

SWKROA

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

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Testimony before the House Committee on Energy and Utilities
HB 2141 – an act relating to instruments conveying interests in wind or solar resources

February 8, 2011

Chairman Holmes and Members of the Committee:

My name is Erick Nordling. I would like to submit written testimony on behalf of SWKROA in regard to HB 2141. I am from Hugoton and serve as the 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 Secretary for the Association, I regularly advise mineral and royalty interest owners, as well as surface owners and farm tenants, with regard to issues relating to access to their lands for oil and gas operations and from damages resulting from such access and use of the land for oil and gas operations. In my practice, I have also reviewed a number of wind lease agreements for several wind farm projects. I have prepared deeds severing and reserving the (undeveloped) wind rights for owners who sold their surface rights. However, we haven't had much experience on the development of solar rights.

While the development of wind and solar resources in Kansas is still in its infancy, the right to own, lease and transfer such rights is essentially the same as being able to own, lease and transfer oil and gas water rights. When such resources are initially developed, the same person generally owns the 'whole bundle of sticks,' meaning that the owner owns the land, and all that is in, under, or above the land, including oil and gas, wind, as well as the surface rights. As 'value' is discovered and developed from the exploitation of such oil, gas, water, wind or solar rights, it is fairly commonplace for such interests to be carved away from or severed from the surface estate. In our area, mineral rights have been severed from the surface estate and transferred from one generation to the next generation by deed or probate proceedings. It seems that the development of the wind rights could effectively be severed from the surface estate just as effectively, and subsections (b) and (c) of HB2141 are unnecessary and would change our common law right to be able to transfer such rights freely. It doesn't appear there is anything 'broken' which needs to be fixed.

It is not clear whether Subsection (c) of the bill, as drafted, is intended to prohibit wind development for agricultural uses too.

We would respectfully suggest that lines 23-25 of Section 1(a)(3) of the bill be revised as follows: ~~"granted or may be terminated, except that if the instrument is recorded under K.S.A. 58-2221, and amendments thereto, any compensation received by the owner of the real property~~

~~may be excluded; and~~”. K.S.A. 58-2221 should also be amended to require wind and solar leases or easements, as well as oil and gas leases to be filed of record with the local Register of Deeds.

Thank you, for your consideration of our remarks.

Respectfully submitted,

Erick E. Nordling
Executive Secretary, SWKROA