

Approved: \_\_\_\_\_

*Carl Dean Holmes*

Date 3-22-93

## MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on March 16, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Ruff, excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
April Howell, Committee Secretary

Conferees appearing before the committee: Paul Karns, Sr. Atty., Williams Natural Gas Company  
Jack Graves, Atty., Panhandle Eastern Pipe Line Company  
Myron McKinney, Empire District Electric Company  
B.E. Nordling, SW Kansas Royalty Owners Association

Others attending: See attached list

Chairman Holmes called the meeting to order and opened the hearings on **SB 167**-Abandonment of Natural Gas Storage Facility and **SB 168**-Injector's Rights to Natural Gas Stored in Underground Storage Facility. Paul Karns, Senior Attorney with the Williams Natural Gas Company presented testimony in support of **SB 167** and **SB 168**. He also had Neil Foley, Special Projects Coordinator for the company along with him to answer technical questions of the Committee. WNG requested the introduction of this legislation to clarify the abandonment procedures for the cessation of operations of an underground natural gas storage facility. Often times a storage facility operator will have acquired areas of geological formations which may appear to someone unfamiliar with the operations as not being utilized. Subsequently, one might mistakenly assume that such portions of the facility have been abandoned. (Attachment 1, Pages 1-3)

In reference to **SB 168**, WNG requested the introduction of this Bill to provide for statutory protection of title, or right of possession, of natural gas which has been injected into an underground storage facility. Gas which is injected into an underground facility will frequently move or migrate laterally beyond the original certificated limits of the storage field. In such cases, this Bill provides that the injector does not lose title to, or the right of possession of, gas previously injected if it can be proved by a preponderance of the evidence that the gas was originally injected by the operator. (Attachment 1, Pages 4-6) Maps were also attached to the testimony. (Attachment 1, Pages 7-8)

Jack Graves, who represents Panhandle Eastern Pipe Line Company, presented testimony in support of both Bills in that he believes they are beneficial to the public and are necessary in the efficient operation of a storage field, which inures to the benefit of the consuming public. The operator is required to compensate adjoining surface owners for any testing conducted on their land, and there is no practical way to determine escape of storage gas without such tests. (Attachment 2)

Bernie Nordling of the SW Kansas Royalty Owners Association testified in support of **SB 168**. His organization appeared in opposition to this legislation in its original form on the Senate side. They suggested four amendments to this Bill, 3 of which have been added. He incorporated these amendments within his testimony, and they are still concerned about Item #2 with reference to the right of the injector to conduct tests on adjoining property for natural gas which might have migrated from the storage reservoir. (Attachment 3)

The Chair opened the floor for questions of the Committee. The hearings on **SB 167** and **SB 168** were then closed.

Hearing was opened on **SB 309**-Definition of Electric Utility for Electric Generation Facility Siting Act Purposes. Myron McKinney of the Empire District Electric Company appeared in support of this Bill in that he believes it is a straightforward attempt to correct what we believe was an unintentional consequence of the Kansas Plant Siting Act of 1981. The Plant Siting Act was passed near the completion of the construction of the Wolf Creek Nuclear Generating Station. The Plant Siting Act as presently constructed requires that very detailed and extensive data be submitted to the KCC and that the KCC hold public hearings to investigate the

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on March 16, 1993.

application prior to granting a permit for generating units to be built. These provisions also apply to facilities the Company might wish to construct in other states where it provides service. Since a unit constructed out of state would have no environmental or resource impacts on the State of Kansas, the Kansas Plant Siting Act is an undue burden and one that they would like to avoid. (Attachment 4)

The Chair opened the floor for questions of the Committee. The hearing on **SB 309** was closed.

The meeting was adjourned at 4:50 p.m.

The next meeting is scheduled for March 17, 1993.



Date: March 16 '93

## GUEST REGISTER

## HOUSE

## COMMITTEE ON ENERGY AND NATURAL RESOURCES

[illegible]

TO: House Committee on Energy & Natural Resources  
FROM: Williams Natural Gas Company  
SUBJECT: SB 167 - Abandonment of Underground Natural Gas Storage  
DATE: March 16, 1993

Good afternoon, Mr. Chairman and members of the House Energy & Natural Resources Committee. My name is Paul Karns, Senior Attorney with the Williams Natural Gas Company. With me this afternoon is Neil Foley, Special Projects Coordinator for our company. On behalf of the Williams Natural Gas Company, I wish to thank you for the opportunity to appear before you today in support of Senate Bill 167, concerning the abandonment of natural gas storage facilities.

By way of introduction, WNG presently operates eight underground natural gas storage facilities in the state of Kansas with a total inventory of approximately 110 billion cubic feet of natural gas storage capacity. Although we are the largest underground storage facility operator in the state, there are a number of others in Kansas, including Southwest Storage Company, Panhandle Eastern, Enron, and Colorado Interstate Gas Company. Williams Natural Gas Company owns and operates approximately 9,200 miles of natural gas pipelines in the states of Texas, Oklahoma, Kansas, Colorado, Wyoming and Missouri; of that, approximately 5,300 miles are located in the state of Kansas. WNG

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Attachment 1  
3/16/93

maintains offices in Kansas City, Wichita, Welda, Ulysses, and Lawrence, to name just a few. WNG's major market areas and customers are in the state of Kansas, including Western Resources in the Kansas City area.

WNG requested the introduction of SB 167 to clarify the abandonment procedures for the cessation of operations of an underground natural gas storage facility.

Often times a storage facility operator will have acquired areas of geological formations which may appear to someone unfamiliar with the operations as not being utilized. Subsequently, one might mistakenly assume that such portions of the facility have been abandoned.

Underground natural gas storage facilities are extremely valuable assets, often times taking years to properly identify and develop. Due to the nature of the natural gas and geological formations, the storage facility boundaries or the extent of the presence of natural gas are not capable of being precisely calculated. For example, an owner of the storage facility should not lose the right to gas injected into a formation included in their certificated area because injection/withdrawal wells are not drilled directly into that particular formation. Such a formation is frequently holding "cushion gas" which is necessary to allow another formation with "working gas" to be utilized at its maximum designed capacity.

A similar analogy can be made for surface operations as well. While some

leased areas may not appear to be the casual observer to be necessary to the operation of a storage facility, the owner/operator should be the one making such decisions.

To correct these problems, SB 167 would require the owner/operator of a certificated underground natural gas storage facility to file a notice of abandonment of the facility with the State Corporation Commission (KCC) and the Register of Deeds in the county or counties in which the storage field is located. Absent such a filing, there shall be a presumption that the storage facility, and all rights associated therewith, remain intact.

The bill originally granted authority to the KCC to promulgate rules and regulations necessary to implement this legislation. At the KCC's request this provision was deleted from the bill on Page 1, line 30 - 32. Also at the KCC's request the amendments on Page 1, lines 33 - 40 were added.

We thank you for the opportunity to appear before you in support of SB 167 and would be happy to stand for questions.

House CENR  
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TO: House Committee on Energy & Natural Resources  
FROM: Williams Natural Gas Company  
SUBJECT: SB 168 - Protection of Gas Stored in Underground Storage  
Facilities  
DATE: March 16, 1993

Good afternoon, Mr. Chairman and members of the House Energy and Natural Resources Committee. My name is Paul Karns, Senior Attorney with the Williams Natural Gas Company. With me this afternoon is Neil Foley, Special Projects Coordinator for our company. On behalf of the Williams Natural Gas Company, I wish to thank you for the opportunity to appear before you today in support of Senate Bill 168, concerning the protection of gas stored in natural gas storage facilities.

By way of introduction, WNG presently operates eight underground natural gas storage facilities in the state of Kansas encompassing approximately 110 billion cubic feet of natural gas storage capacity. Although we are the largest facility operator in the state, there are number of others in Kansas, including Southwest Gas Storage Company, Panhandle Eastern, Enron, and Colorado Interstate Gas Company. Williams Natural Gas Company owns and operates approximately 9,200 miles of natural gas pipelines in the states of Texas, Oklahoma, Kansas, Colorado, Wyoming and Missouri; of that, approximately 5,300 miles are located in the state of Kansas. WNG

maintains offices in Kansas City, Wichita, Welda, Ulysses, and Lawrence, to name just a few. WNG's major market areas and customers are in the state of Kansas, including Western Resources in the Kansas City area.

WNG requested the introduction of SB 168 to provide for statutory protection of title, or right of possession, of natural gas which has been injected into an underground storage facility.

By way of background, an underground natural gas storage facility is typically a depleted oil or gas formation or a salt dome. Gas which is purchased elsewhere is transported by pipeline to the site and injected into such formations through injection/withdrawal wells. When gas is needed, the process is reversed and gas is taken out of the formations through these same wells. Storage gas is usually needed during periods of cold weather to meet peak demands of local distribution companies, such as Western Resources, for their customers.

Gas which is injected into an underground facility will frequently move or migrate laterally beyond the original certificated limits of the storage field. In such cases, the bill provides that the injector does not lose title to, or the right of possession of, gas previously injected if it can be proved by a preponderance of the evidence that the gas was originally injected by the operator.

Without this bill, an adjoining landowner can drill a well, produce and sell gas which has been already purchased and injected into the ground by the



injector. Under existing law, the storage operator is at the mercy of the landowner for resolution of the problem or must seek redress in condemnation proceedings.

The bill provides for the protection of the adjoining surface and mineral owners by requiring any testing to be at the sole expense of the injectors. In addition, adjoining property owners are entitled to compensation as provided by law.

SB 168 also originally granted authority to the State Corporation Commission (KCC) to promulgate rules and regulations necessary to implement this legislation. At the KCC's request this provision was deleted from this bill.

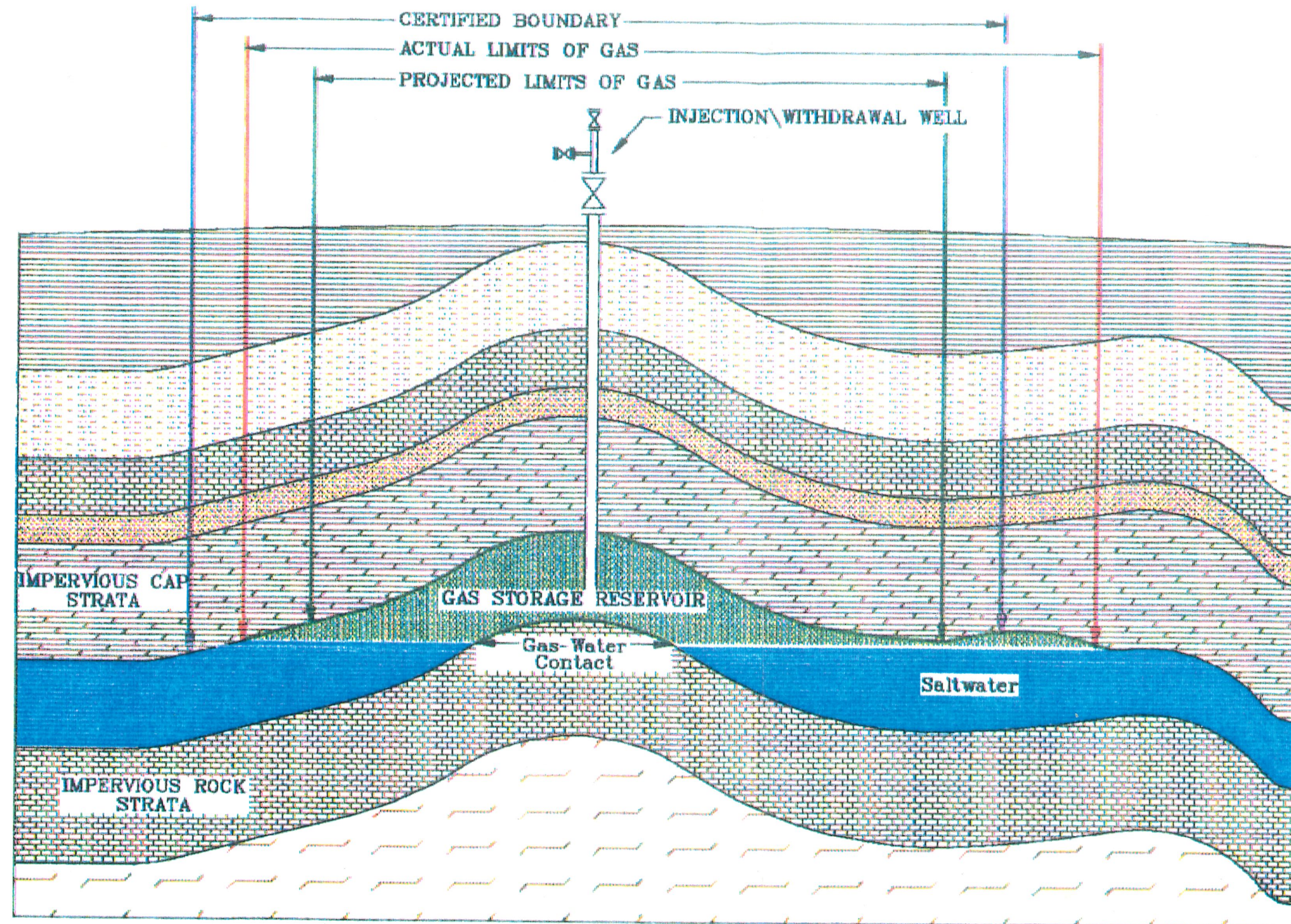
Additional amendments were added to this bill by the Senate, both in committee and on the floor to further clarify the intent of the bill. These appear on Page 1, line 27 - 33, and line 41 - 42, and on Page 2, lines 5 - 7. We support each of these amendments.

Finally, in light of regulatory changes promulgated by the Federal Energy Regulatory Commission, we suggested a technical amendment to make it clear that gas injected into an underground storage facility may be gas which is owned by the injector or being stored under contract with the injector. This was added on Page 1, line 20 and line 38.

We thank you for this opportunity to appear in support of SB 168 and would be happy to stand for questions.



# Cross-Section Depicting Underground Storage

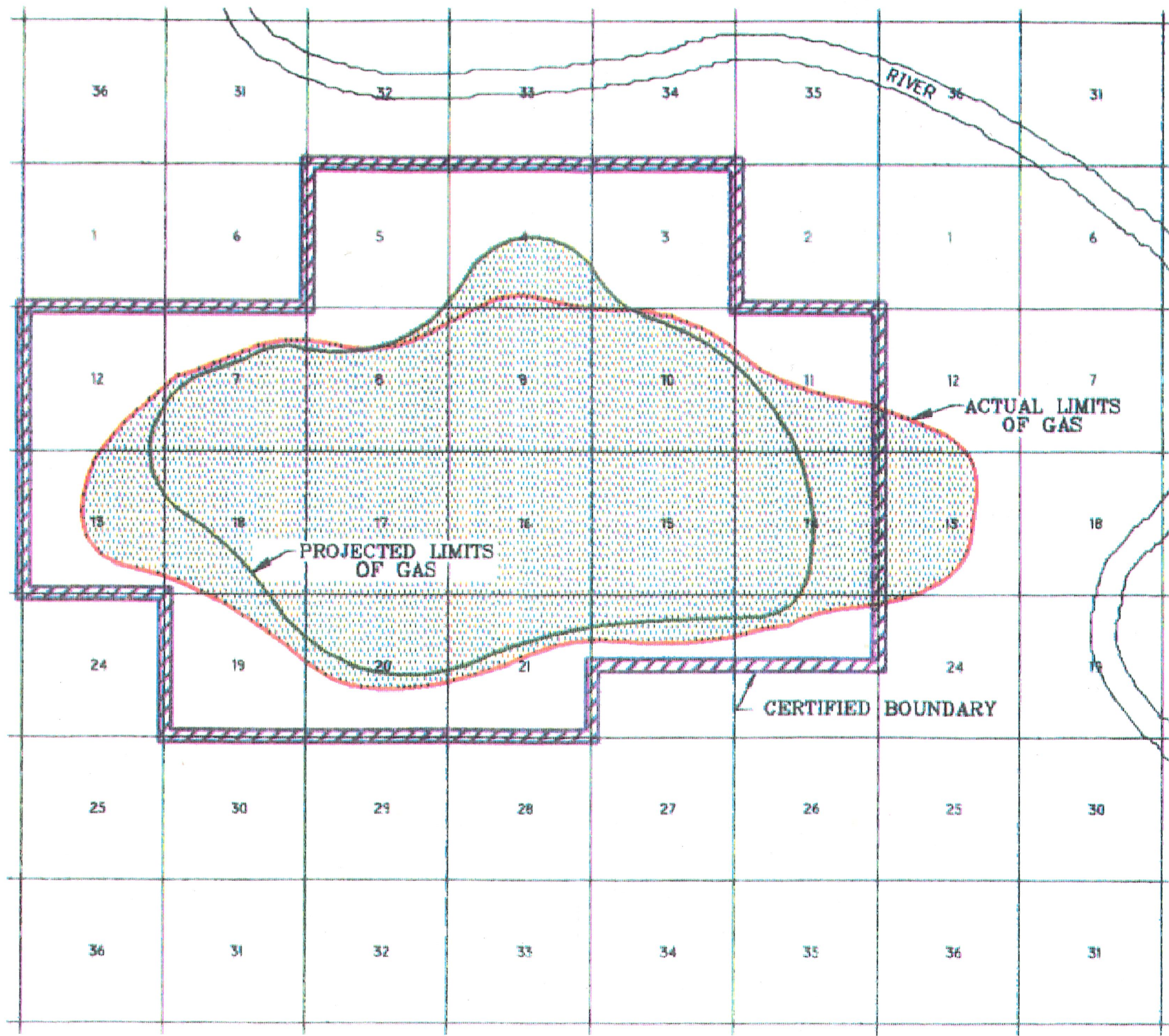


CERTIFIED BOUNDARY ———  
PROJECTED LIMITS ———  
ACTUAL LIMITS ———

HSE E+NR  
1-7



# Plat Depicting Underground Storage



HSE E4NR  
1-8

REMARKS OF JACK GLAVES  
FOR HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE  
IN SUPPORT OF SENATE BILLS 167 & 168  
MARCH 16, 1993

I represent Panhandle Eastern Pipe Line Company that operates a gas storage field in Meade County, Kansas through its subsidiary, Pan Gas Storage.

The Borchers North Field has total capacity of 61.4 Bcf, with certificated working storage of 26.3 Bcf. Although my client has not experienced the specific problem, to which Senate Bill 168 addresses, we do appreciate the possibility of the migration of gas from the storage area and concede that geology is obviously not an exact science, and hence, there is a compelling need for this legislation.

We believe that both Bills are beneficial to the public and are necessary in the efficient operation of a storage field, which inures to the benefit of the consuming public. The operator is required to compensate adjoining surface owners for any testing conducted on their land, and there is no practical way to determine escape of storage gas without such tests. We submit that any inconvenience to adjoining landowners beyond compensation for damages is reasonably warranted by the benefit achieved in behalf of gas consumers, who would bear the cost of loss of gas that migrates from the storage field.

We support adoption of both Bills in their present form.

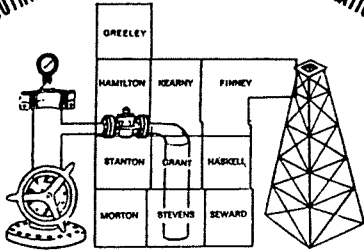
Respectfully submitted,

  
Jack Glaves

Attorney for Panhandle Eastern  
Pipe Line Company

House E & NR  
Attachment 2  
3/16/93

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION



PHONE 316 544 - 4333  
FAX 316 544 - 2230

209 EAST SIXTH STREET

P.O. BOX 250  
HUGOTON, KS 67951

March 16, 1993

PRESIDENT,  
ROBERT LARRABEE  
EXECUTIVE SECRETARY,  
B. E. NORDLING  
ASS'T. SECRETARY,  
ERICK E. NORDLING  
ASS'T. SECRETARY,  
WAYNE R. TATE

The Honorable Carl Holmes and Members of the  
House Committee on Energy and Natural Resources  
State Capitol  
Topeka, Kansas 66612

RE: Senate Bill No. 168

Dear Chairman Holmes and Committee Members:

By way of introduction, my name is Bernard Nordling of Hugoton. I am Executive Secretary of the Southwest Kansas Royalty Owners Association, a nonprofit Kansas corporation organized in 1948 for the primary purpose of protecting the rights of landowners in the Hugoton Gas Field. We presently have over 2,400 land and mineral owner members.

By way of further introduction, I am the senior partner in the law firm of Kramer, Nordling, Nordling & Tate of Hugoton, having lived in Hugoton since 1949. Our law firm specializes in representing landowners and royalty owners in oil and gas matters. I personally have represented surface and mineral owners in negotiating storage leases covering two gas storage fields in Morton County, the most recent of which was the Richfield Gas Storage Reservoir last year.

I am appearing on behalf of our Association and on behalf of the Kansas royalty owners with reference to Senate Bill No. 168, as amended.

Our Association appeared in opposition to Senate Bill 168, as originally drafted, at the time it was under consideration before the Senate Committee on Energy and Natural Resources. A copy of my statement made to that Committee is attached hereto and made a part of this statement as though fully set forth herein.

On Page 4 of the statement made to the Senate Committee, we suggested four amendments to the bill to alleviate our concerns. Senate Bill 168 was amended in the Senate to take care of Items No. 1, 3 and 4. We are still concerned about Item No. 2 with reference to the right of the injector to conduct tests on adjoining property for natural gas which might have migrated from the storage reservoir.

The Oklahoma law, after which Senate Bill 168 was patterned, contains no reference to natural gas migrating to adjoining property. To me, there obviously was a reason the Oklahoma law contains no such provision.

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Chairman Holmes & Committee Members  
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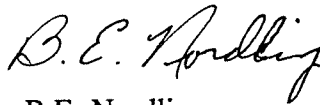
We see all kinds of problems which might arise if the injector is given the right to go on adjoining property to test for migrating gas. For example, one of the clients I represented in the Richfield Gas Storage Field owned land within the boundaries of the reservoir and immediately adjoining the field. The reservoir still had remaining reserves for which the landowners within the storage area were compensated. However, my client received no compensation for the potential reserves underlying his land adjoining the storage area.

If and when the gas injector exercises its right to go on my client's adjoining property to test for migrating gas, my client will contend it is his gas that has never been produced and not migrating gas. My client will then find himself in court at considerable expense to protect his rights as a result of the right given to the injector to go on adjoining property to test for migrating gas under Senate Bill No. 168.

We respectfully request that Senate Bill No. 168, as amended, be further amended to delete the words "that has migrated to adjoining property or to" (lines 34 and 35) and insert the word "in" immediately preceding the words "a stratum" (line 35). By these deletions and insertions, Senate Bill No. 168 then will read the same in this regard as the Oklahoma statutes after which Senate Bill No. 168 is patterned.

Thank you for this opportunity to be heard.

Sincerely,



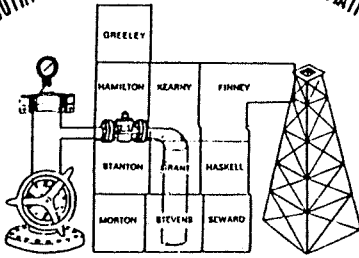
B.E. Nordling  
Executive Secretary  
Southwest Kansas Royalty Owners  
Association

BEN/dh  
Attachment

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3/16/93



SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION



PHONE 316 544 - 4333  
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209 EAST SIXTH STREET

P. O. BOX 250  
HUGOTON, KS 67951

February 25, 1993

PRESIDENT,  
ROBERT LARRABEE  
EXECUTIVE SECRETARY,  
B. E. NORDLING  
ASS'T. SECRETARY,  
FRICK E. NORDLING  
ASS'T. SECRETARY,  
WAYNE R. TATE

The Honorable Don Sallee and Members of the  
Senate Committee on Energy and Natural Resources  
State Capitol  
Topeka, Kansas 66612

RE: Senate Bill No. 168

Dear Senator Sallee and Committee Members:

By way of introduction, my name is Bernard Nordling of Hugoton. I am Executive Secretary of the Southwest Kansas Royalty Owners Association, a nonprofit Kansas corporation organized in 1948 for the primary purpose of protecting the rights of landowners in the Hugoton Gas Field. We presently have over 2,400 land and mineral owner members.

It is my understanding your honorable Committee has before it for present consideration Senate Bill No. 168 clarifying the rights of an injector of natural gas into an underground storage facility. We must respectfully oppose Senate Bill No. 168 as presently drafted because it is contrary to present Kansas law and contains provisions broader than the Oklahoma law after which it is patterned.

Reese Exploration, Inc. v. Williams Natural Gas Co., 1991 U.S. Dist. LEXIS 9124 (D. Kan. 1991), was a case in which the defendant, Williams Natural Gas Company (WNG), owned the gas rights and gas storage rights from the surface down to 1,050 feet below the surface. The plaintiff, Reese Exploration, owned the oil rights in the property. WNG completed wells to inject and produce gas from the Bartlesville formation 900 feet below the surface. Reese conducted enhanced oil recovery operations in the Squirrel formation which was 800 feet below the surface.

For several years, WNG knew that gas was migrating from the Bartlesville formation storage reservoir up to the Squirrel formation. The higher gas pressures in the Squirrel formation interfered with Reese's oil operations and Reese brought a negligence action against WNG for damages caused by the migrating gas.

The Court awarded Reese \$147,733.11 for permanent damages and held that WNG had a duty not to interfere with Reese's oil operations and had violated that duty by allowing gas to escape in the Squirrel formation.

Two other Kansas cases dealing with natural gas storage are Anderson, et al. vs. Beech Aircraft Corporation, 237 Kan. 336, 699 P. 2d 1023 (Kan. 1985) and Union Gas System, Inc. v. Carnahan, et al., 245 80, 774 P. 2d 963.

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The Honorable Don Saltee and Members of the  
Senate Committee on Energy and Natural Resources  
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Page Two

In Anderson vs. Beech Aircraft Corporation, the Kansas Supreme Court held, among other things, that Beech, having purchased, injected and stored non-native gas in a common reservoir under Anderson's adjoining property without obtaining a license, permit or a lease, lost its ownership in that gas and could not thereafter preclude plaintiffs from producing that gas as their own when the Corporation Commission had not issued a certificate authorizing an underground storage facility and no natural gas public utility was involved.

The Union Gas case involved a natural gas utility (Union Gas Systems, Inc.). The Kansas Supreme Court held that: (1) The utility was not entitled to recover for any of its injected gas that had been taken by the surface owners, lessees, or working interest owners before the issuance of a certificate authorizing underground storage; (2) The underground storage of natural gas did not meet the statutory element of open and exclusive possession for adverse possession purposes; (3) The date of taking for purposes of condemnation was the date the award was paid; and (4) The utility was entitled to an offset for the amount of gas captured after issuance of its certificate.

Senate Bill No. 168 is broader in scope than the Oklahoma gas storage law in two respects (See copy of Oklahoma Statutes 52, Section 36.6, attached):

(a) The Oklahoma law does not apply to natural gas that has migrated to adjoining property (compare lines 25 and 26, page 1, Senate Bill No. 168); and

(b) The Oklahoma law does not apply to gas injected before or after its enactment (see lines 32 and 33, page 1, Senate Bill No. 168).

We also have concern about the words, "or otherwise interfere with" (lines 23 and 24). In the Hugoton Gas Field there are numerous producing zones, both oil and gas, below the shallow Hugoton (2,500 to 2,800 feet) and Panama Council Grove (2,800 to 3,100 feet) pay zones.

Natural gas utilities acquiring gas storage rights normally limit, by condemnation or purchase, the storage facility to a particular formation, leaving the surface and/or mineral owner with the right to explore and develop potentially productive zones lying above or below the storage stratum. If the words "or otherwise interfere with" are left in the bill, the gas injector could possibly prevent the mineral owner, and its lessee, from testing the other productive zones lying above or below the formation being used by the injector.

In subparagraph (c) (3) (lines 39 and 40), no reference is made to compensation to the surface owner. In the Hugoton Field, literally tens of thousands of acres have different ownership of the surface and minerals. For example, in Stevens County (my home county), close to 50% of the mineral interests is severed from the surface with different ownership.

For that reason, reference needs to be made in lines 39 and 40 to provide for compensation to the surface owner as well as compensation to the owner of the stratum.

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The Honorable Don Sallee and Members of the  
Senate Committee on Energy and Natural Resources  
February 25, 1993  
Page Three

Our Association would have no objection to the passage of Senate Bill No. 168 with the following amendments:

1. Delete the words "or otherwise interfere with" on lines 23 and 24.
2. Delete the words "that has migrated to adjoining property or to" (lines 25 and 26) and insert the word "in" immediately preceding the words "a stratum" (line 26). By these deletions, Senate Bill No. 168 then will read the same in this regard as the Oklahoma statute after which Senate Bill No. 168 is patterned.
3. On line 31, place a period following the word "storage" instead of a comma, and delete in their entirety the words "whether such injection occurred before or after enactment of this section". (Lines 32 and 33.) The Oklahoma statute does not include these words.
4. On line 39, insert the words "and surface owner" following the word "stratum."

We appreciate this opportunity to present this statement and respectfully request serious consideration of the proposed amendments listed above.

Respectfully submitted,

*B. E. Nordling*

B. E. Nordling  
Executive Secretary  
Southwest Kansas Royalty  
Owners Association

BEN/dh  
Attachment

House E & NR  
Attachment 3-5  
3/16/93

### § 36.6. Ownership of gas

All natural gas which has previously been reduced to possession, and which is subsequently injected into underground storage fields, sands, reservoirs and facilities, shall at all times be deemed the property of the injector, his heirs, successors or assigns. In no event shall such gas be subject to the right of the owner of the surface of said lands or of any mineral interest therein, under which said gas storage fields, sands, reservoirs, and facilities lie, or of any person other than the injector, his heirs, successors and assigns, to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control thereover. With regard to natural gas in a stratum, or portion thereof, which has not been condemned or otherwise purchased under the provisions of this act:

1. The injector, his heirs, successors and assigns shall not lose title to such gas if such injector, his heirs, successors or assigns can prove by a preponderance of the evidence that such gas was originally injected into the underground storage;

2. The injector, his heirs, successors and assigns, shall have the right to conduct such tests, at his sole risk and expense including, but not limited to, the value of any lost production of other than the injector's gas, as may be reasonable to determine ownership of such gas; and

3. The owner of the stratum shall be entitled to such compensation as is provided by law.

Amended by Laws 1981, c. 140, § 1, eff. Sept. 1, 1991.

<sup>1</sup> Section 36.1 et seq. of this title.

### Historical and Statutory Notes

Section 2 of Laws 1991, c. 140, provides for an effective date.

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(Richfield - Mineral & Surface Owners FORREGISTER OF DEEDS

GAS STORAGE LEASE, OIL LEASE & AGREEMENT

LEASE AND AGREEMENT, made and entered into this 22nd day of January, 19 92, by and between

Mary Frances Simmons & Edwin L. Simmons, wife & husband

5319 W. 15th Street

Topeka, KS 66604

hereinafter referred to as "Lessor" (whether one or more), and RICHFIELD GAS STORAGE SYSTEM, an Oklahoma general partnership, whose address is 4200 East Skelly Drive, Suite 1000, Tulsa, Oklahoma 74135, hereinafter referred to as "Lessee".

WITNESSETH: That, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Lessee to Lessor, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the rentals, royalties, covenants and agreements to be paid, kept, and performed by Lessee as hereinafter provided, Lessor does by these presents grant, demise, lease, and let exclusively unto Lessee for the purpose of storing and removing natural gas and other gases or gaseous substances and vapors (hereinafter collectively referred to as "gas"), and to develop, operate for, and produce oil, gas liquids, and gas condensate, subject to prior mineral leases or conveyances of record, if any, the following-described land, together with any reversionary rights and after-acquired interests therein, situated in the County of Morton, State of Kansas, to-wit:

Lots 6, 7 & E/2 SW/4

Limited to Morrow Formation at the stratigraphic equivalent of 4616' to 5060' as found on the electric logs of the Russell 1-1 well located C SW/4 of Section 1-32S-42W

in Section 6, Township 32S South, Range 41W West, and containing 151.10 acres, more or less.

TO HAVE AND TO HOLD the same unto Lessee, its successors and assigns, for a term of thirty (30) years from the date hereof, and so long thereafter as: (i) gas is being stored, held for storage, or withdrawn from the land described above, (ii) gas storage operations are being conducted thereon or upon lands in the vicinity thereof by Lessee, or (iii) oil, gas liquids, and gas condensate, or any of them, is produced from said land or land with which said land is pooled.

1. LESSEE'S RIGHTS

Subject to the other terms and provisions of this Lease and Agreement, Lessee shall have the exclusive right, privilege, and authority to:

a. Utilize the Morrow Formation under the land herein described for gas storage purposes, including the right to construct, maintain, and operate pipelines upon and across said land and to transport through such pipelines gas produced on the land or elsewhere, and further including the right to drill, equip, maintain, and operate on said land a well or wells completed in said underground formation, and through any well or wells now located on said land or drilled hereunder and into such underground

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Attachment 3-7  
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formation, Lessee shall have the right at its will from time to time to inject gas produced elsewhere than on such premises and store the same therein and at its will remove the gas therefrom.

b. Drill, construct, install, operate, maintain, remove, and abandon, at locations selected by Lessee upon the above-described land, such wells, pipelines, electric lines, and other fixtures, structures, equipment and appurtenances as Lessee may deem necessary or desirable for the purpose of receiving, storing, treating, processing, and removing gas in, from, and under the lease premises and other lands in the vicinity thereof;

c. Conduct geological and geophysical surveys to determine the suitability and performance of the area for gas storage;

d. Introduce gas, whether produced from the above-described land or other lands, into the Morrow Formation underlying the lease premises and store the same by injection through wells now located or to be drilled upon said land or other lands, with the gas so stored to be and remain the personal property of Lessee;

e. Remove gas, oil, gas liquids, and gas condensate, together with other hydrocarbon substances and any water vapors absorbed thereby; and

f. Re-establish, re-open, repair, recondition, plug or replug any non-commercial existing wells heretofore drilled, whether or not abandoned.

g. Use, hold, and occupy the lease premises, together with necessary rights of ingress and egress, for all such purposes.

h. Unitize this lease with others to form a gas storage unit and, at the option of Lessee, to file a designation of such with the Register of Deeds of Morton County, Kansas. This power of unitization is separate and distinct from the power to unitize pursuant to Paragraph 4 hereinafter, for oil purposes only.

i. Unitize this lease as to all or any portion of the land described above to form a unit for the recovery of oil, gas liquids, and gas condensate in accordance with the provisions of Paragraph 4 hereof.

## 2. WELL NOT REQUIRED

a. In the event that no surface operations for the underground storage of gas be actually undertaken on the land herein described, but such operations are conducted by Lessee on other premises in the same storage field or area, Lessee nevertheless shall likewise have the right to inject gas into the Morrow Formation underlying the surface of the land herein described, store the same therein, and remove such gas together with any gas which may now be contained therein, utilizing in such process of injection and removal any well or wells located on other premises in the general vicinity of the land herein described.

b. It is expressly understood and agreed that a well or wells need not be drilled on the land described above for storage purposes, and that Lessee shall be the sole and exclusive judge as to whether gas is being stored in the land described above or held in storage within said land, and that its determination shall be final and conclusive.

## 3. COMPENSATION PAID IN FULL FOR EXISTING MORROW GAS RESERVES

a. For and in further consideration of the sum of \$15,110.00, paid by Lessee to Lessor, the receipt and sufficiency of which is hereby acknowledged, Lessor does hereby acknowledge that Lessor has been fully compensated by Lessee for

COLLECTION DEPARTMENT

MAR 8 1992

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all natural gas and other gaseous hydrocarbons that might now or in the future be recovered from the Morrow Formation underlying the lease premises or lands now or in the future be pooled or unitized therewith, subject to the provisions of Paragraph 4 below.

b. For and in consideration of the amount set forth above, Lessor, subject to the rights reserved in Paragraph 4 below, does hereby assign, transfer and convey all rights, including but not limited to royalties, overriding royalties, production payments and non-participating royalties, Lessor may have in natural gas and other gaseous hydrocarbons produced from the Morrow Formation, underlying the lease premises or lands now or in the future be pooled or unitized therewith, provided that when this Lease and Agreement terminates, all rights granted herein to Lessee by Lessor shall cease and revert to Lessor.

#### 4. ROYALTY ON OIL

a. In the event that gas storage operations conducted by Lessee hereunder shall result in the recovery of oil (including gas liquids, and/or gas condensate) in commercial quantities from the Morrow Formation, Lessee shall deliver to the credit of Lessor in the pipeline to which Lessee may connect its wells, as royalty, the equal three-sixteenth (3/16) part of all oil produced and saved from the lease premises, or at the option of the Lessee, may pay to Lessor the market price for such three-sixteenth (3/16) royalty for oil (including gas liquids, and/or gas condensate) of like grade and gravity prevailing on the day such oil is run into the pipeline or storage tanks.

b. After division orders are executed, payments due Lessor shall be made within forty-five (45) days after the oil (including gas liquids, and/or gas condensate) is removed from the unit tank battery(s). If the amount due Lessor is less than Twenty-Five Dollars (\$25.00), Lessee may withhold payment until said amount is at least Twenty-Five Dollars (\$25.00). In any event (after division orders are executed) payment must be made every six (6) months even if the amount due is less than Twenty-Five Dollars (\$25.00).

c. The royalty payable to Lessor hereunder shall be in addition to annual rental and other payments due Lessor in accordance with the terms of this lease. All costs and expenses associated with the production of oil from the lease premises herein shall be borne and paid solely by Lessee. It is expressly understood and agreed by Lessor that use of the lease premises by Lessee shall be for the primary purpose of injecting, storing, and removal of gas, as herein defined, and that Lessee shall have no obligation, whether express or implied, to drill or otherwise operate and develop the lease premises for the recovery of oil.

d. Nothing herein contained shall be construed to grant to Lessor any ownership or royalty interest in and to the gas to be injected, stored, and removed from the above-described land in connection with the exercise by Lessee of its gas storage rights hereunder.

e. Lessor hereby grants to Lessee the right to unitize this lease as to all or any part of the land described above with other lands and leases in the vicinity thereof to form a unit for the recovery of oil from the Morrow Formation, with such unit to be comprised of all lands forming the gas storage unit of which this lease is a part. Lessee shall execute in writing and record in the office of the Register of Deeds of Morton County, Kansas a declaration of unitization identifying and describing the acreage so pooled.

f. If oil is produced from the pooled acreage, it shall be treated as if production is had from this lease, whether the well or wells be located on the premises covered hereby or not. In

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lieu of the royalties elsewhere herein specified, Lessor shall receive on oil produced from such unit only such portion of the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest herein on an acreage basis bears to the total acreage included in the unit.

#### 5. STORAGE RENTAL

a. In full payment for the right to inject, store, and remove gas hereunder, and all other rights and privileges conferred upon Lessee, including the right to produce and remove any commercial quantities of gas remaining in the storage formation, and the right to continue this lease in force and gas storage operations hereunder beyond the term of years hereinabove provided, but excluding the right to develop, operate for, and produce oil, gas liquids, and gas condensate, Lessee shall pay to Lessor, as rental, the sum of Five Dollars (\$5.00) per acre per annum, payable annually in advance, commencing with the date hereof and continuing so long as gas is injected for storage or such gas storage rights are utilized or held by Lessee. Annual rental hereunder may be paid directly to Lessor, or to the credit of Lessor at the First National Bank at CCC, Kansas, or its successors, which shall continue as the depository and agent of Lessor to receive and credit such payments regardless of changes in the ownership of said land.

b. Notwithstanding the foregoing, on the fifth anniversary of this Lease and every succeeding five (5) year anniversary thereafter, the rental amounts shall increase by Two Dollars (\$2.00) per acre per annum. At the expiration of the initial thirty (30) years term hereof, the annual rental payable hereunder shall be adjusted to reflect the net change in the Consumer Price Index or any comparable measure issued by the United States Department of Labor, or a successor governmental agency, during such term by multiplying the annual rental amount set forth in the foregoing Paragraph 5a by a factor having as its numerator the value of such index as of the end of said initial term, and as its denominator the value of such index of the inception of this Lease. Annual rental shall thereafter be adjusted each year as of each subsequent anniversary hereof in accordance with changes in such index during the preceding twelve (12) month period.

c. Payment of annual rental as herein provided shall grant to Lessee the right to extend the term of this lease beyond the period of years above set forth, and continue this lease in force and operations hereunder for successive annual periods thereafter so long as gas is stored in and under said land, or so long thereafter as Lessee shall own, maintain, or operate such gas storage facilities in the manner herein provided, or in the same storage field or area. Lessee shall be the sole and exclusive judge of the necessity, advisability, or need for retaining this Lease, and the land covered hereby, or any part thereof, for use in connection with or for the protection of such gas storage facilities or operations.

d. Lessee's failure to make payment of or tender any annual payment when due shall not operate to terminate or impair any provision of this lease unless and until Lessee shall fail to make such payment within sixty (60) days following receipt of Lessor's written demand therefor. Lessee shall pay interest on any payment of annual rental more than thirty (30) days past due at the prime rate of interest then charged by the First National Bank in Wichita, Kansas.

#### 6. DAMAGE COMPENSATION

a. In addition to the annual rental required by Paragraph 5 hereof, Lessee further agrees to pay to Lessor the amounts shown on the attached Exhibit "A", for the privilege of conducting surface operations upon the above-described lease

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premises, such sums to be paid prior to the commencement of such operations, to compensate Lessor for all damage to the lease premises caused thereby.

b. Damages for which compensation is to be paid to Lessor in accordance with Exhibit "A" shall be limited to those damages normally arising in the ordinary course of gas storage operations.

c. Settlement of surface damage as herein provided shall be binding upon all persons acquiring any right, title, or interest in and to the surface of such lands by or through Lessor. Lessor shall hold Lessee harmless from and against any and all claims of tenant for damages to the surface, such payment being considered as payment in full.

d. Amounts to be paid Lessor in compensation for surface damages as shown upon Exhibit "A" shall be adjusted as of the third and each subsequent three (3) years anniversary hereof to reflect the net percentage change in the Consumer Price Index issued by the United States Department of Labor, or any comparable measure issued by any successor governmental agency, during the preceding three (3) year period.

#### 7. SPECIAL DAMAGES

a. In the event Lessee shall cause a well to be drilled on this lease during the growing season of any crop planted, and should Lessee's or his agent's equipment prohibit the use of any irrigation system on said land during that time the well is being drilled, Lessee agrees to pay Lessor the difference in the value of the crop produced on that strip of land that could not be watered and the field average yield for such crop per acre, which shall be deemed the maximum producing capability of the land. The price per unit shall be the cash price at the local elevator in the town nearest to this land as of the first of the normally accepted harvest month.

b. Lessee shall pay Lessor for any and all unforeseen or extraordinary damages to the property or property rights of Lessor, whether real, personal, or mixed, caused by its operations hereunder including, without limitation, damages to land, growing crops, grass, buildings, livestock, fences, and other improvements and personal property, but shall not be liable to Lessor for latent damages of any nature whatsoever existing prior to the commencement of such operations, or damages occurring as a result of events of force majeure or other causes beyond the reasonable control of Lessee.

#### 8. COMPLIANCE WITH CONSERVATION RESERVE PROGRAM

a. It is understood by the parties that the surface of the land covered by this Lease is presently entered into the Conservation Reserve Program, or may be entered into a Conservation Reserve Program. Under the terms of said program, the land in the program must be kept in an approved grass or vegetative cover for the duration of the program. In the event that a well is drilled on said property or pipelines are built on said property, the Lessee will indemnify and hold harmless the Lessor, his agents, or surface owners from any penalties that may be assessed as a result of the land not being in compliance with the program.

b. It is understood the Lessee will pay site damages as set out in the contract, which are anticipated to cover costs due to operations on the CRP land. It is also understood that as long as the Lessee diligently, reasonably, and with use of due care prosecutes his operations on the land, no costs or penalties in the CRP program will be generated which would entitle the Lessor to further compensation. However, in the event the Lessees or his agents fail to comply with the requirements of the County Soil

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Conservation Service and the ASCS office and penalties are generated due to disregard of the regulations, the Lessee will then indemnify and hold harmless the Lessor from said costs and penalties.

c. If due care is used in the prosecution of the Lessee's operations, the Lessor will be entitled to no further payments. However, in the event of the lack of due care or disregard of the regulations, the Lessors will then have the right to recover the costs and penalties that are incurred as a result of these activities.

d. Prior to drilling, constructing pipelines, or other activities on the property, the Lessee will notify the County Soil Conservation Service Office and ASCS Office of the proposed activity and obtain their consent to the activity. All activities will be conducted in compliance with their requirements. The Lessors will not be entitled to be reimbursed more than the payments set out herein for any reductions in program payments attributed to the spots where the activities are conducted. However, in the event the complete piece of property is thrown out of compliance, then the Lessors will be entitled to recover the costs of being put out of compliance from the Lessees.

#### 9. LESSOR RESERVATIONS

a. Lessor reserves all rights to grant, lease, mine and/or produce any minerals from the lands subject hereto, except those interests in gas and oil and their constituent products herein leased to Lessee or subject to the storage provisions of this lease.

b. In the event that the lease premises are presently subject to a valid and subsisting oil and gas lease, all rights granted herein to Lessee shall be subject to the same. Nothing herein contained shall be construed to reduce or impair any royalty payable to Lessor under the terms of any such prior oil and gas lease.

c. Lessee agrees to defend, indemnify and hold Lessor harmless from and against all liability, cost, and expense, including attorney's fees, incurred in connection with any action instituted against Lessor by the Lessee under any existing oil and gas lease of the lease premises resulting from Lessor's execution of this Lease.

#### 10. LESSEE OPERATIONAL OBLIGATIONS

In conjunction with its operations, Lessee specifically agrees to:

a. Build any meter houses, separators, heater treaters and storage tanks, used for the purpose of producing and saving any oil and gas upon the above-described premises adjacent to any county, state, or federal road or highway adjoining the above-described premises. All storage tanks and tank batteries shall be installed in any of the four (4) corners of the lease premises to avoid interference with any irrigation circular sprinkler system. No such installation, with the exception of an actual well pad, shall be made closer than 1400 feet to the center of the lease premises. It being the intention of the parties hereto to minimize interference with farming operations on said land insofar as possible, including but specifically not limited to the operation of pivotal irrigation sprinkler systems, or any other irrigation method. Any production equipment, including but specifically not limited to pump jacks, hydraulic lifting equipment, or any other equipment necessary to produce any oil or gas well on the above-described land, shall be recessed to such depth as to permit the use by Lessor of a circular irrigation sprinkler system currently in operation.

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b. Minimize interference with Lessor's use and enjoyment of the surface, including:

(i) bury pipelines and utility lines to a depth of not less than sixty (60) inches below the surface, and backfill, compact, and maintain all ditches for pipelines and utility lines at original surface level;

(ii) fill and level all slush pits within sixty (60) days after well completion or abandonment, unless a longer time therefor is granted by Lessor, at his option;

(iii) backfill, water pack, and level any pipeline ditch across irrigated land so as to allow irrigation water to cross the pipeline ditch in a normal manner, with such backfilling, water packing, and leveling to be performed by Lessee at its expense and in a workmanlike manner, to the satisfaction of Lessor; and

(iv) reseed and establish, at Lessee's expense, native grass cover, if any, on any right-of-way and adjoining land used in pipeline construction.

c. Comply with all laws, regulations and orders of all governmental entities having jurisdiction with respect to environmental hazards, damage, contamination and remediation. Lessee further agrees to accept the leased premises in its "as is" condition. It is acknowledged that Lessee has been advised to inspect the property to determine that it is suitable for the purpose intended and to ascertain that no environmental hazards or toxins are now present, insofar as it concerns the Morrow Formation. Lessee makes no representation and shall have no obligation hereunder as to the environmental condition of existing producing oil and gas wells on the property.

d. Indemnify and hold Lessor harmless from any claims, damages, actions or causes of action from any environmental damage or contamination caused or contributed to by Lessee subsequent to the commencement of this Lease.

e. Within one (1) year after the expiration of this Lease, fill all pits and ponds, remove all structures and equipment, plug and abandon all wells drilled or used by Lessee in accordance with applicable rules, regulations, and orders of the State Corporation Commission of the State of Kansas, and restore the lease premises, as nearly as practicable to its original condition, natural wear and tear and damage from the elements excepted. Any surface equipment remaining upon the lease premises at the end of one (1) year following the expiration of this Lease shall become the sole property of Lessor. In the event this Lease is terminated at any time for any reason, including the non-payment of rental or other compensation due Lessor hereunder, Lessee shall have the right, for a period not to exceed one (1) year following the date of such termination, to remove all gas stored in and under said land and any natural produced which may be produced therewith, and the right to own, maintain, and operate all of its pipelines, wells, and other facilities for such purpose during the time necessary and convenient for Lessee to accomplish the removal of such gas and, at the conclusion of such operations, to remove all of its equipment and other property as hereinbefore provided.

f. Maintain any well site, storage tank location, or any other area used in its lease operations reasonably free of weeds, but without the use of salt or chemical substances in such weed control. Lessee will use reasonable diligence in its operations to cause minimal interference with any cattle operations on said lands.

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#### 11. ACCESS REQUIREMENT

Lessor in cooperation with Lessee, may designate routes of ingress and egress to and from all well locations, but shall not insist upon unreasonable access requirements. Prior to the construction of any roads, tank battery installations, or installation of other equipment on the lease premises, Lessee shall consult and agree with the landlord or tenant or other person(s) in possession of the surface as to the location and direction of lease roads and installations. There shall be no oil road surfaces or hard surfacing of any access roads without the written consent of Lessor. Lessee shall, insofar as possible, construct all lease roads along one-half (1/2) section lines, following a true North-South or East-West direction, so as to least interfere with farming operations as possible.

#### 12. WATER USE

Water for the lease premises shall be used for drilling operations and water packing pipeline or utility ditches only. Lessee is expressly denied the right to use fresh water from the above-described premises for the purpose of water flooding or injection in any water flooding program in which the lease premises may, for any reason, be pooled or unitized.

#### 13. SALT WATER DISPOSAL

The installation of any salt water disposal equipment by Lessee in the operation of this lease shall be subject to the written approval of Lessor. Lessee shall not be permitted to use any well drilled on the lease premises as a salt water disposal well without the written consent of Lessor and without compensating Lessor for the use thereof; provided, however, that the terms of this paragraph shall not apply to the disposal of salt water produced from wells located on the lease premises.

#### 14. PROPORTIONATE REDUCTION

In the event that Lessor owns a less interest in the above-described land than the entire undivided fee simple estate therein, then the annual payments provided herein or oil royalty as provided for in Paragraph 4 shall be paid to Lessor only in the proportion which his interest therein bears to the whole and undivided fee.

#### 15. LESSOR SUBSEQUENT TRANSFERS

If the lease premises shall hereafter be owned in severalty or in separate tracts, the premises may nevertheless be developed and operated as an entirety, and the annual payments and royalties hereunder shall be paid to each separate owner in the proportion that the acreage owned by each bears to the entire leased area.

#### 16. ASSIGNMENTS

a. If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to and be binding upon their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of annual payments or royalties due hereunder shall be binding upon Lessee until after it has been furnished with written notice thereof and either the original recorded instrument of conveyance or a duly certified copy thereof, together with like proof of all intermediate transfers showing a complete chain of title back to Lessor of the full interest claimed.

b. If Lessee assigns or releases this Lease, in whole or in part, Lessee shall notify Lessor in writing of such assignment or release within thirty (30) days thereof, and shall thereafter be released and discharged from all payments,

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obligations, and conditions herein contained with respect to the portion hereof so assigned or released; provided however, that notwithstanding release of this Lease, Lessee shall have the rights upon termination provided by the foregoing Paragraph 10e, and shall remain liable to Lessor only for environmental claims and damages, or other causes of action, if any, arising out of its use and enjoyment of the leased premises by operation of law.

17. LESSOR WARRANTY

Lessor hereby warrants and agrees to defend the title to the land herein described, and agrees that Lessee, at its option, may pay or redeem for Lessor by payment any mortgages, taxes, or other liens on the above-described land in the event of default in payment by Lessor, and be subrogated to the rights of the holder thereof or reimbursed from any annual payments and/or royalties thereafter accruing hereunder. The undersigned Lessor, for himself and his heirs, successors, and assigns, hereby surrenders and releases all rights of dower and homestead in the lease premises, insofar as said rights of dower and homestead may in any way affect the purposes for which this lease is made. In case of notice of any adverse claim to the lease premises, or any claim affecting all or any part of the annual payments or royalties to be paid to Lessor hereunder, Lessee may withhold payment or delivery of the same until the ownership is determined by agreement, compromise, or by final decree of a court of competent jurisdiction, and proper evidence of the same furnished to Lessee.

18. SUBSEQUENT THIRD PARTY DRILLING

a. It is agreed that any operation on said land, which without limitation includes drilling and mining, in which gas is stored on said land pursuant to this storage lease shall be so conducted as to prevent the escape of gas from, and the intrusion of water and other fluids into, any formation in which gas is so stored. Before Lessor or any party proceeding under Lessor's authority begins any operation connected with or resulting from drilling and mining on said land, such party shall notify Lessee in writing, addressed to Lessee at the address hereinbefore indicated (in initial recitals) or to the current operator as shown by the records of the County Clerk, not less than thirty (30) days prior to the intended beginning of any such operation. Thereupon and before actually beginning any such operation, such party and Lessee shall agree in writing upon the methods and practices which such party shall use in any such operation, which without limitation includes plugging and abandoning thereof.

b. It is specifically understood and agreed that Lessor or its successors may, pursuant to this provision, only properly drill and properly case holes above or through the Morrow Formation, but may not bottom any wells or perforate any casing within 200 feet of the top of the Morrow Formation. Lessee shall have the right to have a representative present at all times while any such operation is conducted and shall have the right of access to records of such operations and to declare the agreement breached if the agreed upon methods and practices governing such operation are not followed and to require termination of such operation following such declaration of breach.

19. SUBJECT TO FEDERAL, STATE & LOCAL LAWS

All terms, covenants, and conditions of this lease, express or implied, shall be subject to all federal, state, and local laws, rules, regulations, orders, and ordinances, and this lease shall not be terminated in whole or in part, nor Lessee held liable in damages for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such law, rule, regulation, order, or ordinance.

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20. ABSTRACTING

Any abstracting charges for drilling operations by Lessee under the terms of this Lease shall be paid by Lessee.

21. TERMINOLOGY

Whenever necessary in this Lease and where the context requires, the singular term and the related pronoun shall include the plural, the masculine and the feminine.

22. BINDING EFFECT

This Lease and Agreement, and all the terms and provisions hereof, shall extend to and be binding upon Lessor, his heirs, successors, executors, administrators, and assigns, shall inure to the benefit of Lessee, its successors and assigns, and shall run with the lands, tenements, and hereditaments subject hereto.

23. COUNTERPARTS

This Lease and Agreement may be executed in multiple counterparts, all of which are identical. All of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

SSN: 395-12-3355

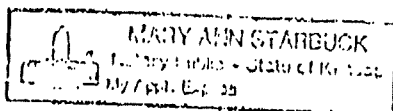
Mary Frances Simmons  
Mary Frances Simmons

SSN: 335-16-7140

Edwin L. Simmons  
Edwin L. Simmons

STATE OF Kansas )  
COUNTY OF Shawnee ) SS.

The foregoing instrument was acknowledged before me this 20th day of February, 1992, by Mary Frances Simmons and Edwin L. Simmons.



Mary Ann Starbuck  
Notary Public

My Commission Expires:

6/25/93

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EXHIBIT "A"

COMPENSATION SCHEDULE

Pipeline Right-of-Way

<u>Line Size</u>	<u>Right-of-Way Per Rod</u>		<u>Damages</u>	
			<u>Dry Land</u>	<u>Irrigated</u>
4 to 8"	\$20.00	plus	\$10.00	\$15.00
10 to 14"	\$25.00	plus	\$10.00	\$15.00
16 to 20"	\$35.00	plus	\$10.00	\$20.00

Well Sites

Pasture Land	\$2,250.00 Per Location
Dry Land, Cultivated	\$3,000.00 Per Location
Irrigated Land	\$4,000.00 Per Location

(Road Easements are included in well site compensation.)

For purposes of determining damages for well sites and pipeline right-of-ways, CRP Land will be treated as if it is irrigated land.

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HISTORICAL BACKGROUND, ACTIVITIES AND ACHIEVEMENTS OF  
THE SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

Historical Background and Corporate Structure

As numerous problems arose between landowner-lessors and the oil and gas companies in the development of the Hugoton Gas Field in the 1930's and 1940's, A. E. "Gus" Kramer, a practicing lawyer of Hugoton (now deceased) and longtime Stevens County resident, recognized the need for an organization to protect the rights of landowners in the Field.

In late 1947 and early 1948, Kramer arranged for meetings with landowners in the nine southwest Kansas counties then encompassing the Hugoton Field. Following those meetings and a meeting in Hugoton with all of the 27 county commissioners of the nine southwest Kansas counties, a group of landowners formed a nonprofit corporation designated as the Southwest Kansas Royalty Owners Association.

Articles of Incorporation were filed in February, 1948, with the Kansas Secretary of State. The stated purpose of the corporation is "to foster, protect and further in all proper respects the rights and interests of the mineral owners."

The following persons, all highly respected farmers or business leaders in Southwest Kansas, were the SWKROA incorporators and its first Board of Directors: A. E. Kramer, Harry L. Lightcap, and John Persinger of Hugoton, Stanley Julian of Johnson, Fred Shore of Big Bow, I. C. Wiatt and Cecil Tate of Lakin, Frank G. Boles and Oliver S. Brown of Liberal, Claude F. Wright and F. S. Williams of Garden City, L. O. Stanley and John C. Jones of Satanta, R. H. Joyce and Dan C. Sullivan of Ulysses, A. W. DesMarteau of Syracuse, Neil Bishop of Kendall, and Delmas Littell and Howard Drew of Rolla, Kansas. All of the SWKROA incorporators and original directors are deceased with the exception of Oliver S. Brown of Liberal.

The present SWKROA Board of Directors for 1992-93 are: Robert Larrabee and E. Paul Boles, Liberal; Jack Hayward, Elkhart; Duane Murphy, and Ed Stoppel, Sublette; Robert F. Jones, Holcomb; Philip R. Dick, Garden City; Walter Waechter, Steven Alford, Dale Stevenson, and Joseph Byers, Ulysses; Zeno Gould and Grady Grissom, Syracuse; Vincent Youngren and Floyd Gillespie, Hugoton; Ted Julian, Johnson; Norman Eatinger, Lakin; Manford Dye, Rolla; and Ervin Helm and John Lawson, Tribune. All of these individuals are well respected farmers or business leaders in their respective communities.

Three presidents have served the organization since its inception: Harry L. Lightcap of Hugoton (1948-1952); Oliver S. Brown of Liberal (1952-1971); Robert Larrabee of Liberal (1971-to date). Two executive secretaries have served the organization: A. E. Kramer of Hugoton (1948-1968) and Bernard E. Nordling of Hugoton (1968-to date). Vincent Youngren of Hugoton has served as vice president since 1973. Erick E. Nordling of Hugoton is presently serving as assistant secretary and treasurer. Wayne R. Tate of Hugoton is also an assistant secretary.

There are ten directors from each of the ten southwest Kansas counties comprising the Hugoton Field and ten directors at large elected at the SWKROA annual meeting held each spring.

Funding and Membership

Funding comes only from membership dues and voluntary contributions to the Association. Since its inception in 1948, SWKROA has grown in membership to a present membership of over 2,400 members from nearly all 50 states.

SWKROA has a base dues of \$25.00 per year for the first 160 mineral acres or less, plus \$5.00 per year for each additional 160 mineral acres or fraction thereof owned. Dues are a tax deductible expense for royalty owners. The Association is on a fiscal year basis of March 1 to March 1. If you decide to join and pay your dues, they will be considered paid to March 1 of next year.

ACTIVITIES AND ACHIEVEMENTS OF SWKROA AND ITS MEMBERS

1. SWKROA is the strongest landowner organization in Kansas and one of the most successful mineral owner groups in the United States. SWKROA is totally devoted to representing royalty and mineral owners and is recognized by the oil and gas industry, the Kansas legislature, and the news media as the authority on subjects dealing with mineral owners.

2. SWKROA is a nonprofit membership corporation existing under the laws of the State of Kansas and is recognized by the Internal Revenue Service as a business league. Members of the Association are owners of mineral interests and of royalty payable to them as oil and gas lessors. The purpose of the Association is to promote the common business interests of such members.

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3. SWKROA members are kept informed of matters of general interest and concern to mineral owners through timely newsletters and special bulletins throughout the year. The Executive Secretary's office is also available to respond to inquiries of SWKROA members, either by telephone or by correspondence.

4. The Association has established guidelines for payment of compensation for pipeline easements and for wellsite damages. It also has available for its members pipeline easement and seismograph permit forms, the terms of which are generally acceptable by the oil and gas companies operating in the Hugoton Field.

5. Shortly following its formation in 1948, the Association filed proceedings with the Kansas Corporation Commission requesting the Commission to establish a uniform minimum price at which gas may be taken in the Hugoton Field as a conservation measure. As a result of the proceedings, the Commission established a minimum wellhead price for natural gas at 8 cents per Mcf, followed by a subsequent order establishing a minimum price of 11 cents per Mcf. The KCC order was later struck down by the United State Supreme Court in 1958, but by that time, most of the gas producers in the Hugoton Field had adjusted their prices upward, benefitting all royalty owners in the Field through higher royalty prices.

6. The Association successfully opposed a state severance tax for 35 years, thus saving royalty owners millions of dollars in taxes. SWKROA was the first mineral owners organization in the United States to fight the windfall profit tax placed on royalty owners on oil production.

7. The Association actively participated in support of infill drilling in the Hugoton Field in proceedings had before the Kansas Corporation Commission in 1986. The KCC issued an order permitting the drilling of infill wells (second wells) in the shallow Hugoton pay formation. The courts affirmed the KCC's right to make such an order. There are presently over 5,600 gas wells in the Hugoton Field producing from the Hugoton pay, including 1,400 infill wells. It is estimated the infill order could result in the potential drilling of at least another 2,400 infill wells for a total of 3,800 or more infill wells.

8. During the natural gas shortage in the mid-1970's, the Federal Power Commission (FPC) issued a curtailment order and classified natural gas used for irrigation as an industrial use, thus placing its use on an interruptible basis. Shortly after issuance of the order, SWKROA protested such action to the President, all Congressional members, and governors of the states located within the affected area. The Association also alerted its member irrigation gas users and irrigation associations in Kansas, Oklahoma and Texas about the problem. Through their concerted efforts, the FPC changed its order, thus protecting irrigation gas users from any interruptible service.

9. In 1977, SWKROA officials learned that producers selling gas in the Hugoton Field in interstate commerce were passing on their share of local ad valorem taxes to their pipeline purchasers and in turn to the consumers but were not seeking reimbursement for such taxes on behalf of their royalty owners. The Association successfully applied pressure on the producers to seek such reimbursement for royalty owners. This action resulted in a benefit of almost four million dollars each year for the royalty owners, for a total tax savings of over 40 million dollars over a 11-year period.

10. Recognizing the need for exploration and development of the nonproducing deeper zones underlying the Hugoton Field, the Association approached the Kansas Legislature, beginning in 1976 to secure the passage of a "deep horizons" bill confirming the implied covenants required of the lessee under an oil and gas lease to reasonably explore and develop nonproducing zones. Through efforts of the Association, the bill became law in 1983, putting pressure on lessees operating in the Hugoton Field to explore and develop the deeper zones underlying the Field.

11. In 1991, the Association was successful in its efforts to obtain passage by the Kansas Legislature of a bill requiring payment of interest on royalties held in suspense and a bill providing a security lien for royalty owners in the event of bankruptcy by a producer or oil or gas purchaser.

12. In the 1992 Kansas legislative session, the Association valiently fought against the statewide school tax levy on the grounds of loss of local control and the already heavy tax burden on royalty owners and producers operating in the Hugoton Field. SWKROA is presently participating in hearings pending before the Kansas Corporation Commission to determine the need, if any, to change the Basic Proration Order of the Hugoton Field.

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Testimony of The Empire District Electric Company  
Presented to  
House Energy and Natural Resources Committee  
Representative Carl Holmes, Chairman  
on March 16, 1993

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear here today. My name is Myron McKinney. I serve as Vice President of Customer Services for The Empire District Electric Company, a Kansas corporation located and headquartered in Joplin, Missouri. We serve approximately 121,000 customers. 85% of those customers are in Missouri, 8% in Kansas, 4% in Oklahoma, and 3% in Arkansas. We are regulated by the State Corporation Commission or its equivalent in all states where we operate. We are also regulated by FERC at the federal level.

I am appearing here this morning to present testimony in support of Senate Bill No. 309. Senate Bill 309 is a straightforward attempt to correct what we believe was an unintentional consequence of the Kansas Plant Siting Act of 1981. The Plant Siting Act was passed near the completion of construction of the Wolf Creek Nuclear Generating Station. It was passed in reaction to what some perceived to be a lack of public participation and input in the decision to build the Wolf Creek Plant.

The Plant Siting Act as presently constructed requires that very detailed and extensive data be submitted to the KCC and that the KCC hold public hearings to investigate the application prior to granting a permit for generating units to be built. The law is quite explicit that such a generating facility not be constructed without the appropriate permit. The permit application itself requires information regarding environmental impacts, commercial impacts, mechanical impacts, air quality impacts, and various other data in support of the application.

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At the time of the passage of the Plant Siting Act, Empire did not anticipate that provisions of the bill would apply to facilities the Company might wish to construct in other states where it provides service, so we were quite surprised in 1984 to learn that a permit would be required when we decided to add a small 20 megawatt turbine to our existing Asbury plant, which is located near Asbury, Missouri. However, we did complete the application and the KCC held hearings and we were granted a permit to build such a facility, even though it was outside Kansas and a small facility.

In 1987 we added two 16.5 combustion turbines at our Riverton Generating Station at Riverton, Kansas. Again we went through the permitting process. In this instance, the Company felt the permitting was an appropriate requirement since the units were located in the state of Kansas.

Currently, we are planning the construction of another combustion turbine, approximately a 100 megawatt unit, which will be located east of Joplin, Missouri. Since this unit will be constructed in Missouri and will have no environmental or resource impacts on Kansas, the Company feels that meeting the requirements of the Kansas Plant Siting Act is an undue burden and one that we would like to be able to avoid.

The Company caused an amendment to be drafted to the Plant Siting Act which was very forthright. Basically, it excluded Empire and any other electric utility that serves less than 10% of its retail customers in the state of Kansas and is constructing a generating facility located outside the state of Kansas from

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the requirements of the Act. Any generating facility we might build inside the state of Kansas which would have an impact on the air, water, or land usage of the state would still require completion of the permitting process. The KCC suggested amendments to the bill in the Senate Committee and we agreed to those amendments. The effect of the Bill as presented is to exempt a facility constructed outside the state of Kansas if:

1. The siting is subject to review by the utility regulatory authority of that state where it is to be constructed.

2. Less than 10% of the retail customers on the electric system are located in Kansas and that number is no more than 15,000 customers.

3. A facility is to be built outside Kansas in a state which has no plant siting regulation. The commission will consider the effects on system reliability and economic efficiency when determining the most reasonable location of a proposed facility.

As far as customer protection, the Kansas Corporation Commission will still maintain all authority over the Company regarding our operations in Kansas. They will certainly have the ability to hold prudency reviews regarding construction of the facilities at the time we might attempt to include those facilities in rates. I believe this legislation as proposed will rectify a situation that requires the expenditure of a good deal of time and effort for utilities that are basically domiciled outside the state of Kansas.

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To my knowledge this bill would impact only Empire District and possibly Southwest Public Service Company of Amarillo, Texas who has a small operation in the very southwestern corner of the state. I don't believe it would affect any other investor-owned utility. Again, the provisions of the amendment are very straightforward and we would appreciate your favorable consideration.

I will be glad to try to answer any questions you might have. Thank you.

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