SWKROA

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

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Testimony in **Support** before the House Committee on Taxation
House Bill No. 2179 – Property Taxation; relating to mineral interests, recordation

February 11, 2015

Chairman Kleeb and Members of the Committee:

My name is Erick Nordling, of Hugoton, Kansas. I would like to submit remarks in support of House Bill No. 2179 on behalf of the members of SWKROA and on behalf of other Kansas royalty owners.

I am Executive Secretary of SWKROA. I also am an attorney with the law firm of Kramer, Nordling, and Nordling, LLC. In my law practice, and as Executive Secretary for the Association, I routinely give advice and answer questions for mineral and royalty interest owners, including mineral and royalty taxes. As an attorney, I have reviewed and drafted many deeds which impact surface, water, mineral, wind, and other rights. I am also familiar with and have drafted many deeds where the mineral interests have been severed from the surface estate.

K.S.A. 79-420 allows for mineral rights which have been severed or split off from the surface estate to be taxed separately. However, the last sentence of the statute contains an unusual and very harsh provision which orders that, "When such reserves or leases are not recorded within 90 days after execution, they shall become void if not listed for taxation." While taxation is an important need for the State and local governments, failure to list a deed for taxation purposes shouldn't be an automatic trigger for voiding an otherwise valid deed, upon which the parties to the deed (and their successors in interest), and the oil and gas companies may have been relying on for many years, or perhaps decades. SWKROA supports House Bill No. 2179 as it deletes this provision.

Likewise, it is important for royalty interests derived through a mineral deed not be also be voided for failure to record the deed for taxation purposes.

The remedy of voiding a mineral conveyance for failure to be able to collect taxes is an extremely harsh remedy, especially if the original grantor has died, and their intent to transfer the mineral conveyance is thwarted by the statutory voidance of the deed.

The last sentence on Lines 19 and 20 of the Bill should also be stricken as the reference to 'such reserves or leases' is ambiguous when the rest of the statue deals with mineral conveyances.

Also, and significantly, there is already a statute, K.S.A. 58-2221, which requires recordation of every instrument in writing that conveys: (a) real estate; (b) any estate or interest created by an oil and gas lease; (c) any estate or interest created by any lease or easement involving

wind resources and technologies to produce and generate electricity; or (d) whereby any real estate may be affected, proved or acknowledged, and certified in the manner hereinbefore prescribed. That statute also requires that, "The register of deeds shall forward such information to the county clerk of the county who shall make any necessary changes in address records for mailing tax statements."

There is also an existing remedy for failure to record a deed in K.S.A. 58-2223. K.S.A. 58-2223 provides a more balanced approach when a deed has not been filed of record by providing that the instrument is at least valid between the parties and such others as have actual notice thereof, until the same has been deposited with the register of deeds for record.

Because K.S.A. 58-2223 already provides a remedy for failure to file a deed, we believe that sub-section (b) of House Bill No. 2179 is unnecessary and should be deleted from the Bill.

For such reasons, SWKROA respectfully urges the committee to approve the deletion of the last sentence of K.S.A. 79-420 (Lines 19-20 of the Bill), and to delete sub-section (b) of the Bill.

Thank you, for your consideration of our remarks.

Respectfully submitted,

Erick E. Nordling
Executive Secretary, SWKROA