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**Testimony of David G. Seely before the House Committee on Energy and the Environment**

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Regarding **HB 2132** –An act concerning oil and gas; relating to natural gas injection wells, ownership, rule of capture; amending K.S.A. 55-1210 and repealing the existing section.

Chairperson Hedke and members of the Committee:

My name is David Seely. I am from Wichita, where I practice law in the firm of Fleeson, Gooing, Coulson & Kitch, L.L.C. I also serve as General Counsel to the Eastern Kansas Royalty Owners Association ("EKROA") and to the Southwest Kansas Royalty Owners Association ("SWKROA"). I regularly advise those associations and other mineral and royalty interest owners, as well as surface owners, regarding leases and other issues related to their property rights, including the exploration, development and production of oil and gas, as well as natural gas storage.

I would like to submit this testimony on behalf of EKROA and SWKROA **in opposition to HB2132**.

**HB2132** should be recognized for what it is–an attempt to legislatively overrule the decision of the Kansas Supreme Court in *Northern Natural Gas Company v. ONEOK Field Services, LLC*, 296 Kan. 906, 296 P.3d 1106 (2013). In that case, the Supreme Court applied traditional common law principles, including the Rule of Capture, and clearly-established rules of statutory construction, and upheld the Pratt County District Court's ruling that Northern Natural lost title to gas that had escaped from its Cunningham Storage Field and migrated several miles away, where it was captured and produced by gas wells located on properties that were subject to oil and gas leases between mineral owners and oil and gas production companies.

The existing version of K.S.A. 55-1210 allows Northern to keep title to its escaped gas on adjoining properties within a one-mile radius and therefore encourages it to act promptly and responsibly in preventing and addressing the leaking and migration of storage gas onto property owned by others, miles away. The proposed amendment overhauling K.S.A. 55-1210 would expand Northern's rights at the expense of royalty owners, mineral owners, and landowners, as well as oil and gas producers, and would cause several significant problems.

**The Bill would eliminate incentive for NNG to operate its storage field in a safe and responsible manner.**

As I mentioned, the adjoining property provisions of K.S.A. 55-1210 create a one-mile area within which Northern can reclaim title to its gas, thereby creating an incentive for Northern to act responsibly by operating its storage field in a safe prudent manner, in order to avoid and prevent leakage and migration and quickly react to any migration that might occur. **HB2132** would eliminate that incentive for safe and responsible operation. Instead, the Bill would reward Northern by allowing it to retain title to storage gas wherever it goes, thereby encouraging Northern to allow gas to migrate and then expand its storage field to keep up with the gas, as it has already done repeatedly, using eminent domain to acquire additional storage field acreage.

The Kansas Corporation Commission has concluded that the Cunningham Field was operated at pressures that far exceeded the reservoir's reported original discovery pressure, and that "excessive operating pressure may be the cause of, or at least a contributing factor to, the containment issues at the Cunningham Storage Field." The Kansas Corporation Commission's Comments on the Environmental Assessment, Docket No. CP09-465-000, at p. 7. The KCC also observed that as of February 2010, "Northern has taken no operational steps to stop or limit continuing migration of storage gas from its Cunningham Storage Field." *Id.* In other words, Northern appears to need more incentive to operate its storage field in a safe and responsible manner, not less.

The risks and dangers created by the migration of storage gas are not merely economic. In 2001, much of downtown Hutchinson was destroyed when the operator of a gas storage field operated its field at excessive pressures –like Northern–permitting gas to escape and migrate to the nearby town. Businesses and residences burned and two Kansans lost their lives. It is important that the statute be preserved as a part of the legal framework that provides an incentive for storage companies to operate their facilities responsibly.

**Interstate Gas Storage fields in Kansas are essentially unregulated.**

In *Colorado Interstate Gas Co. v. Wright*, 707 F.Supp.2d 1169 (D. Kan. 2010), the federal court held that state regulation of gas storage fields engaged in interstate commerce was preempted by federal law. That ruling means that the State of Kansas cannot regulate the operation and safety of gas storage fields such as Northern's Cunningham Field, on the theory that the federal government is responsible for regulating them. Unfortunately, the federal government, specifically the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, does not have the funding and resources to inspect, much less properly regulate, natural gas storage fields in Kansas. So there is really no regulation of these storage fields.

This untenable situation prompted Senators Jerry Moran and Pat Roberts to introduce proposed legislation in 2013, entitled the Underground Gas Storage Facility Safety Act, which would have expressly allowed states to regulate interstate gas storage facilities, in the absence of federal action. Senator Roberts said, "It's been over 10 years since we lost two lives to a gas explosion in Hutchinson, and the federal government is still nowhere to be found .... in the absence of federal leadership the state must be allowed to step up and protect its people." Senator Moran added, "This legislation fills a void by allowing states to step in where the federal government fails to monitor natural gas storage sites." http://www.moran.senate.gov/public/index.cfm/news-releases?ID=bf3db4cc-a43b-4f26-9d00-641d64c192f2

Unfortunately, due to gridlock in Washington, D.C., the Moran and Roberts bill was not passed. As a result, gas storage fields such as Northern's remain essentially unregulated. Because nobody is monitoring them, gas storage field operators must be encouraged to act in a safe and responsible manner.

**The Bill would result in an inverse condemnation of presently-existing property rights, giving rise to potential liability by the State of Kansas.**

The law presently provides that a storage operator still "owns" its storage gas if the gas moves onto an adjoining property. The Kansas Supreme Court ruled in 1997 that "adjoining property" is limited to a one-mile radius of adjacent sections around the certificated boundaries of a storage field. *Williams Natural Gas Co. v. Supra Energy, Inc.*, 261 Kan. 624, 931 P.2d 7 (1997). Current Kansas law provides that the long-established rule of capture still applies to property that does not adjoin a storage field, and that the owner of non-adjoining property owns all of the minerals that are found and captured there. The new Bill will extinguish the ownership of those minerals in the affected formations on properties located miles away from a storage field. Such taking of well-established property ownership rights will occur without compensation. The State's appropriation of the minerals, although done for a public purpose, should be seen as a taking and subject to inverse condemnation.

Inverse condemnation actions are lawsuits by owners of land against governmental entities. They are in the nature of an implied contract. When a public entity appropriates and uses property rights without compensating the owner, an implied contractual obligation arises to pay the owner reasonable compensation for the rights taken. By passage of this statutory amendment, the State of Kansas would expose itself to potential liability because it will be taking a common law property right from Kansas mineral owners and their lessees, without compensation.

**The Bill would have a chilling effect on oil and gas leasing, development, and production.**

It should also be noted that the Bill would have a significant negative effect on oil and gas leasing, development, and production in the state of Kansas. If a gas storage company can claim ownership rights to gas in formations underlying property located miles away from the storage field, even when producers are already operating there under valid oil and gas leases, then oil and gas producers will be unlikely to accept that additional risk of exploring for and developing oil and gas in Kansas, especially anywhere near a gas storage field. The result would be less leasing, fewer wells, less oil and gas produced, fewer jobs, and less revenue for oil and gas production companies, as well as for royalty owners and mineral owners.

In conclusion, Northern should be encouraged to live up to its responsibilities and keep its storage gas where it belongs.

We respectfully oppose **HB2132**.

Respectfully submitted,

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