** (Attachment 2). Compared to other states with significant oil and gas development, Kansas has a superior legal system governing those developments. It does not appear this legislation was prompted by widespread operator abuse, but rather to raise the payment for surfaces damages.

David Dayvault spoke in opposition, indicating **SB 547** curtails the rights oil and gas companies derive through the oil and gas lease contract (Attachment 3). Passage of **SB 547** would not just affect those few operators who currently fail to notify or compensate for surface damage; this legislation would unfairly burden the majority of operators and would alter contractual relations between the oil and gas operators and their lessors.

Brent Sonnier provided neutral testimony stating the structure of **SB 547** favors large companies and would create a hardship on many of the small operators in day-to-day operations (Attachment 4). Of particular concern is the fundamental lease right of the operator to free access to make reasonable use of the surface. Any form of **SB 547** should be consistent with the contractual setting established by the mineral lease of good faith negotiations between parties and provide a flexible structure to accomplish a fair resolution of surface disputes through that process.

Doug Lewis testified in a neutral capacity providing comments and recommendations the Kansas Corporation Commission could administer to assist operators if **SB 547** or **SB 589** is enacted (Attachment 5 & 6).

Written testimony in support of **SB 547** was submitted by:
John Donley, Asst. General Counsel, Kansas Livestock Association (Attachment 7)
Richard Felts, Kansas Farm Bureau & Eastern Kansas Royalty Owners Association (Attachment 8)
Kenny Carter, Eastern Kansas Royalty Owners Association (Attachment 9)
Curtis Kettler (Attachment 10)
Douglas G. Zillinger, Farm & Ranch Owner, Phillips & Graham Counties, (Attachment 11)

MINUTES OF THE Senate Judiciary Committee at 9:37 A.M. on February 19, 2008, in Room 123-S of the Capitol.

Phil Habiger, Farm & Ranch Owner, Land County (Attachment 12)
Kirk Heger, President, Southwest Kansas Irrigation Association (Attachment 13)
Dennis Hupe, Kansas Soybean Association (Attachment 14)
Thomas G. Schnittker, Farm Manager, Pratt, Kansas (Attachment 15)
Robert K. Beymer, Lakin Kansas (Attachment 16)

Written testimony in opposition to **SB 547** was submitted by:
Steve M. Dillard, Vice President/Land Manager, Pickrell Drilling Company, Wichita (Attachment 17)

There being no further conferees, the hearing on **SB 547** was closed.

The hearing on **SB 589–Landowner and surface owner protection act** was opened.

Ed Cross testified as a neutral party stating under most circumstances the relationship between oil and gas operators and the surface owners are good (Attachment 18). The oil & gas industry met with surface owners and other stakeholders over the past few months resulting in **SB 589**. While there are several agreeable provisions, there are also several contentious issues especially, property rights, geophysical operations, fair market value, notice waivers, and incidental activities. Mr. Cross feels **SB 589** favors the surface owners and offered language that will make the bill more workable for all involved.

David Bleakley agreed with Professor Pierce stating there is more than one hundred years of contract law and this bill is not needed (Attachment 19). Mr. Bleakley has spent the last several months working on this issue and feels **SB 589** has come about because a few companies are not living up to the standard of most companies.

There being no further conferees, the hearing on **SB 589** was closed.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is February 20, 2008.

SWKROA

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

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Hugoton, Kansas 67951

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Testimony before the Senate Committee on Judiciary

SB 547 -- Oil and Gas Surface Owner Notice and Compensation Act
SB 589 – Landowner and Surface Owner Protection Act

February 19, 2008

Chairman Vratil and Members of the Committee:

I am Erick Nordling from Hugoton. I am Executive Secretary of SWKROA and also an attorney with the law firm of Kramer, Nordling, and Nordling, LLC. In my practice, and as Secretary for the Association, I represent and advise mineral and royalty interest owners, as well as surface owners and farm tenants.

Today, in consideration of time, I will be providing oral remarks on behalf of the coalition of proponents which have come together to work on this important legislation. The proponents of the bills include the following organizations and their respective constituents: Eastern Kansas Royalty Owners Association (EKROA); Kansas Farm Bureau (KFB); Kansas Livestock Association (KLA); Kansas Corn Growers Association (KCGA); Kansas Soybean Commission (KSA); Southwest Kansas Royalty Owners Association (SWKROA); and Southwest Kansas Irrigation Association (SWKIA).

I will plan to be brief in my formal remarks to leave the committee time for questions. Because of the significant negotiations which have taken place between the parties, I will also focus on the two bills before you, rather than to try to cover the underlying issues and needs for legislation. Although I'd be glad to provide you details on the needs and issues if you have questions. The members of the coalition strongly urge the need for a legislative solution, which can be found in the bills before you.

Special Committee on Judiciary

As you are aware, during the 2007 legislative session, several of our organizations were concerned with the need for legislation in Kansas to address improvement of relations and settlement of damages between landowners and their farm tenants and the gas and oil operators who use the surface of the land to conduct their oil and gas exploration and development activities. With the assistance of Chairman Vratil, this issue was assigned to a Special Committee on Judiciary which conducted hearings on October 12, 2007.

Senate Judiciary
2-19-08
Attachment 1

The special committee included members from both the Senate and the House. A number of conferees presented testimony to the committee for both the proponents and opponents. The committee made the following conclusions and recommendations:

> "The Special Committee on Judiciary considers this to be a serious issue and agrees something needs to be done to resolve or protect the interests of the surface owners. The Committee encourages the parties to seriously negotiate this subject and come to an agreement. If an agreement among the parties cannot be reached, legislation will be introduced in the 2008 Session."

Industry and coalition representatives followed the committee charge and met a number of times last fall to negotiate compromise language. The meetings were helpful, educational, and a lot of progress was made, although we were not able to reach consensus on all issues. As a result, we were not able to present to you a fully negotiated bill.

Overview of both bills

At the October hearing, proponents presented a draft bill. During the negotiations, industry offered a significantly revamped version for consideration. SB 547 embodies much of the basic framework offered by industry, and represents the vast majority of provisions which were successfully negotiated by the parties.

A key difference between the bills is the approach for enforcement. SB 589 establishes the office of landowner and surface owner protection through the State Corporation Commission (KCC), and provides for complaint based enforcement through the commission if the good faith negotiations between the parties fail. Mediation is also an option. This approach has some merit.

SB 547 encourages numerous steps for private negotiations (offers and counter-offers), and specification of damages claimed by the surface owner before the parties could proceed to litigation. The court ordered damage award would have to exceed certain tolerances before attorney fees and costs could be awarded to either the surface owner or the operator depending on the amount of awarded damages compared to the highest offer by the operator.

In the last week or so, the parties have been focused to consider further compromise language. SB 589 has been at the center of those discussions, so my remarks may focus on the proposed changes to SB 589. Much of the language which has been discussed for inclusion into the proposed substitute for SB 589 comes verbatim from provisions within SB 547. Proposed substitute for SB 589 appears to be a bit more streamlined than SB 547.

The two bills before you (including the proposed substitute for SB 589) represent significant progress which we hope your committee will take into account when you 'work' the bill. Proponents believe that either bill could work to address the issues. Many of the negotiated provisions dealing with definitions, 'notice' and the type of operations to be covered are contained as mirrored provisions in both bills.

The proposed substitute for SB 589 also contains a provision to expand the membership for advisory committee on regulation of oil and gas activities (K.S.A. 55-153), which the coalition supports. As the Governor's appointee for the general public to the advisory committee since 2001, I also personally support this expansion to bring landowner/mineral owner representation to the committee.

Key provisions which should be included

Norman D. Ewart, Associate General Counsel of Rosetta Resources, Inc., Houston, Texas was one of the presenters at the Rocky Mountain Mineral Law Foundation at its Special Institute on Surface Use for Mineral Development in the New West. The institute was held in Westminster, Colorado, February 7-8, 2008. He provided an excellent overview of surface use laws. He stated that the purposes of the surface owner protection statutes are: to minimize damage suffered by surface owners; to prevent harm to the general public by potential loss of available surface for agricultural or other beneficial purposes; to promote settlement of disputes between surface owners and mineral owners; and not to prevent or delay exploration and development of minerals.

Proponents believe that both of the bills accomplish such purposes. The following is a list of key provisions which proponents believe should be included in surface owner legislation in Kansas:

- General purpose of act
- Definition of terms
  - including critical terms
    - Agricultural surface use
    - Oil and gas operations
    - Restoration
    - Surface damages
- Notice provisions
  - triggering events
    - operations with significant surface impacts
    - operations incidental surface impacts
    - restoration or plugging
    - geophysical exploration
  - timing of notice
  - written
  - contents of notice
- Open lines of communication
  - Both written and oral communications are desirable
  - Meet with landowner to discuss plans for operations
  - Contact information
- Offers to settle damages
  - Some preference to settle in advance if possible for usual damages
  - Settlements in writing

            - encourage surface use agreements
- Waivers and alterations of act
    - Should be conspicuous and knowing
- Enforcement
    - For failure to follow rules for notice, etc.
    - For non-payment or under-payment of damages
    - Where/How to enforce
        - Options include
            - District Courts and/or
            - Corporation Commission
            - Mediation
        - Venue for enforcement
        - Possible sanctions
        - Not limit rights or remedies otherwise available

Summary

The focus for your committee will be to pick the best provisions from both bills to end up with the best product to address these real life concerns.

It is true many Kansas operators work hard to keep and maintain good relations with its landowners by providing timely and accurate information regarding upcoming operations, and work hard to provide timely and fair compensation. However, as you in the legislature especially should know, although laws are enacted to provide protections against the 'bad' actors in society they also have a side benefit to help all of the good citizens too.

This legislation certainly would provide protections against the 'bad' operators, but it will also help level the playing field for all landowners in their relationships with operators who use their surface estate to exploit the minerals underlying the surface and by providing consistency throughout the state. Legislation will likely also help operators by giving predictability in dealing with surface owners.

After meeting with the industry on numerous issues over the years, I am a firm believer that communication is often at the root to differences of opinion. Encouraging better communication and education, albeit through a legislative effort, has to help improve the working relationships between mineral owners, surface owners and oil and gas operators.

On behalf of the proponent coalition, thank you for your consideration on this important issue.

Respectfully submitted,

Erick E. Nordling
Executive Secretary, SWKROA

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Testimony before the
Senate Committee on Judiciary
February 19, 2008

SB 547 -- Oil and Gas Surface Owner Notice and Compensation Act

SB 589 – Landowner and Surface Owner Protection Act

Presented by Erick Nordling
on behalf of following coalition:

Coalition for Surface Owner Legislation

- Eastern Kansas Royalty Owners Association (EKROA)
- Kansas Farm Bureau (KFB)
- Kansas Livestock Association (KLA)
- Kansas Corn Growers Association (KCGA)
- Kansas Soybean Commission (KSA)
- Southwest Kansas Royalty Owners Association (SWKROA)
- Southwest Kansas Irrigation Association (SWKIA)

Special Committee on Judiciary

Conclusions and Recommendations.

The Special Committee on Judiciary considers this to be a serious issue and agrees something needs to be done to resolve or protect the interests of the surface owners. The Committee encourages the parties to seriously negotiate this subject and come to an agreement. If an agreement among the parties cannot be reached, legislation will be introduced in the 2008 Session.

Parties to the Oil and Gas Leasing

Oil and Gas Producers negotiate contract and damage terms with the Mineral Owner

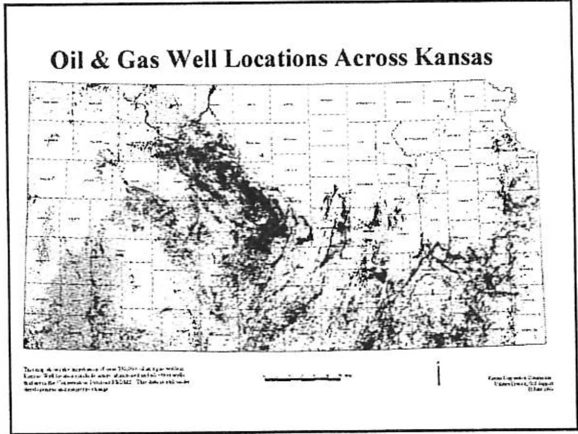
Surface owner may have a limited voice regarding access and damages

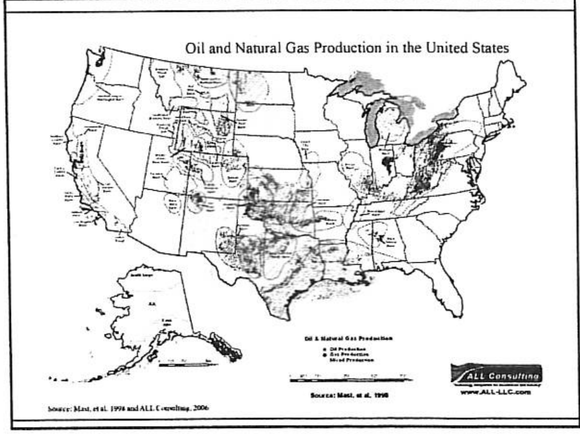
Oil and Gas Producer

Surface owner

Mineral Owner

The mineral estate is dominate over the surface estate. This can create a natural conflict between the surface owner and operator and perhaps the mineral owner





OTHER STATES THAT HAVE SIMILAR STATUTES

- ILLINOIS
- KENTUCKY
- MONTANA
- NEW MEXICO
- NORTH DAKOTA
- OKLAHOMA
- SOUTH DAKOTA
- TENNESSEE
- TEXAS
- WEST VIRGINA
- WYOMING
- COLORADO

Legislation

- There is no law in Kansas to ensure a private landowner, farm tenant or rancher the right to negotiate and receive compensation for the economic loss caused to their private property by oil and gas operations.

Purposes of the surface owner protection statutes

- to minimize damage suffered by surface owners
- to prevent harm to the general public by potential loss of available surface for agricultural or other beneficial purposes
- to promote settlement of disputes between surface owners and mineral owners
- and not to prevent or delay exploration and development of minerals

Norman D. Ewart, Assoc. General Counsel of Rosetta Resources, Inc., Houston, Texas

Key Provisions for Bill

- General purpose of act
- Definition of critical terms
  - Agricultural surface use
  - Oil and gas operations
  - Restoration
  - Surface damages

Key Provisions for Bill

- Notice provisions
  - Triggering events
    - operations with significant surface impacts
    - operations incidental surface impacts
    - restoration or plugging
    - geophysical exploration
  - Timing of notice
  - Written
  - Contents of notice

Key Provisions for Bill

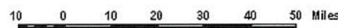
- Open lines of communication
  - Both written and oral communications are desirable
  - Meet with landowner to discuss plans for operations
  - Contact information
- Offers to settle damages
  - Some preference to settle in advance if possible for usual damages
  - Settlements in writing
  - encourage surface use agreements

Key Provisions for Bill

- Waivers and alterations of act
  - Should be conspicuous and knowing
- Enforcement
  - For failure to follow rules for notice, etc.
  - For non-payment or under-payment of damages
  - Where/How to enforce
  - Venue for enforcement
- Possible sanctions
- Not limit rights or remedies otherwise available

Oil & Gas Well Locations Across Kansas

This map shows the distribution of over 330,000 oil and gas wells in Kansas Well locations include active, abandoned and all other wells that are in the Conservation Divisons RBDMS. This data is still under developement and subject to change.



Kansas Corporation Commission
Utilities Divison, GIS Support
23 June 1999

STEVENS COUNTY OIL & GAS WELLS

North Fork Cimmaron

MOSCOW

K-56

HUGOTON

K-51

K-25

LEGEND

Oil Wells

Oil & Gas Wells

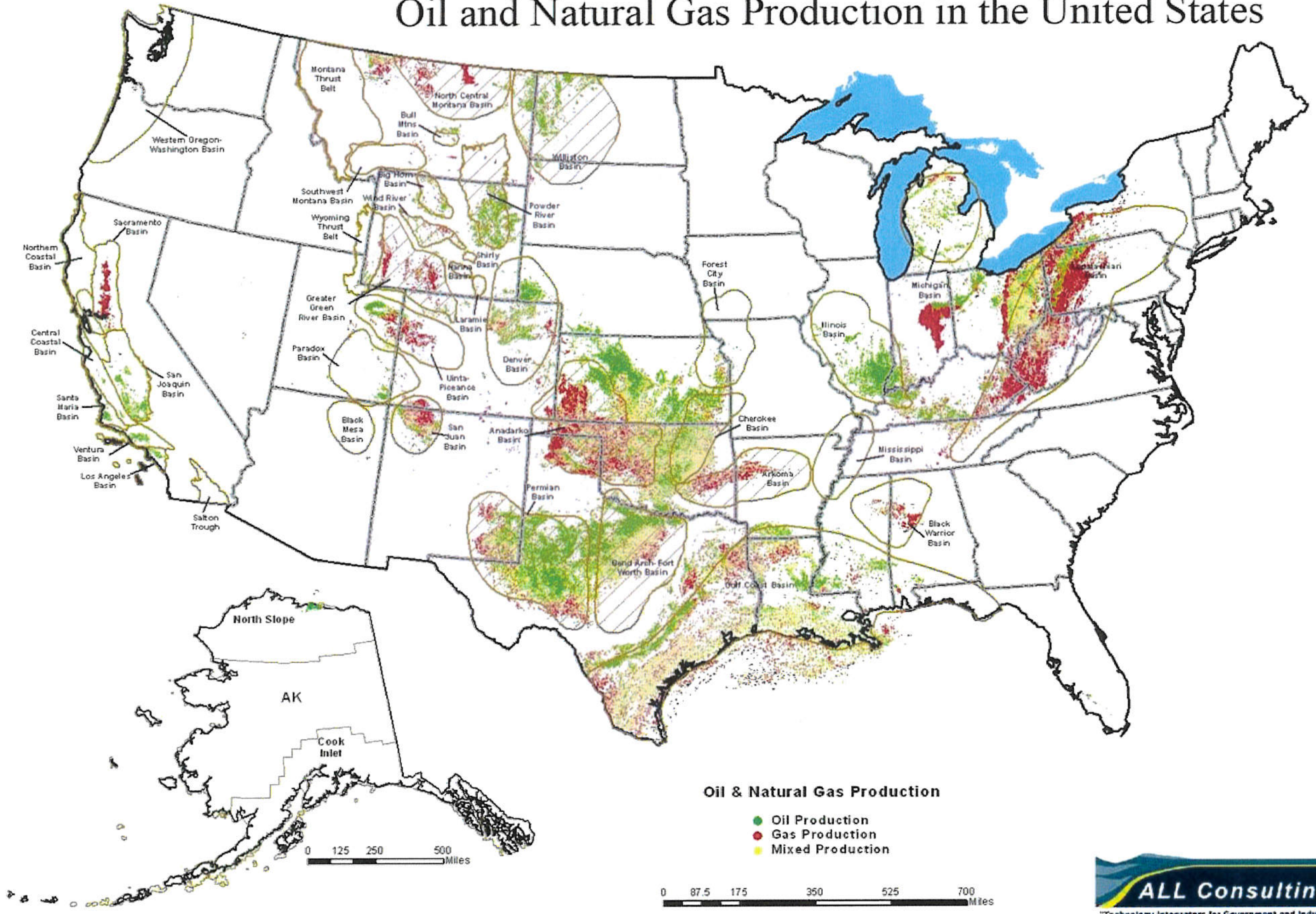
Gas Wells

Rivers_SVCO

County Boundry

00.45.9 1.8 Miles

Stevens County GIS makes no warranties, guarantees, or representations for the accuracy of this information & assumes no liability for errors or omission



Source: Mast, et al, 1998 and ALL Consulting, 2006

1-10

Testimony Before the Senate Judiciary Committee in Opposition to Senate Bill No. 547 & Senate Bill No. 589
David E. Pierce

I appear here today as someone who has studied Kansas oil and gas law, and the Kansas oil and gas industry, for nearly 30 years. Although I represent noone in this matter, with regards to this proposed legislation my views clearly coincide with those of the Kansas oil and gas developer.

Compared to other states with significant oil and gas development, I believe Kansas has a superior legal system governing the development of oil and gas. For example, Kansas is the only major producing state that does not have a compulsory pooling law. Although many commentators think that is a "bad" thing, I think our approach works quite well–for Kansas. Compulsory pooling, also known as forced pooling, can be used to "force" a landowner into the development of their oil and gas. It limits the landowner's ability to simply say "no." In Kansas a landowner cannot be forced into developing the oil and gas in their land. They have the power to say "no."

This means no oil and gas lease will be entered into without the landowner's consent. The landowner has total control over the situation because they are under no obligation to lease to anyone. When they do decide to lease, they have the ability to specify what they will receive as an upfront cash payment, called a "bonus," annual payments called "delay rental," the share of production they will receive as "royalty," and the lessee's rights and obligations regarding use of the land to conduct operations. It is viewed as a package deal and oil and gas leases frequently provide for extensive surface use rights and obligations that have been negotiated as part of the package deal.

This approach, which relies upon freedom of contract between the parties, has worked very well. Litigation on these issues in Kansas is minimal. Problems are the exception, not the rule.

Contrast the Kansas experience with that of Oklahoma where they have detailed forced pooling statutes, surface use statutes, and statutes for a host of other oil and gas development issues. The statutory schemes become a self-fulfilling prophecy of dispute and litigation. The net result is the cost of doing business in Oklahoma becomes unnecessarily inflated by the additional business risks imposed by detailed statutory schemes which include delay and uncertainty, not to mention civil penalties and attorney fees. The predictable result has been for the industry, in the surface use area, to simply "buy" peace by paying the landowner a sum of money that has very little relation to the deal that was made under the oil and gas lease–or to the actual disruption of the land.

The net effect of such statutory schemes is to require the oil and gas operator to pay more money to the landowner to exercise the rights it has already purchased under its oil and gas lease. If your ultimate goal is to better equip the landowner to get more money from the oil and gas developer than the bonus, delay rental, royalty, and surface rights they have negotiated for under their lease, then you should pass this legislation. It does not appear this legislation was prompted by widespread operator abuse. Instead the basic complaint seems to be developers pay people more in Oklahoma for surface damages than they do in Kansas. As noted above, the higher payments in Oklahoma reflect the efforts of developers trying to buy back some of the rights they lost under their oil and gas leases with the passage of these types of "notice" and "compensation" laws.

Senate Judiciary
2-19-08
Attachment 2

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Testimony to the Senate Judiciary Committee
Senate Bill 547
AN ACT enacting the oil and gas surface owner notice and compensation act

David M. Dayvault, President
Kansas Independent Oil & Gas Association

February 19, 2008

My name is David M. Dayvault. I am President of the Kansas Independent Oil & Gas Association (KIOGA) and the Chief Financial Officer of Abercrombie Energy, LLC. KIOGA. The Eastern Kansas Oil & Gas Association, and the Kansas Petroleum Council oppose the passage of SB 547 dealing with the relations between oil and gas operators and surface owners.

The relationship between an oil and gas operator and a mineral owner is that of lessor and lessee. All the rights that the oil and gas operator has are derived by the oil and gas lease contract. The operator pays valuable consideration for this contract and in so doing receives a bundle of interrelated rights necessary for mineral exploration and production. Among these rights are the rights of ingress and egress to conduct oil and gas operations. SB 547 curtails those rights and in so doing changes the existing oil and gas lease contract.

At such time as a well is drilled the oil and gas operator moves heavy equipment onto location, digs pits for the storage of water, drilling mud and sediment which comes to the surface during the drilling operations. The location is leveled and a drilling rig is moved onto the location to drill the well. The size of the location depends on the depth and the area of the state but it is unusual for a location to impact more than two acres of surface area. Following the drilling of the well the pits are closed and the surface is restored as much as possible to its original condition. The damage suffered by the surface owner is typically crop loss for that drilling location and some reduced crop yield for the next season or two.

Pursuant to most oil and gas leases, the operator has an obligation to reimburse the surface owner for his losses. Some operators try to quantify the amount of crop loss and to simply make the surface owner whole. Other operators pay a substantial amount in excess of the economic loss in order to buy goodwill with the surface owner and to enhance the operator's reputation in that area. Because of these two different approaches many surface owners may be confused as to why they are receiving less than their neighbor for similar activities. One surface owner may not be getting as much as his neighbor but he is none the less being made whole for his economic losses pursuant to the lease contract.

KIOGA conducted a survey of many Kansas operators active in the state. Our non-scientific survey included 16% of the wells drilled during 2006. The results of the survey indicated that no instances were found where the process of damage settlement resulted in litigation. Only in four instances did the surface owner engage an attorney at any process of this procedure.

SB 547 contains a requirement to notify the surface owner at least 14 days prior to entry for certain purposes. Among those purposes is utilization of a service rig for many routine repair operations. The bill imposes a notification requirement if a service rig is utilized in such a way that it would use more surface area than was used immediately prior to that operation. Most of these repair operations could not be contemplated 14 days prior to being conducted. As a result many wells in Kansas would either be shut in for a period of time on a regular basis to comply with the notice requirement or the operator would face a penalty. The act provides for a $2,500 penalty for violating the notice requirement. This is a steep penalty for an operator who is merely exercising a contractual right for which he has paid valuable consideration. To put this penalty in a different perspective, the Kansas Corporation Commission has recently imposed a $250 penalty for failure to notify a surface owner in the event of a spill of oil or other produced liquids.

SB 547 would severely limit the flexibility of operators to conduct their operations. Drilling rig schedules, service rig schedules, seismographic crew schedules and many other contractors' schedules often change daily. Most often this is due to changes of weather and the resulting muddy conditions on the surface. The imposition of the notice requirement would deny these contractors the flexibility to conduct their operations as in a manner which provides efficient service. The lack of flexibility forced by the notice requirement will force many field workers to wait at home waiting on notice to be delivered and while drawing no wages.

The rights of the oil and gas operator are derived from the mineral estate. Under Kansas law the relations between the mineral estate and the surface estate are governed by the doctrine of mutual accommodation. In Kansas, the vast majority of mineral estate owners also own the surface. In the rare instances where ownership is split, the surface owner and the owner of the mineral estate are allowed to contemporaneously use the surface and each should make reasonable accommodation to the needs of the other. In the vast majority of instances the surface owners and the oil and gas operators enjoy good relationships. Passage of Senate Bill 547 would not just affect those few operators who currently fail to notify or compensate for surface damage; this legislation would unfairly burden the majority of operators who have been doing the right thing all along. This legislation would alter contractual relations between the oil and gas operators and their lessors, and would tend to disturb the many good relations which currently exist.

Testimony re: SB 547 and SB 589 Addressing Respective Surface Use by Land Owners and Oil and Gas Operators

Senate Judiciary Committee
February 19, 2008

Mr. Chairman, Members of the Committee

My name is Brent Sonnier, and I am the Hugoton Asset Team Regulatory Advisor for OXY USA Inc. ("OXY"), a wholly owned subsidiary of Occidental Petroleum Corporation, and I serve as a representative of major Kansas oil and gas operators through our trade association, the Kansas Petroleum Council ("KPC"). The major operator members of the KPC operate thousands of wells primarily in the Kansas Hugoton Field area of Southwestern Kansas, and collectively account for a substantial portion of the State's prolific oil and gas production.

At the initial hearing on this matter last October by the Special Committee on the Judiciary, OXY's Managing Counsel, Brent Moore, presented testimony in which he expressed to the Committee that surface use legislation not be adopted by Kansas, whereas nearly 80 years of common law jurisprudence on the issues arising from the competing surface uses of agricultural production and oil and gas operations adequately define the respective rights and obligations of those engaged in these enterprises. In reiterating that sentiment today, KPC maintains that the relations between oil and gas operators and land owners involving surface use arise out of the oil and gas mineral lease contract between the parties, which is designed to resolve surface use issues through good faith negotiation. Where disputes cannot be resolved through the negotiating process, then there is resort to the State's courts of competent jurisdiction to fairly apply the longstanding legal precedents to equitably decide such disagreements.

The KPC respectfully submits that this time-honored process of negotiation and civil remedy is adequate to resolve issues of competing surface use between the farming and petroleum industries, and legislation is unneeded to address a few isolated cases in which an oil and gas operator has neglected its contractual commitments to the surface owner. Notwithstanding this position, KPC would take the opportunity to briefly present certain concerns with the two bills at issue, should one or the other move forward.

SB 547:

The statutory structure of SB 547 was initially proposed by the KPC in participating in the negotiations over this bill with the Kansas Independent Oil and Gas Association (KIOGA) and the Eastern Kansas Oil and Gas Association (EKOGA) and various surface owner representatives, including the Southwest Kansas Royalty Owner Association as one possible legislative alternative. While the bill's structure follows a procedure which the major operators generally follow in settling surface damages in the Hugoton Field area, it is specifically tailored for major operators with a large work force and substantial resources. In declining to pursue further negotiations on this bill in its

current form, KIOGA and EKOGA have made clear that the proposed statutory structure would work a financial and functional hardship on many of their smaller members in day to day operations. Whereas the independent operators drill a vast majority of the wells in the State, the KPC members would not impose our way of resolving surface issues to the detriment of our independent colleagues.

With that said, of particular concern to KPC is that any form of SB 547 that may emerge from this Committee maintain the fundamental lease right of the operator of free access to make reasonable use of the surface to conduct oil and gas operations in a prudent manner, absent a judicial injunction prohibiting that access. Kansas statute imposes on an oil and gas operator the obligation to further develop the mineral estate for the benefit of its lessor as reasonable. That obligation, along with the substantial expense and logistical difficulties of mobilizing equipment and preparing the surface for drilling operations, and the whims of the Kansas weather, necessitates that the right of entry for the operator be preserved and not unduly restricted.

Additionally, the present form of the bill would impose on an operator liquidated damages of $2,500 for failing to either give the surface owner timely notice of proposed oil and gas operations or to make an offer to settle surface damages. These liquidated damages would be in addition to any actual damage caused the surface owner by the operator's neglect. As a matter of law, liquidated damages must be reasonable in relation to the potential injury they are to remedy. Also, the liquidated damages were proposed in negotiations as part of the bill to provide the surface owner with a financial resource and limit legal expenses to pursue a practical legal remedy in the State's small claims courts, where the jurisdictional limit is $4,000 in damages, exclusive of costs. Excessive liquidated damages likely would preclude use of the small claims jurisdiction to pursue all surface damages claimed because of this damage limit, and would be patently unfair to the operator when actual damages can be recovered for a failure of notice or settlement offer. KPC would respectfully propose that no more than $500 be imposed as liquidated damages under the bill should it proceed herein.

Lastly, any form of SB 547 should be consistent with the contractual setting established by the mineral lease of good faith negotiations between the parties and a flexible structure to accomplish a fair resolution of surface disputes through that process. While certain time tables are proposed in the bill, the law adopted should allow the parties the freedom to settle their differences without undue formalities, and allow mutual waiver of a part or all of the statutory requirements if agreed.

SB 589:

As of the filing of this testimony, the KPC has not had the opportunity to review SB 589 in its current form, which we understand has been revised from the original proposed bill. From discussions with KIOGA and EKOGA representatives who have offered those revisions as to the current version of the bill, KPC wishes to make two points.

First, the KCC functions as an oil and gas regulatory agency primarily to prevent waste of the State's oil and gas resources, protect the correlative rights of those with an interest in oil and gas produced, and to prevent injury to land and fresh water in oil and gas operations. The agency must be fair and objective in its regulation and in its dealings with the various stakeholders involved. It is the opinion of the KPC that placing the Commission in the position of arbitrating surface disputes imperils its public perception as an even-handed regulator of basically technical matters that come before it. While KPC does not outright object to giving the KCC this proposed role, we do have the foregoing concern, especially with the limited resources of the agency at present.

Secondly, as already noted above, surface use issues derive from mineral lease contracts and therefore are matters for courts of law to decide. The KCC is without jurisdiction to enforce contracts, and to prosecute a party's rights in contract in pursuit of a private remedy. At best, under its present jurisdictional limitations, the Commission could only offer a non-binding recommendation as to an appropriate amount of surface damages on the given facts, and if one party disagreed, then the matter would be for a court to resolve as with negotiations between the parties from the outset. While the KCC could administer to certain notice requirements, given it jurisdictional limitation and the need for ultimate judicial remedy, KPC questions whether the KCC should be an intermediate stop for the parties before seeking a resolution in court on the issue of surface damages.

Finally, the KPC wishes to advise that it concurs with the testimony submitted to this Committee by the KIOGA addressing SB 547, and adopts same as part of this testimony. Since KPC has not reviewed SB 589 in its present form, we reserve further comment on same.

The KPC appreciates this opportunity to present this testimony to the Committee.

Respectfully submitted,

Brent G. Sonnier

Senate Judiciary Committee
SB 547
Comments by Doug Louis
Kansas Corporation Commission
Conservation Division
February 19, 2008

Chairman Vratil and members of the Judiciary Committee, I am Doug Louis, Director of KCC Conservation Division. I am here today to provide comment on Senate Bill 547. In addition I will offer a few recommendations with respect to this legislation.

Background and Current Status

The Commission has been involved in regulating oil and gas exploration and production operations since the mid 1930's. Some of these activities include: licensing oil and gas operators, permitting drilling activities such as "intents to drill" and associated pit permits, enforcing proration orders, overseeing well plugging operations, permitting injection well activities, regulating gas gathering, enforcing pit and spill regulations, regulating underground porosity gas storage operators and administering the abandon well plugging program. Staff has developed an expertise with many aspects of the industry's field activities by the nature of enforcing regulations that are designed to prevent waste of natural resources, protect correlative rights and protect public health and safety.

Comments / Recommendations – SB 547

As "oil and gas operations" is defined in Sec. 3 (k), the term "production operations" could possibly include day-to-day maintaining of wells and gauging crude oil tanks. These routine tasks rarely cause surface damage. It is recommended the term "production operations" be stricken.

The Commission is capable of creating a notice form as directed in Sec. 5 b (1). The form could be developed with the aid of the "Oil and Gas Advisory Committee", as outlined in K.S.A. 55-153. The form could then be placed on the KCC webpage and paper copies kept at the conservation division's central and district offices for distribution.

Sec. 5 b (5) directs the commission to post "intents to drill" on its website. Approved intents are currently being displayed on the KCC website for 180 days.

Sec. 5 (k) provides for the commission to add a check-off box on the notice of intent to drill and plugging report forms indicating the operator has complied with the notice requirements. A check-off box on the notice of intent to drill form can easily be added to the current form. With regards to a check-off box on the plugging report form, the plugging report form is a form filed by the operator that describes the method in which the well was plugged, it is filed after the well is plugged. If the intention is to have the operator indicate that notice requirements have been complied with beforehand, the form that should be modified is the commission's "Well Plugging Application". A check off box can be added to this form easily.

It is anticipated the commission could administer SB 547 without hiring additional staff.

Thank you for this opportunity to provide comment and if the Committee has questions I will be happy to attempt to answer them

Kathleen Sebelius, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner

Senate Judiciary Committee
SB 589
Comments by Doug Louis
Kansas Corporation Commission
Conservation Division
February 19, 2008

Chairman Vratil and members of the Judiciary Committee, I am Doug Louis, Director of KCC Conservation Division. I am here today to provide comment on Senate Bill 589. In addition I will offer a few recommendations with respect to this legislation.

Background and Current Status

The Commission has been involved in regulating oil and gas exploration and production operations since the mid 1930's. Some of these activities include: licensing oil and gas operators, permitting drilling activities such as "intents to drill" and associated pit permits, enforcing proration orders, overseeing well plugging operations, permitting injection well activities, regulating gas gathering, enforcing pit and spill regulations, regulating underground porosity gas storage operators and administering the abandon well plugging program. Staff has developed an expertise with many aspects of the industry's field activities by the nature of enforcing regulations that are designed to prevent waste of natural resources, protect correlative rights and protect public health and safety.

Comments / Recommendations – SB 589

The Commission is capable of creating a notice form as directed in New Sec. 4 (5). The form could be developed with the aid of the "Oil and Gas Advisory Committee", as outlined in K.S.A. 55-153. The form could then be placed on the KCC webpage and paper copies kept at the conservation division's central and district offices for distribution.

New Sec. 4 (5) directs the commission to post "intents to drill" on its website. Approved intents are currently being displayed on the KCC website for 180 days.

New Sec. 6 would establish an office of landowner and surface owner protection within the commission that would investigate and possibly mediate discussions between landowners and oil operators concerning surface damage, upon written complaint of the landowner. This bill would empower the commission to determine and subsequently order oil and gas operators to pay surface owners damages. The

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determination of damages and payment to landowners would be an activity that is a completely new area of regulation for the commission and a departure from the commission's current regulatory role. If the commission is given this new regulatory role our recommendation is that it should be done using administrative procedures similar to those currently utilized by the commission.

It is probable that additional commission staff (legal staff and investigative field staff trained in agricultural or environmental science), office space, equipment and vehicles will be needed to administer the newly established office of landowner and surface owner protection. At the end of the office's first 6 months of operation an analysis and report could be produced that would detail the level of activity of the office and future funding needs.

Thank you for this opportunity to provide comment and if the Committee has questions I will be happy to attempt to answer them

Since 1894

TESTIMONY

To: The Senate Committee on Judiciary
Sen. John Vratil, Chairperson

From: John Donley

Date: February 19, 2008

Subject: **Surface Owner Notice, Compensation, and Protection**

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

Good Morning. My name is John Donley. I am Assistant General Counsel for the Kansas Livestock Association.

I am providing written comments today in support of many of the concepts that are included in both SB 547 and SB 589. KLA has been active in the discussions regarding this issue since the Interim Committee hearing last fall. This is an important issue to KLA members that are also surface owners in the state.

KLA members have had numerous situations where they have had disputes with oil and gas operators over the years. One of the consistent themes to these problems has been the lack of communication from the operator and the lack of a forum to economically reach a resolution to the disputes that arise. It is our belief that these bills and the proposed language being negotiated will help improve both of these problems. While I will not go into the details of the bills in this testimony, I will mention that we fully support the testimony given by the coalition of interested surface owner groups.

One of the comments that has stuck with me throughout discussion of this issue was a comment made to me by a KLA member in western Kansas. Our member stated to me that they have made a concerted effort to improve communications between the oil and gas operators and themselves. By opening up this line of communication, they have found that there is less damage occurring on their property, and the operator has to pay less in damages as well. This member went on to state that if all of the operators would simply let surface owners know what is going to happen and when something is going to

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6031 SW 37th Street ◆ Topeka, KS 66614-5129 ◆ (785) 273-5115 ◆ Fax (785) 273-3399 ◆ E-mail: kla@kla.c

happen on their land, many of the disputes will go away. The legislation being discussed today goes a long ways toward improving that communication.

Finally, KLA and other interested groups have been working with the oil and gas operators to try to achieve language that both sides feel will address the problems that they have with regards to this issue and these bills. We remain hopeful that all sides can reach a resolution that is compatible with the continued success of both the oil and gas industry and the agricultural industry, as they are both vital to the Kansas economy.

Feel free to contact me if you have any questions regarding this testimony.

KANSAS FARM BUREAU
The Voice of Agriculture

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785-587-6000 • Fax 785-587-6914 • www.kfb.org
800 SW Jackson St., Suite 1300, Topeka, Kansas 66612-1219 • 785-234-4535 • Fax 785-234-0278

PUBLIC POLICY STATEMENT

SENATE JUDICIARY COMMITTEE

Re: SB 547 & 589 – Concerning the Kansas Landowner and Surface Owner Protection Act.

February 19, 2008
Topeka, Kansas

Testimony Provided by:
Richard Felts

Chair Vratil and members of the committee, thank you for accepting my testimony. My name is Richard Felts and I am a land and mineral owner in Montgomery County. In addition, I am a member of the Kansas Farm Bureau and the Eastern Kansas Royalty Owners Association.

In the last few years we have been blessed with rapid development of our coal bed methane fields in Eastern Kansas. However, with this great opportunity have also come many challenges. On our property we have experienced ruts in pastures, pipes laid on top of the ground, rocks left on the surface, open ditches, etc. Most recently we had a road built and a well drilled without our knowledge, even though the lease stated we should have been notified prior to the activities. Because of many similar issues all across Eastern Kansas it has led to the forming of the Eastern Kansas Royalty Owners Association.

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S.B. 589 will address many of the issues we have experienced as surface owners. A notification and surface damage act overseen by the state corporation commission would be in the best interest of the oil and gas industry.

As a representative of the Kansas Farm Bureau and the Eastern Kansas Royalty Owners Association I urge you to support S.B. 589.

Respectfully submitted,

Richard Felts
3453 County Road 4700
Liberty, Kansas 67351
Home 620-485-3376

February 19, 2008

My name is Kenny Carter. As Treasure of Eastern Kansas Royalty Owners Association (EKROA) and a land owner in Wilson County, Kansas, I am in favor of legislation that would give some oversight to an industry that has to answer to no one. Specifically concerning surface damage, property damage abiding by a contract or the timely compensation for agreed to damages. No one in this state can get by paying their bills late or not at all without a penalty. Surface owners need someone they can take their complaints to. Most people will simply not spend the time or the money to hire an Attorney and end up in Court for $800 or $1000.

An incident I personally experienced was a late payment. The land man and I measured the damages and figured the damages according to the contract. It was one year later when we finally received the money. About every 3 months I would call the land man and ask if we needed to resubmit the damage paperwork. His answer was no, he had personally submitted the charges; it was just on somebody's desk. We finally received all the money we were owed just slightly over due. Who else could get away with operating in this fashion? I suggest no one.

I am also presenting you with a copy of a complaint EKROA received from one of our members. Please notice the bracketed paragraph on page one and then refer to page two, item h, towards the bottom. This is a copy of the lease on the property. The language is very specific. Just a note, this waterway goes up a hill that rises about 80 ft. in elevation and the waterway is about 125 yards long. This is a lot of slope. This all happened in March of 2005. Mr. Carter did receive a $300 payment for damage in April of 2007. He did not pursue any kind of litigation. He thought the company would do the right thing.

Thank You for your consideration on this subject.

Kenny Carter
18240 K47 Hwy
Altoona, Ks. 66710

Altoona,Ks 66710
November 18,2006

EKRUA
Dear Sirs:

I have two leases on my property.
One on 12-29-16 is a lease with Quoque and it says I am to get 1/8 of the gas at the well and nothing about deductions.
The other on 24-29-16 is alease with Quest Cherokee and it does not say anything about deductions.

My main trouble is that they are't charging the same per MCF on leases. Starting in May they are taking $1.76 per mcf out of my check and are taking $1.26 from my neighbors. On my lease on 12-29-16 the wells on it are free flowing. They are pumping water from the other leases. Now this last check they gave back .48 cent a mcf on the other leases for the last 4 months.

On the lease on 24-29-16 they went up the middle of my waterway with a road and my lease states they are not to drive on the waterways and as of this date they have not payed any damages for this. I have been told that they pay others for the roads on their leases yearly.

Since they put in the new lines this summer they have not paid damages for this and there are two holes that they have not filled up. I have told several of their men about them and they tell me they will get it done. And there is one place where they have not fixed my fence on the corner of Udall rd and 1200.

Kenny Brown turned in a damage report for $3500 two months ago and I have not received it.

And another thing they have put a disposal site which is at least 1/2 on my property and they have not talked to me about that. They have placed a bunch of valves on the new lines on 12-29-16 lease.

Yours Truly.

Willard Carter

Willard Carter

filed for record - 4-3-03 Bk. 258 - Pg. 407 time 12:39 P.M.

OIL AND GAS LEASE

THIS AGREEMENT, made and entered into this 3rd day of April 2003, by and between Willard L. Carter and Lucile Myers Carter Revocable Living Family Trust, hereinafter called Lessor (whether one or more), and Quest Oil & Gas Corporation, a Kansas corporation, hereinafter called Lessee, does witness:

1. That the said Lessor, for and in consideration of TEN OR MORE DOLLARS cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of Lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let exclusively unto Lessee, for the sole and only purposes of investigating, exploring by geophysical and other means, drilling, producing, saving, taking, owning, gathering, transporting, storing, handling, processing, treating, and marketing; oil and liquid hydrocarbons (including, but not limited to, distillates and condensates) and all gases (including, but not limited to, casinghead gas, methane gases from coals and shales, helium and all other constituents and substances produced therewith) and; to the extent reasonably necessary or convenient to enable Lessee to carry out said purposes, including the dewatering for production of any gases, the right of constructing, operating and maintaining pipelines, flowlines, gathering lines, compressors, tank batteries, electric lines, roadways, metering facilities and equipment, facilities for the injection of water, other fluids and gaseous substances into subsurface strata, and other facilities, structures, and equipment required by Lessee for said purposes; all of the following described land, together with any reversionary rights and after acquired interest therein, situated in the County of Wilson, State of Kansas described as follows, to wit:

The Northeast Quarter (NE4) of Section Twenty-four (S24), Township Twenty-nine South (T29S), Range Sixteen East (16E), of the Sixth P.M.

less and except the wellsite of any abandoned well(s) existing on this land on the date of this lease that is not claimed by Lessee, and containing 160acres, more or less (herein called leased premises).

2. This lease shall remain in full force for a term of three (3) years from this date, and as long thereafter as oil or gas, or either of them, is produced from the leased premises, or the leased premises are being developed or operated, or are otherwise perpetuated as provided herein.

3. In consideration of these premises Lessee covenants and agrees:

(a) To deliver to the credit of Lessor, as royalty, one-eighth (1/8) part of the oil produced and saved from the leased premises, said payments to be made monthly.

(b) To pay Lessor, as royalty, for gas of whatsoever nature or kind (with all of its constituents) produced and sold (whether to an affiliate or otherwise) or used off the leased premises or used on the leased premises by Lessee for any purpose other than the development or operation thereof or used in the manufacture of any products therefrom, one-eighth (1/8) of the proceeds at the wellhead at the prevailing market rate, said payments to be made monthly.

(c) To bury all pipelines associated with this lease below normal plow depth.

(d) To pay for damages caused by Lessee's operations to the leased premises.

(e) To avoid drilling a well closer than 300 feet to the house(s) now existing on said premises.

(f) To provide availability for Lessor's free use of gas for domestic purposes only in the principal dwelling located on the leased premises from a gas well on the leased premises by Lessor making his own connections with the well at his expense, all in a manner approved by Lessee, with the use of such gas at the sole risk and expense of Lessor. Lessor, including Lessor's users of such gas for domestic purposes, shall save, hold harmless, defend and indemnify Lessee from any claim asserted against Lessee arising out of or in connection with Lessor's use of such gas, and for any act or omission by Lessee related to the use of such gas.

(g) In consideration of these premises Lessee covenants and agrees to pay Lessor a minimum amount per year, including royalties and rentals, of $10.00 per acre of the leased premises. If the Lessor's annual payment(s) received fail to meet this amount, then Lessee shall have forty-five (45) days after receiving written notice from Lessor to pay the difference. This minimum payment shall be due on the anniversary date of this lease in 2007 for the preceding twelve (12) months and each anniversary date thereafter.

(h). To not drive or drill on waterways.

(i) To consult with lessor on road routes and to rock all roads.

(j) When lease is terminated all tanks and equipment left on lease land becomes property of the lessor after six months.

4. When gas is not being sold or used and a gas well capable of producing in paying quantities is shut in on the leased premises, whether or not said well has theretofore actually produced, and there is no current production of oil or gas or operations on the leased premises sufficient to keep this lease in force beyond the primary term, this lease shall, nonetheless, remain in full force and effect, and it will be deemed that gas is being produced in paying quantities

9-3

Testimony for an Act enacting the Kansas landowner and surface owner protection act; amending K.S.A. 55-153 and repealing the existing section.

And support of provisions **enacting the oil and gas surface owner notice and compensation act** of Senate Bill No. 547.

As a party to gas leases with three distinct and varied gas lease producers, and as a landowner of several farms, a widow and agricultural producer dependent upon my income from "agricultural surface use", as defined in the bills presented; I have ample experience to testify to the conditions which make the passage of an act to protect surface right owners, absolutely necessary. The new influx of less than quality operators who do not respect surface rights, the drive for new sources of cheap energy, and lax protection of the surface rights by producers; has been a factor in the growth of the southeastern Kansas royalty owners association. As a member of that association, I have heard fellow landowners voice a high number of complaints and their concerns about their lack of protection and damages. They have had to bear the problems of surface damage without proper recourse.

Quality operators have no reason to object to provisions of the proposed bills, because they already comply with them, as matter of good business practice. I have one producer who is proud of the fact that their operations are conducted with minimal surface damages and operations are done in accordance with the laws of his "home state", whose surface damage laws are more stringent than those of Kansas. This company already gives some notification and respects surface rights. So, some quality operators might object to these bills as not being needed, since they represent the quality operators. Btu, even the best operators are not going to spend anymore than is nominally necessary and resist surface protection legislation in the preference to maximizing income.

The gas industry has no ability to control those licensed gas lease operators within their own profession, who do not respect the industry and the land from which they derive their livelihood. There is a great need for the laws of Kansas to enter the new century to govern the surface rights aspects of the production of this most essential energy source. As energy demands rise and production in Kansas increases, the legislature must be more vigilant in providing protection to the landowners. There are many fine operators giving much to the state in their industry, but there will always be the minority of less than reputable operators who knowing Kansas landowner lease protection laws are antiquated, will be attracted by greed and the high prices energy commands. They are the ones who routinely short-cut protection of the surface rights.

The gas producer will always have the landowner at a disadvantage, because of the nature of gas leases that provides the bulk of income to the producer, first, and no law requires a division order for payment on gas leases, as is required by oil leases. Since the gas lease operator can use the bulk of income generated to fight claims of the landowner, the landowner is the weaker party in any gas lease dispute. Having the KCC evaluate claims and enter the process where necessary, adds fairness and a level of equality and objectivity into any surface rights dispute. I have an operator taking seven eights ($7/8^{th}$) of the production and leaving me with less than one-eighth ($1/8^{th}$) after taxes, and using that very income to pay his attorneys to dispute my provable claims. So the taxpayer and landowner would receive equal justice in a dispute because the KCC could acquire objective facts on the dispute. Additional, an operator can extend surface damage disputes over time, by simply refusing to pay the damages. Also, the operator has the ability to diminish production output of a lease during any dispute. Therefore, the landowner will have reduced income and yet the operator will still have a larger actual dollar amount available for his use in any surface rights litigation. The use of a KCC mediator could reduce the time involved in the dispute.

The law to protect surface rights is needed because during this new boom, operators of lesser quality, have gravitated to Kansas. I have the one operator, who is typical of type operators of a lesser quality. He feels a gas lease gives him unrestricted use of all the acreage surrounding his operations, drilling and tanks. In his attempt to gain gas production, he believes any surface damage is of no of consequence. He denies and does not pay clear and provable claims of surface and crop damage. He owes crop damage from actions in 2004 and up to the present, which he refuses to pay.

The KCC needs to be given powers to expand their enforcement of Environmental Protection issues that involve gas leasing surface rights because the agriculture use issues in our state have changed and grown since the previous gas lease boom. Over the last decade of rapid gas development in the southeast part of our state, I have found that there is little or no reasonable recourse for landowners, when their farming acres are damaged. I have found that the Kansas Corporation Commission has no ability or mandate under law to respond to the landowner's concerns and has been bound, mainly, to work only within EPA water-protection limitations. The commission's representatives have expressed to me that there is nothing they can do in helping the landowner with matters between the operator and landowner when surface damages occur, if not directly a salt-water spillage. I found the KCC, even in the event of continual surface damages, investigated and documented, the agency collects few if no penalties.

The landowner has little or no representation with that commission over past years and the agency seems more responsive to operators, than those owning the land. That has left the landowner with no recourse but to sue for surface damages, clogging the court system and costing often more in time and money than the damages may be worth, while deeply disrupting the relationship of landowner and operator. The KCC has had too limited a scope of duties, leaning toward gas lease operators. The KCC could aid gas production in the state by acting objectively in evaluate surface damages claims of land owners and create the existence of a more harmonious relationship between the gas industry and the landowners. Expanding the Advisor Board to include landowners is a way of making the landowners a respected party of the gas production now occurring in the state.

The KCC already address some aspects of surface damage to a degree, so it is appropriate that they should be able to handle the collateral and other matters of surface damages that the commission may not have previously evaluated. The one gas producer on my farm poured a tank of salt water into the creek adjunct to my field in 2004, and never received any penalty, despite the commission's representative's acknowledgment after investigation, that this occurred. The collars on his wells frequently leaked salt water for months at a time and no penalty has ever been assessed, despite the proven documentation of the facts. He removed stakes placed by the landowner to mark ten year old abandoned wells, which he refused to produce or plug; so as to endanger farm workers and equipment in their operations. My lease contract says that the roads and ground will be restored after drilling operations. Since drilling in 2003, no gravel has been placed on the access roads severely rutted by drilling operations, no restoration has been done around drilling sites, and no damages paid for the loss of an entire year's hay crop or loss of a FSA test grass plot. Only some of these have been documented by the KCC while others do not fall under that current scope of duties.

Empowering the KCC to evaluate surface damages and assess penalty, is a necessary protection tool that will enable landowners to address surface damages in a clear, effective and concise manner. A lease operator on my farm has expressed distain for the KCC since he knows they do not often actually assess penalties, and currently KCC regulations do not strictly prescribe the penalties for many types of surface damage, which do farmers the greatest damage. So it is good, that this bill lists some monetary penalty for failure to comply.

The landowner can no longer be expected to consider surface damages, just an additional cost of receiving gas income. In a time when agricultural products require more in input costs, the surface damage and loss of crops are becoming more than the farmer can just be expected to generously bear. The penalty for specific damages should be evaluated in a way to have some effect on the licensing of an operator, and the monetary penalty should be in keeping with inflation and crop price increases. Penalties for poor surface management should not become simply, minor cost an operator choose to pay as a little part of producing gas. Operators may become complacent about it.

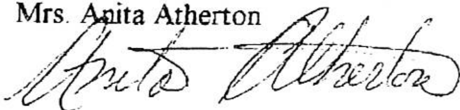
This bill is necessary since it allows the KCC to address a wider range of Ecological Damaging activities that can be disruptive to the surface use, which the KCC does not currently have the power to address. Damage by an operator has occurred from heavy machinery on a field I own and there is yet a lack of restoration. Although the ruts are fully visible several years later, he has denied those claims. Despite the requirement in the lease to bury electrical cable, the unburied electrical wire from production pumps entangled and damaged agricultural machinery; a full two years after drilling had been done. The loss of the hay crop occurred during a year of hay shortages through the plains, when that hay harvest was greatly needed. The damage to the hay meadow is so sever that it is now necessary to hire custom workers to hay the field, at a higher price, rather than haying by contract, as was previously done. The worker mowing the field will not cut as close to the edges because of fear of hidden wires on the surface, which entangled his machinery and thus, caused ecological changes in that field, by allowing noxious weeds to enter into the previously mowed area. The operator, also, stored over 25 motorized pieces of equipment, tanks and other equipment on a special 2 acre test plot of specialty grass after drilling, despite the fact no storage yard or equipment storage provision existed in the lease. When asked, he would not pay for the replanting and the special seed the FSA office had provided to the landowner, even though he had been informed of his damages by attorney's letters.

The KCC is needed as an active agency to protect surface rights, because they govern the entire state. The operator who has disrespected the surface rights on my farm in southeast Kansas has now expanded his operations to Elkhart, Kansas, in the Hugoton area of southwest Kansas; so only a state wide governing agency could provide and record the habitual damages of such an operator. It is fitting and proper that the commission be given the powers to mediate and assess surface damages, so they are clearly defined and uniformly applied.

It is proper that a government agency at the state level over see the long-term effects of damage and complaints brought to it, since damages done by drilling can last more than the 7 to 15 years, which the current gas boom is projected to exist. At the cessation of production, or at time of diminished production in years to come, the landowner will be left with long-term property damage in the event of a poor operator, if the KCC does not have many of the provisions in these bills to hold the gas producers responsible.

No landowner wants to stop energy production, but only wants to curb abuses and have protection of his surface rights in order to use his land for needed agriculture production. The experiences of several gas operations on my agricultural fields, has lead to the conclusion that legislation is needed to strengthen the Kansas surface rights laws to enable them to met the realities of this new boom and demands of future production in this state. Both industries have the ability to exist profitably side by side. The landowner and the lease producers are a partnership in energy production.

Respectfully submitted,
Mrs. Anita Atherton



Testimony for an Act enacting the Kansas landowner and surface owner protection act; amending K.S.A. 55-153 and repealing the existing section.

And support of provisions **enacting the oil and gas surface owner notice and compensation act** of Senate Bill No. 547.

Submitted by: Anita Atherton
5200 N. US Hwy 75
Independence, KS 67301

Voice: 800-321 4523
Fax: 620 331 0638

Feb. 18, 2008

February 19, 2008

I am in favor of a bill that would help landowners with the oil and gas companies. I have been in dispute with a gas company since 2005. It has been hard to get the company to follow the contract and conditional use permit promises they made. I still have fences and a catch pen that haven't been rebuilt, trenches that haven't been filled properly. They haven't maintained the compressor site liked they stated, or paid the taxes like they said they would. We have tried to get the gas company to follow the contract without a lawyer and now I have had a lawyer for almost 2 years now and still haven't been able to get the company to fulfill their commitments. It has been well over 2 years now and we're ending up taking this to court to seek eviction due to breech of contract. All this time the gas company has been transportation gas through the compressor site. We have a 60 day curative process in the contract and they continue to violate this also. We should not need legislation to get companies to follow the contract. As in several others states already, it evidently must be necessary to have it.

I pray that we can have some sort of legislation that will not only make this process quicker but hold the company accountable to the contracts and promises they make.

Thank-you for your time on this matter.

Surface and mineral owner
Curtis W. Kettler
21370 W. 335th
Paola, Kansas 66071

Testimony on SB 547 and 589

Presented to
Senator John Vratil and
Senate Judiciary Committee
By
Douglas G. Zillinger
Owner Operator of a Farm and Ranch
In Phillips and Graham Counties, Kansas

February 18, 2008

Chairman Vratil and members of the Committee on Judiciary, my name is Douglas G. Zillinger and I am a farmer rancher in Phillips and Graham counties in western Kansas. Thank you for the opportunity to prepare testimony on these two very important bills to our family operation. We are currently working with 5 different oil operators on owned or rented land; one oil transmission line operator and one salt water line operator and have not had a day in the last 15 years when we did not have an unsettled damage issue with at least one of the companies. In this presentation, I will give you a brief overview of the mineral producers, why my family and I are so dearly interested in these bills, offer one point that I would improve on, and strongly encourage you to pass both bills or combine them so that all the options in the two bills become law.

The operators that currently own the leases are all independents and with the exception of one company, are all Kansas based companies. They are all very mobile with their help, that is, pumpers and division superintendents change quite frequently and we are constantly trying to figure out who should be on the land and who shouldn't. In addition to that, three of the leases seem to change hands quite frequently and we never know for sure who the operators of the leases are until we call the Corporation Commission. They are required to have clear signs listing the operators and contact people and that is hard to come by so you have to catch them entering or leaving the property. When a spill occurs, the first thing they are to do is call the Corporation Commission for clean up instructions and that never happens until I find the problem and ask if it has been reported or report it myself if it is horrific. They all have three lines that they start with during a crisis that have yet to be proved true to me: 1. "Oil works like a fertilizer to the ground. You will really have good crops here next year." 2. "This isn't a bad spill, must have only been a barrel or two at the most." 3. "I'm a farmer too and I wouldn't do anything to your land that hasn't been done to mine."

My strongly emotional interest in these bills started when I married my wife. On a visit to her father's farm, we worked cattle and when we were done, I showered in their oil field polluted water. That one shower made me resolve that no matter where we were going from that place in the future, I would not shower in that water again. I felt oily, sticky, and saltier than before the shower. That farm and the farms in the surrounding sections have not had a clean, clear drink of water since the late 1960s. As my farming

interests became larger, I was appalled at the amount of land that has had leaks on it that 20 to 30 years later are not growing crops, weeds, or supporting any type of animal activity like badgers digging dens etc. I have made deals with pumpers, division superintendents, owner operators of the leases, and one thing I can count on is that what happens is not what was agreed to because their internal communication system is disastrously poor and they hire contractors for the dirt work or the drilling and fail to tell them what the agreement is. They are fast to get their production going and will tear up anything to get that production system operational, but according to them owe you nothing for damages. They know that the lawyer I have to hire to fight for my rights will cost me more than they will have to pay and so they will get off for free if they wait it out.

Examples of the destruction

A hole was drilled in one of the pastures of our operation in a draw that is close to the shale and often is soft and muddy because of the high surface water table. The agreement was to put the pits at a higher elevation to keep from getting into the ground water. The pits ended up in the bottom of the draw and the dozer brought mud out as he finished digging. The oil well was good and so they completed it. When they put in the lease road, the operator cut two deep sharp ditches on either side of the road on a 15% grade. We never allow ditches like that, especially on that kind of grade. When I saw that, I told them to get them filled and finish their road in another manner that we agreed to. That has not happened and the erosion has started. This damage deal has been pending for 7 months and the problem has not been corrected. Notice of drilling activity given to me 24 hours prior to drilling on a weekend. Started drilling on Saturday and filed intent with the state on Monday.

Another operator had a pipe break and drain an entire tank battery into the dike that surrounded it. The dike was unable to hold the contents because they built the dike on a 5 % grade and the dike had that same grade. Their solution that I have not and will not accept is to shorten the high side of the dike. What I want is the low side of the dike raised up to level and they will have plenty of salty dirt to use as they filled a 400-foot long terrace channel to its 2 foot holding capacity. Unsettled for damages and dike not fixed for 5 months. Notice was given to me by passing neighbor two days after the spill.

In the mid 90's, we terraced one 20 acre hill that had 4 wells and a natural gas line on it. The superintendent came out and shut down the field after a week of calls. He left as the terracer made the first round and hit lead lines less than 10 inches deep. This was already late September and I was trying to plant the hill to wheat. During the next two weeks, we farmed that entire hill with all kinds of earth moving machinery. I planted the wheat in Mid October and had a disastrous yield. When I questioned the oil company, they told me they didn't owe me anything because they only paid for growing crops, not making the land so crops couldn't grow. Crop Insurance doesn't pay for this either.

That next spring was exceedingly wet and the new line started breaking due to an installation problem. Finally the supervisor for the oil producer called me to get

permission to lay a line on top of the ground to be buried when I told them to bury it. I told him that was fine as long as he waited for me to tell him to bury it. We got to that field in early June because of the rain and found a tracscavator in the field trying to bury the line. The trench was 4 feet deep as required and full to running over with water. The operator was trying to push the pipe down with the bucket and hurry to the top of the trench to get dirt to hold it down. The pipe continued to float out and on top of that, as I got up to him to tell him to leave, he broke the pipe that was full of pressurized crude and salt water. That patch did not grow a crop for 5 years due to compaction of the mud. It was one of the most productive parts of that field and I received no damages as it was "caused by natural causes beyond their control." Dirt contractor showed up on his own with no notice to the oil company or me.

I am sure you understand the problem from these examples. Protecting myself and the environment from the oil field has become a full time job for me that doesn't pay well. I could list more incidents, but time is of the essence. My points to improve the two bills:

1. Damages should be able to be collected until the land is back to its original producing capability and the oil producers should be required to help make that happen. One time settlements are not the answer.
2. Mineral producers should have to pass inspections of equipment just like farmers and soil conservation efforts. The Corporation Commission has the expertise to help with these decisions and should be expanded to get that type of environmental work done. The mineral industry can pay for that cost just like agriculture pays for services that the government gives them.
3. SB 547 does an excellent job of discussing the problems with drilling and plugging a hole, but fails to address the real issue of the damages that occur in between. Some of the leases that I am working around were started in 1944 and still have the original lead lines minus what have broken. These lines should be replaced as every spring and fall we have major spills.
4. Leases should be able to be renegotiated periodically to bring them up to environmental standards of today and that would help close a lot of loopholes.

I like both bills as they are a good start to a major environmental problem, but feel that the strong points of the two bills should be used to make one bill. SB 547 does a very good job of outlining specific problems and solutions. I like the idea of negotiating with the lease operator myself, but past experience tells me that the stiff daily penalties until the problems are rectified, the use of the Corporation commission as a mediator with educational information and binding results will create a better environmental result for the citizens of Kansas and the victims of oil field pollution. Do not pass up this opportunity to pass legislation to help all of Kansas. Pass both bills or better yet, make a compromise bill with the above listed improvements.

Thank you for your time and consideration.

Douglas G. Zillinger

February 19, 2008

RE: SB 547 & 589

Chairman Vratil and Members of the Senate Judiciary Committee;

My name is Phil Habiger. I farm and ranch in Lane County, Kansas and would like to share with you several accounts where I have encountered less than satisfactory reactions from oil production companies operating on land that I own or rent. Please consider these accounts as you contemplate the bills before and seek solutions to address the adverse relationships that exist between many surface owners and the oil and gas industry.

1) On a 320 acre tract I cash rent; the seismic company contacted the owner and obtained a permit. The permit fee was to be forwarded to the tenant. Also the timing of work was to be arranged by tenant. I negotiated a date for the crews to be that would not interfere with wheat drilling. I was informed there would only be 7 lines (sets of tracks) across this property. On the evening of the day they promised to be done I started to drill wheat as tracks and flags indicated to me that they had completed their work. The next morning when I arrived at the field the whole field was covered with seismic cables. After a heated discussion and sheriff involvement, they claimed they had the right to be their as weather caused delays in other areas. They picked up the cables came back a month later. I had 7 lines 3 different directions (north to south, east to west and on a diagonal). I received no extra damages as they claimed owner's signature on permit was all they had to abide by.

2) On 160 acres I cash rent the lease company took care of the permitting. This was the first I had heard of this practice. The local resident agent called on the phone and said owners had signed permit but needed to know crop damages and so forth. I told her of growing wheat and requested additional damages. She agreed and said she would tell her boss. The owner also gave the permit fee to the tenant. I told resident agent I was not going to cash the permit check until work was done to determine crop damage. After work was done I told them what I thought the damages should be. They informed me they do not have to pay as owner signed permit. I contacted a lawyer and damages were not enough to go to court. He suggested small claims court but my county said I had to file in the oil companies county which happens to be out of state.

3) I bought 4 Quarters of land I had farmed for some time in 2002. The former owners retained part of the minerals. At the time of the sale I thought the language was clear enough that I was to be able to lease or not. It was also stated that I would be entitled to any lease moneys received. Several lease jockeys tried to lease from me with no success. One day I received a phone call requesting access to seismograph 2 quarters. I informed them this was not leased and I did not have to allow this. They informed me the two quarters were leased recently by the former owners. On the two leased quarters a large field of oil was discovered 3 miles south. After several nasty phone calls and letters, I found myself being sued for $12,500 per day for holding up the seismic crew. I informed

the seismic company this property was not legally leased as I had not been paid for lease. Within 2 hours a lease jockey 40 minutes away was on my door step with lease money. I refused the money because I had never signed a lease. I contacted an attorney and he negotiated a deal to seismic. He thought the courts would allow seismic any way because if our case fell through they could charge $12,500 per day for work delay. They did seismic work, decided to drill, and offered me a bigger share of royalties which I declined. They drilled a dry hole, left the pits open 18 months. After the pits were closed we presented the damages to the oil company. The oil company's attorney we were dealing with has left the company. This company is selling off assets. I have not received a dime from any of this.

4) On 320 acre half section I rent 120 acres of grass. An additional 40 acres is a town site where 5 residences including mine are located. The rest is cultivated farm ground. I was out working when a four wheeler showed up driving around some of the buildings in the town site. The operator could tell I didn't think he should be their. He came over and told me his boss said he should be here. I asked if he had a permit or lease he didn't know. I told him to leave. I talked to the owner of the grass I rent he didn't think he signed a permit or if it was even leased. Three days later I show up and this four-wheeler is in my pasture. I asked where for their permit. He just said his boss told him to do this. I told him not to come back until he can prove he is legally supposed to be here. Two days later the boss shows me the signed permit, with my name as tenant for the grassland and also my phone numbers. The permit specifically said no activity on 40 acres in the town. The elderly man I rent from doesn't recall the lease or permit. I also had to ask them to leave 3 different times on the 40 acres.

5) I own 320 acres that is not leased for oil and gas and has a plugged and abandoned well. An oil company asked me if I would be interested in turning this into a salt water disposal well. This company has three producing wells nearby, and if I would allow them to set one set of tank batteries on my property they would lease/rent a small tract where ever I wanted it around the disposal well. They also agreed to payments for each well annually. We signed the agreement and the roustabout company came out and set the tanks where they wanted. I asked the foreman and he said an oil and gas lease says they could set the tanks where ever they desire. I informed him the oil and gas lease was not on my property. The oil company did fire the roustabouts and did do as we had agreed.

6) I bought 160 acres from my in-laws family. At one time the site contained 4 producing wells, now there is only a single 2-3 barrel well. I receive any new production. Most likely there won't be any. As long as this well is in operation I have to put up with what ever company owns the lease, work over on well, they can even have it seismographed. This property along with 480 acres I cash lease has been seismographed. The permits I signed stated no wet work, no four wheelers, or other truck tracks. Thumper trucks only. Also damages to be determined after work is complete and computed # acres x bushel per acre x price at time work is done. They parked equipment in two different locations, tracks everywhere and a little deep tracking in wet spots. Now they are telling me what my damages should be.

7) I have often been told that Oil and Gas Leases give the right to seismograph; therefore the companies don't even need the permit.

8) They also claim the permit fee covers damages.

9) What I have noticed is they try to get local folks to be lease jockeys and permit agents or resident agents. Most of these are desperate for income but then it pits neighbor against neighbor.

10) They also try to convince potential lessees that all farmers deserve the same compensation.

11) I also think they don't care if it pits landowner against tenant.

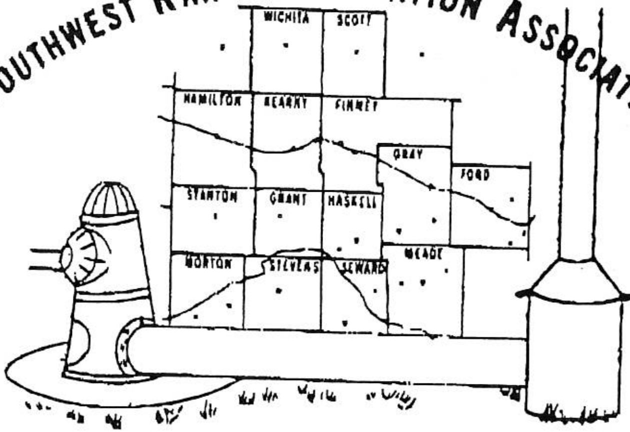
12) Oil leases are really complicated and seismic permits are wide open.

Thank you for the opportunity to share these concerns. The bills before you provide an avenue for surface owners to find some assistance in navigating these complex relationships and in addressing many of the situations I have encountered in my operation.

Please take favorable action to address this issue.

Respectfully,

Phil Habiger
139 S Tomahawk Rd
Dighton, KS 67839
Lane County



Box 254
Ulysses, Kansas
67880

To: Senate Judiciary Committee

From: Kirk Heger, President
Southwest Kansas Irrigation Association

Date: February 18, 2008

Re: Senate Bills 547 and 589

Chairman Vratil and members of the Committee:

On behalf of the Southwest Kansas Irrigation Association, thank you for taking time to address the important issue of land owner surface rights today. Several of you are already familiar with this issue either from the discussions in the Special Committee on Judiciary this past October or from your constituents contacting you with their concerns. The Special Committee encouraged the parties interested in this issue to meet and try to resolve the issue through agreement on language for legislation in the 2008 Session.

You have two measures before you today, SB 547 which embodies and addresses most of the concerns of the landowners regarding surface rights and surface damage. You also have SB 589 in front of you. A great deal of work has gone into creating a substitute for SB 589 that is the result of compromise between the parties.

Substitute for SB 589, while taking a different approach than Senate Bill 547, embodies most of the concerns of landowners and treats all parties fairly. The different approach taken in 589 involves the Kansas Corporation Commission in the enforcement of the Act through the creation of the office of landowner and surface owner protection. It contemplates intervention by the Kansas Corporation Commission when necessary, and adds the option of mediation of disputes to encourage communication and settlement between the parties at the lowest possible level.

One suggestion we believe would improve the process is authorizing and encouraging the KCC to employ an education component to this Act. If landowners and operators are both receiving information from the KCC in an informational type setting, it could only further enhance the understanding and communication between the parties.

Once again, thank you for taking the time to consider this important issue, and please feel free to contact me or Steve Kearney our representative in the Capitol on this matter.

PUBLIC POLICY STATEMENT

Judiciary Committee

SB 547 and SB 589
RE: Surface Damage Notice and Compensation

February 19, 2008
Topeka, Kansas

Written Testimony Provided by:
Dennis Hupe
Director of Field Services, Kansas Soybean Association

Chairman Vratil and the Judiciary Committee, I want to thank you for the opportunity to provide written testimony on SB 547 and SB 589. My name is Dennis Hupe and I serve as the Director of Field Services for the Kansas Soybean Association (KSA). KSA represents the soybean growers in Kansas.

Back in October, I provided testimony to the Special Committee on Judiciary over the concerns that the Kansas soybean growers had in southeastern and southwestern Kansas about exploration and production of gas and oil. I covered the following concerns:

- Little reclamation of the site by the producer of oil and gas operations that creates issues in land preparation for the planting of a crop.
- The lack of cooperation by the producer to address the concerns of the surface owner or tenant as it pertains to damages on their land.
- The producers lack of maintenance of existing access roads unless under the threat of a lawsuit.

- The failure of the producer to honor the surface owner's private property rights when it comes to accessing the land for various exploration and production needs.

KSA supports the efforts by the Judiciary Committee to address the concerns expressed during the hearing in October. Both SB 547 and SB 589 address the concerns that soybean growers have expressed. The bills cover notification of owners by the producer prior to entry. SB 547 and SB 589 set up the procedures for reclamation upon abandonment, continued maintenance of sites, and mediation for settlement of claims for damages. KSA hopes that this legislative effort, along with discussions between both sides, leads to a long term solution to a reoccurring problem.

On behalf of Kansas soybean farmers, I want to thank you for the opportunity to offer support to the committee as you work on balancing an owner's private property rights and the country's need for energy. KSA will be available to assist as you move forward.

Kansas Soybean Association
785-271-1030

SCHNITTKER AG. SERVICES

Thomas G. Schnittker
445 SE Park Hills Dr.
Pratt, KS 67124-8230
Office/Cell #: (620) 672-7400
Fax #: (620) 672-1980
E-mail: tom.gfa@cox.net

DATE: February 18, 2008

TO: Eric Nordling

RE: Surface Damage Bill

I am going to just start into this and see where we go. An actual happening on why we need this Bill happened to me a year ago.

In November of 2006 about 3:00 p.m. on a Saturday I received a call from one of my Tenants on a farm I manage. His question was, "Did I give a seismic company permission to drive through our standing cotton?" Of course I answered "no" and what was going on? As my Tenant was stripping cotton a seismic company was using 4 wheelers to lay lines in the standing cotton. My Tenant asked the Crew Chief what was going on and received no answer---a communication barrier had been reached. My Tenant spoke English and the Crew Chief spoke Spanish. I got on the phone and called the oil Lessee about what was happening and he said, "It cannot be our company---our company is not scheduled to be here for another 2 – 5 weeks." Finally after 5 calls, I found out the seismic company was rained out in western Kansas and they moved to Cowley County where it was dry and they could lay the lines.

No communication. The Landowner, the Tenant nor the Lessee were notified of the change in plans and this created very hard feelings among all parties. Had the seismic company called me or the Tenant, we would have had the cotton stripped before they arrived. Driving through a standing crop is **unacceptable.**

We need a Bill to require all contractors or Lessee's to notify someone---Landowner or Tenant---before entry to prevent these problems in the future.

Sincerely,

Thomas G. Schnittker
Farm Manager
Board Member of SWKROA

Robert K. Beymer
1472 Road R3, P.O. Box 3
Lakin, Kansas 67860
620-355-7006

February 18, 2008

Senate Judiciary Committee
Topeka, Kansas

Dear Sirs & Madams:

I am a landowner and mineral owner residing in Kearny County, Kansas. In addition, I am a member of the board of directors of the Southwest Kansas Royalty Owners Association. I am writing in support of the Oil and Gas Surface Damage Act.

My dealings with oil and gas operators over the years have been reasonably good. However, with more drilling activity anticipated in the Hugoton Field especially on land where the mineral estate has long since been severed from the surface estate, a situation I find myself in quite often, I believe that a structured system for notifying surface owners of intended oil & gas operations is necessary.

From my experience oil and gas operators and/or their representatives/agents are somewhat vague in their initial contact about the intended operation to be performed. When contacting the surface owner, the nature and scope of the operation to be performed by the operator should be explicitly detailed so that the owner can assess the impacts of the operation on their use of the surface. Sufficient time should be allowed the surface to contact third party farm tenants about the proposed project and collect their opinions about the affect of the proposed operation.

Furthermore, a system needs to be put in place to address landowner concerns that arise during or after the oil and gas operators project when the project is not performed as originally intended. Having been involved in several disputes with operators, I have found it quite difficult to deal with them as they hide behind their legal staff and throw up other road blocks. The resulting damage from the operator's action is normally a significant amount to the landowner but a rather small amount to the operator. In any case using the legal system to address damages is expensive in comparison to the actual damages incurred making it prohibitive to file a law suit against the operator.

Thank you for this opportunity to be heard in regards to this proposed legislation.

Respectfully submitted,

Robert K. Beymer

Testimony of Steve M. Dillard before the Senate Committee on Judiciary
On SB 547 and Substitute for SB 589

My name is Steve M. Dillard. I am Vice-President/Land Manager for Pickrell Drilling Company, Inc. in Wichita. I have previously testified on the subject matter of the bills that are being considered today. I testified before the Interim Legislative Committee this past summer that a bill to address this matter is unnecessary and I maintain that position today. However, if the legislature is intent upon passing legislation that will amend the oil and gas leases which were negotiated in good faith and for which significant consideration was paid then I ask that you please consider the owners of service contracting companies and their employees when you draft such legislation.

While Pickrell is an operating company, it is also a rotary drilling contractor. Among my responsibilities is the contracting of Pickrell's rigs and scheduling the wells that we will drill. Our drilling schedule and the drilling schedule of the other nearly 100 rotary drilling rigs operating in Kansas is very fluid. We are moving onto a new location for each rig every 8 to 12 days or less. Field conditions change dramatically as a result of changing weather conditions. This past twelve months has been a year that has necessitated changing the drilling schedule innumerable times because of snow or large rains. It happens often and it usually is not only the next location that is inaccessible, it is the next several scheduled locations that are inaccessible since I usually try to schedule locations that are in close proximity to each other to minimize the expense of moves. If it rains hard around Laird, Kansas and the next four locations are all in a radius of 6 miles of Laird, then it is likely that all of these locations will be inaccessible.

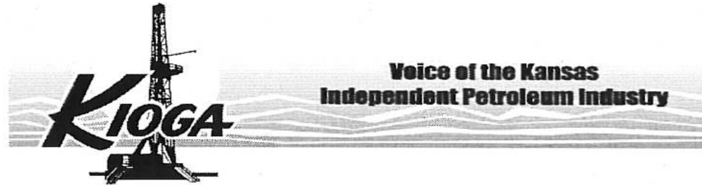
I have on repeated occasions quickly found locations to drill where the field conditions are dry enough and moved on to those locations within only four or five days. I have obtained an approved intent to drill in two days, cleared the One-Call requirement time period, and obtained the other necessary approvals so that one of our rigs is moving on to location four days later. The caterpillar is making the location the day before that. In every instance the landowner or tenant was given notice prior to us initiating any work on the lease. However, 10 or 15 days advance notice would be impossible. I don't know 10 or 15 days in advance where it is going to rain or not rain.

If I was unable to make these quick changes as a result of 10 or 15 day notice requirements, the rotary rig would be idle and the 12 employees of that rig would be home out of work and filing unemployment claims. The other result would be that Pickrell and other contractors being unable to quickly move to an alternate location would attempt to move on to the originally scheduled location as soon as physically possible even though it might require three caterpillars to drag in every load creating stress on its equipment, creating less safe work conditions for its personnel, and damaging the landowners surface much more than it would have been damaged if we were able to alter our drilling schedule to move in at later time after field conditions had improved. This situation would repeat itself with other service contractors including seismic companies, dirt work contractors, service rigs, the providers of well stimulation services, and others. The schedules of all of these service contractors are adjusted quickly and dramatically by weather and field conditions.

Senate Judiciary
2-19-08
Attachment 17

Advance notice alone should be sufficient, not 10 or 15 days advance notice. If the legislature is intent upon amending our oil and gas leases, simply notice in advance of drilling operations with no requirement for waivers of notice being executed and filed of record should be sufficient.

I urge you to consider the hourly employees of the service contractors and the service contractors themselves when considering any legislation that will impact the way we do business.



Kansas Independent Oil & Gas Association
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Topeka, Kansas 66612-1216
785-232-7772 Fax 785-232-0917
Email: kiogaed@swbell.net

Testimony to the Senate Judiciary Committee
Substitute Senate Bill 589
AN ACT enacting the Kansas Landowner and Surface Owner Protection Act

Edward Cross, Executive Vice President
Kansas Independent Oil & Gas Association

February 19, 2008

Good morning Chairman Vratil, Vice-Chair Bruce and members of the committee. I am Edward Cross, Executive Vice President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA is a 1,400 member trade association representing the interests of the independent oil and gas industry in Kansas. I am here today to express KIOGA's position regarding Substitute Senate Bill 589.

The relationship between oil and gas operators and their surface owners are good in most instances under current circumstances. Well-established precedents have served both industry and landowners well over the years. Most operators try to be fair in their dealings with surface owners and recognize that continued success is derived from maintaining good relations with all of their business contacts including surface owners.

Unfortunately a small number of operators don't fulfill their obligations to their surface owners. The aggrieved surface owner needs a process in which to seek redress. Both the surface owners and operators would like to keep these situations out of the courts to the extent possible. Litigation is an expensive and inefficient way to address grievances. However, the court system is there for a reason and is the ultimate arbiter of such disputes if alternatives short of litigation are not successful. Fortunately the courts have allowed for a small claims procedure which will handle most disputes between operators and surface owners.

The oil and gas industry has met with surface owners and other stakeholders over the past few months. Substitute Senate Bill 589 is a result of meetings over the past few weeks. Several

agreeable provisions are found in Sub SB 589. However, there are also several contentious issues. Five such issues involve property rights, geophysical operations, fair market value, notice waivers, and incidental activities.

Sub SB 589 is a surface owner's bill. The oil and gas industry has never had a bill introduced. A copy of a proposal we developed is attached. The attached bill addresses the needs surface owners communicated to us. We need the five issues discussed to make Sub SB 589 workable for industry. Less than 2% of operators have reported surface owner issues. Whatever bill is passed should only impact 2% of oil and gas operators. In Kansas, we have nearly 100 years of oil and gas law in the area of surface use. A bad law would create a new generation of legal challenges to well established precedents that have served both industry and landowners well over the years. Surface issues are very complicated and careful consideration should be made when developing law in the area of surface use. Industry does not have a surface use bill introduced. We do need all five contingent issues to make Sub SB 589 workable for industry. Thank you.

"Kansas Surface Use Notice and Compensation Act"

Be it enacted by the Legislature of the State of Kansas.

Section 1. SHORT TITLE. -- This Act may be cited as the "Kansas Surface Use Notice and Compensation Act."

Section 2. LEGISLATIVE FINDINGS. -- The Legislature finds that:

(a) The exploration for and production of oil and gas is essential to the economic well being of the state and a matter of vital importance to the energy supply and security of this state and the nation.

(b) The state recognizes the constitutional protections afforded oil and gas leases and other related contracts governing the use of the surface for the exploration and the production of oil and gas pursuant to such leases and contracts.

(c) Agricultural production is essential to the economic well being of the state and a matter of vital importance to maintain the food supplies of this state and the nation.

(d) Oil and gas operations and agricultural and farming operations contemporaneously utilize the same lands.

(e) It is necessary for the state to promote both oil and gas operations and agricultural and farming operations and to protect such operations from unreasonable interference through enhanced communications and mutual accommodation.

Section 3. PURPOSE AND SCOPE OF CHAPTER. -- It is the purpose of this chapter to direct the Kansas corporation commission to clarify, through it's adoption of rules and regulations hereunder, the mutual rights and obligations arising from the contemporaneous use of the surface to conduct oil and gas and farming operations thereon. This Act, enacted in the public interest, shall be supplemental to and shall not contravene oil and gas leases and other agreements or contracts governing surface use that shall be in existence prior to the effective date of this act. The courts of this state shall decide all issues arising hereunder as matters of contract unless the legal context requires otherwise.

Section 4. RULES AND REGULATIONS.

(a) In furtherance of and in accordance with sections 2 and 3 hereof, the commission shall adopt rules and regulations that provide for:

(1) Appropriate notices and replies to notices of proposed or ongoing contemporaneous uses of the surface involving oil and gas operations; and

(2) Procedures governing the restoration of or payment for damages to the surface owner's property caused by oil and gas operations thereon; provided however, in no event shall and oil and gas operator be required to pay a damage amount that exceeds the fair market value of the damaged surface prior to such damage; and

(3) The filing of a written complaint with the commission concerning and procedures governing the commission's investigation of complaints or claims that an oil and gas operator has failed to notify, restore the surface or compensate the surface owner for damages in accordance with the rules and regulations of the commission promulgated pursuant to this act.

(b) No rules and regulations promulgated pursuant to this section shall be adopted by the commission until recommendations have been received from the advisory committee established by K.S.A. 55-153, and amendments thereto.

Section 5. COMPLAINT PROCEDURE.

(a) Any person aggrieved by an alleged violation of this act may file a written complaint with the commission. As a condition to formal commission action, a person requesting commission action must first file a complaint in accordance with this section and the rules and regulations promulgated in accordance with this act. Such complaint must:

(1) Contain a statement that the complainant has presented the complaint, in writing, to the respondent and included a request for a meeting with such person to discuss the matter;

(2) Contain a copy of the document described in subsection (a)(1);

(3) Contain a statement that the requested meeting took place or the respondent refused to meet with the complainant;

(4) Contain a detailed factual statement indicating how the conduct or practice violates the commission's rules and regulations governing notice and contemporaneous use of the surface;

(5) Contain a statement of the precise remedy being requested that will be consistent with the commission's rules and regulations governing notice and contemporaneous use of the surface; and

(6) Be filed with the commission within two years after the alleged damage occurred.

(b) The commission shall handle the complaint in accordance with KSA 55-162. In so doing, the commission may resolve the complaint by use of an informal procedure established by the commission pursuant to rules and regulations adopted by the commission or the commission may conduct a formal hearing and take evidence as necessary to determine the merits of the complaint. If the commission uses an informal procedure and the complaint is not resolved within 60 days after the complaint is filed, the commission shall conduct a formal hearing on the complaint. The hearing shall be conducted and notice given in accordance with the Kansas administrative procedure act. Upon such hearing, the commission shall have authority to order the remediation of any violations of commission rules and regulations, to the extent necessary for remediation as to the aggrieved person with respect to the particular violation.

(c) The commission shall maintain a publicized telephone number to facilitate the filing of informal complaints pursuant to this act.

(d) The commission shall adopt such rules and regulations as the commission determines reasonably necessary to prevent abuse of the complaint procedure

provided for by this section. Such rules and regulations shall include provisions to prevent delay of the proceedings that may damage a party's ability to pursue or defend the complaint.

(e) After the commission has entered its final order in a complaint filed pursuant to the rules and regulations promulgated under this section, a surface owner may seek enforcement of the commission's order in district court in accordance with the Kansas Administrative Procedures Act.

Section 6. RELIANCE ON PUBLIC RECORD. -- The commission and operator shall be entitled to rely on the taxpayer records of the county treasurer, in identifying surface owners entitled to notice under this act and commission rules and regulations promulgated hereunder.

Section 7. WAIVER OF RIGHTS AND OBLIGATIONS. -- The surface owner and the oil and gas operator may, in an oil and gas lease or in or by any other agreement, alter or waive, in whole or in part, their respective rights and obligations under this Act or the rules and regulations promulgated thereunder. Any such alteration or waiver shall be binding upon the parties thereto and their respective heirs, successors or assigns.

Section 8. EFFECTIVE DATE. -- This Act shall take effect and be in force from and after its official publication in the statute book.

Senate Judiciary
2-19-08
Attachment 19

SENATE JUDICIARY
February 19, 1998
RE: SB 589 -

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

The Eastern Kansas Oil and Gas Association (EKOGA) continues, as I testified back on October 12, 2007 before the Special Committee on Judiciary to believe that any bill dealing with mandating certain notifications and damage settlements to the surface owner that provides additional rights to a surface owner to a contract (lease) that has already been negotiated and agreed to by the landowner is a very dangerous policy for the legislature to be involved in.

ITEMS TO CONSIDER BEFORE PASSING THIS BILL

There currently exist over 100 years of oil and gas contract law dealing with the issues in this bill.

This bill was framed by the Royalty owners as necessary to stop a few bad actors (oil and gas operators) from not using best management practices:

1. Notifying the landowner when certain major events are going to take place on their property; and
2. Paying for damages to the surface caused by such major events.

The best number we could come up with is at best 1% of all oil and gas operators (approximately 2300 active operators) are bad actors.