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Brief for the Kansas Independent Oil & Gas Association as Amicus Curiae

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SCHOOL OF LAW

SMALL SCHOOL.
BIG VALUE.

No. 17-118387-S

IN THE SUPREME COURT OF THE STATE OF KANSAS

Jason Oil Company, LLC

Plaintiff-Appellee

vs.

Frank E. Littler, *et al.*

Defendants,

(Debra Baldwin Burkhart, Susan Baldwin Manes, and James Baldwin),

Defendants-Appellants,

(F&E Littler, LLC, Janice Stull, Craig Stull, Jerilyn Ann Stull, and Michael Stull),

Defendants-Appellees.

Brief of *Amicus Curiae*
Kansas Independent Oil & Gas Association
(KIOGA)

Appeal from the District Court of Rush County
Honorable Bruce T. Gatterman, Chief Judge
District Court Case No. 2015-CV-21

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APPENDIX B

I. Introduction

Is the letter of the rule against perpetuities (the Rule) more important than its public policy? The Appellants in this case recklessly petition the Court to apply the Rule to a commonly used form of mineral reservation for the first time in the reservation's nearly 100 years of use. They contend the Rule should apply even though it would cloud or nullify the property interests of countless unrepresented parties, spur a spate of litigation, remove a useful form of mineral ownership from commerce, and disrupt oil and gas development across Kansas—all in contravention of the Rule's policy of making land more likely to be developed. Kansas courts have long rejected applying the Rule at the expense of its policy. This case does not provide a compelling reason to change course.

The Kansas Independent Oil and Gas Association (KIOGA) represents the interests of over 1,400 members involved in the development of crude oil and natural gas in Kansas. KIOGA's members, who include oil and gas producers, attorneys, landmen, and abstractors, have long assumed reservations of defeasible term mineral interests, like those in the present case, are valid under the Rule because they promote the development of oil and gas and create a future interest that parties in commerce regard as immediately vested. For as long as these reservations have existed, parties in Kansas have purchased leases, paid royalties, and probated estates on this assumption.

KIOGA urges the Court not to apply the Rule and upend this long-accepted practice. In this brief, KIOGA will describe the commonness of the interests at stake,

illustrate some of the practical consequences of applying the Rule to them, and demonstrate the commercial function these interests serve in the development of oil and gas.

II. This is not a typical rule against perpetuities case because the form of property conveyance involved has been widely used in Kansas for nearly a century.

The cases Appellants cite in support of applying the Rule involve unusual, even one-of-a-kind, conveyances that affected a discrete number of parties. *Beverlin v. First Nat'l Bank*, 151 Kan. 307, 98 P.2d 200 (1940), examined a complicated devise involving multiple generations of a single family. Similarly, *In re Estate of Freeman*, 195 Kan. 190, 404 P.2d 404 (1965), involved alternative devises of the corpus of a unique testamentary trust. Yet another will construction case, *Nelson v. Kring*, 225 Kan. 499, 592 P.2d 438 (1979), considered the relatively rare case of a charitable devise of land for use as a hospital.

Here, in contrast, the form of conveyance before the Court is pervasive in titles to land in Kansas. The frequent occurrence of reserved defeasible term mineral interests is illustrated partly by the number of reported Kansas appellate decisions construing them.[1] *E.g.*, *Brooks v. Mull*, 147 Kan. 740, 78 P.2d 879 (1938); *Zaskey v. Farrow*, 159 Kan. 347, 154 P.2d 1013 (1945); *Shepard v. John Hancock Mut. Life Ins. Co.*, 189 Kan. 125, 368 P.2d 19 (1962); *Dewell v. Fed. Land Bank*, 191 Kan. 258, 380 P.2d 379 (1963); *Stratmann*

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[1]The earliest example of a defeasible term mineral interest reservation in the Kansas cases appears to be from March 1929. *See Brooks v. Mull*, 147 Kan. 740, 78 P.2d 879 (1938).

v. Stratmann, 204 Kan. 658, 465 P.2d 938 (1970); *Classen v. Fed. Land Bank of Wichita*, 228 Kan. 426, 617 P.2d 1255 (1980); *Friesen v. Fed. Land Bank*, 227 Kan. 522, 608 P.2d 915 (1980); *Kneller v. Fed. Land Bank*, 247 Kan. 399, 799 P.2d 485 (1990); *Oxy USA, Inc. v. Red Wing Oil, LLC*, 51 Kan. App. 2d 1028, 360 P.3d 457 (2015), *pet. for rev. granted* (Kan. Sept. 29, 2017). Kansas is not unique; these interests are also prevalent in other oil and gas producing states. *See* 1 Eugene Kuntz, A Treatise on the Law of Oil and Gas § 17.3 at 524 n.21 (1987) (collecting cases); 2 Patrick H. Martin and Bruce M. Kramer, Williams & Meyers, Oil and Gas Law § 335 at 186.2(1)–(2) n.8 (Matthew Bender 2017) (same).

To illustrate the ubiquity of these reservations in Kansas, KIOGA conducted a limited examination of conveyances made during a five-year period by the Federal Land Bank of Wichita and Federal Farm Mortgage Corporation (the Banks), which routinely reserved term mineral interests when conveying foreclosed lands. KIOGA identified 114 deeds containing such reservations, covering 25,416 gross acres in four Kansas counties.[2] As the cases above illustrate, the Banks are far from the only grantors to make these reservations; individual grantors have also widely adopted the practice. KIOGA's findings are summarized in Appendix A.

In determining mineral ownership under these conveyances, lawyers and parties in commerce have always accepted the term reservations and the future interests that follow

[2]Counsel for KIOGA conducted a grantor–grantee search for conveyances in which the Federal Land Bank of Wichita or the Federal Farm Mortgage Corporation was the grantor in Franklin, Greenwood, Russell, and Trego counties from January 1, 1940, to December 31, 1945.

as valid. Passing title on these conveyances is justified by the dearth of authorities questioning them. As the above cases demonstrate, Kansas appellate courts have upheld the validity of these interests many times without discussion of the Rule. The Kansas Title Standards Handbook addresses these interests without noting the Rule. Standards for Title Examination Comm., Kan. Bar Ass'n, Kan. Title Standards Handbook § 16.3 (8th ed. 2018). The fact that no one has previously challenged this prevalent form of conveyance under the Rule in Kansas further confirms the practice.

As Professor Eugene Kuntz notes, the application of the Rule to the interest following a retained term mineral interest "is easily overlooked, probably because the evil designed to be avoided by the rule is not readily apparent if it is apparent at all." Kuntz, *supra*, § 17.3 at 524. The parties to these conveyances regard the grantee's interest as certain to one day become possessory, putting them beyond the spirit, if not also the letter, of the Rule. *See Williams v. Watt*, 668 P.2d 620, 632 (Wyo. 1983).

Additionally, the application of the Rule to the executory interest following a determinable fee in minerals has been raised before appellate courts of other oil and gas producing states. Of those other states, *none* have ultimately applied the Rule to void the future interest. *E.g.*, *ConocoPhillips Co. v. Koopmann*, Number 13-14-00402-CV, 2016 Tex. App. LEXIS 5278 (Tex. App. May 19, 2016), *pet. for rev. granted*, 2017 Tex. LEXIS 562 (Tex. Jun. 16, 2017); *Stevens Mineral Co. v. State*, 418 N.W.2d 130 (Mich. Ct. App. 1987); *Earle v. Int'l Paper Co.* 429 So.2d 989 (Ala. 1983); *Williams v. Watt*, 668 P.2d 620 (Wyo. 1983); *Bagby v. Bredthauer*, 627 S.W.2d 190 (Tex. App. 1981); *Rousselot v.*

Spanier, 131 Cal. Rptr. 438 (Cal. Ct. App. 1976) (rejecting *Victory Oil Co. v. Hancock Oil Co.*, 270 P.2d 604, 611–12 (Cal. Ct. App. 1954)).

For these reasons, untold numbers of oil and gas leases have been purchased, drilled, and produced on the understanding that this form of conveyance is effective. Lawyers have certified countless titles on this understanding. Reversing this assumption after almost 100 years would cause widespread title confusion, spur litigation, and expose thousands of parties to unforeseen and potentially devastating liabilities. Accordingly, in determining whether to apply the Rule in this case, the Court should weigh the public policy benefits of its application—which do not exist—against the public policy losses of upsetting certainty of land titles across the state.

III. Applying the Rule to void the grantee's interest would betray Kansas's public policy of upholding certainty in land titles.

The rationale behind the Rule is not the only public policy at stake in this case. Kansas also has a public policy of upholding certainty in titles to land. Holdings that would tend to make land titles uncertain are "contrary to the public policy in this state." *Schultz v. Cities Serv. Oil Co.*, 149 Kan. 148, 152, 86 P.2d 533 (1939). Preserving current understandings of title from doubt "is of great importance to the public." *Harvest Queen Mill & Elevator Co. v. Sanders*, 189 Kan. 536, 543, 370 P.2d 419 (1962). On the basis of this public policy, this Court has declined to retroactively adopt new applications of legal rules that would force a reexamination of titles and subject parties in commerce to unforeseen liability. *See Giles v. Adobe Royalty, Inc.*, 235 Kan. 758, 766–67, 684 P.2d 406 (1984).

Kneller v. Fed. Land Bank, 247 Kan. 399, 799 P.2d 485 (1990), illustrates when it is inappropriate to retroactively apply a modification of existing law. *Kneller* involved a division order title opinion issued under the Court's rule in *Smith v. Home Royalty Assoc.*, 209 Kan. 609, 498 P.2d 98 (1972), which held that production from lands with which a tract is pooled or unitized does not perpetuate a term mineral interest in the tract. Eight years later, the Court reversed this rule in *Classen v. Fed. Land Bank*, 228 Kan. 426, 617 P.2d 1255 (1980). Appellants asked the *Kneller* court to apply *Classen* retroactively and render the division order title opinion issued under *Smith* erroneous. The *Kneller* court prudently declined, reasoning that applying the modification retroactively "would make a phoenix out of a defeasible or mineral interest [sic] which had, under the existing Kansas law, expired eight years prior to the filing of *Classen*." *Kneller*, 247 Kan. at 404.

Such is the case here, where a holding that applies the Rule would not only resurrect expired term mineral interest reservations, but enlarge them to a full fee simple absolute. Title opinions issued by virtually every lawyer and law firm in the state practicing in the area would be rendered erroneous. To demonstrate only a few of the potential consequences of such a holding, consider the following hypothetical scenarios.

HYPOTHETICAL 1: THERE WILL BE BLOOD[3]

Fact 1: On December 1, 1985, Paul executed a deed in favor of Eli conveying the Sunday Tract. The deed contained a reservation materially identical to the reservations in this case, *i.e.*, saving and excepting all oil, gas, and other minerals for a period of 20 years and as long thereafter as oil, gas and/or other minerals are produced.

[3] *There Will be Blood* (Paramount Vantage, Miramax, and Ghoulardi Film Company 2007) (motion picture) (providing an entertaining, fictional look at the oil and gas industry).

Fact 2: On December 1, 2005, there was no production of oil, gas and/or other minerals on or from the Sunday Tract and no drilling had ever occurred on the land.

Fact 3: On December 1, 2006, Plainview Oil Co. obtained an oil and gas lease from Eli covering the Sunday Tract. Plainview Oil Co. did not obtain an oil and gas lease from Paul because it believed his interest in the Sunday Tract terminated and devolved to Eli under the deed's express terms.

Fact 4: Prior to drilling, Plainview Oil Co. obtained a title opinion from Reasonable Law Firm. Reasonable Law Firm certified title to the minerals in the Sunday Tract in Eli.

Fact 5: Plainview Oil Co. then drilled on the Sunday Tract and hit a gusher.

Hypothetical 1 potentially exists in droves across Kansas. If the Court were to apply the Rule in this case, Paul or his successors in interest would have a claim against Plainview Oil Co. for mineral trespass and conversion. Plainview Oil Co. may have a claim against Eli for reimbursement of wrongly paid royalties. Plainview Oil Co. may also have a claim for legal malpractice against Reasonable Law Firm for its title certification.

Similar claims would abound statewide and potentially overburden district courts. Registers of deeds offices would be inundated by landmen and title examiners attempting to find fact situations like the above and then acquire leases of the grantors' interest (or bring a claim for mineral trespass and conversion). Cognizant of the potential for mispaying royalties, oil and gas producers would likely suspend payment on many or most leases until title could be reexamined.

The costs of reexamining title, obtaining curative oil and gas leases, and defending claims of mineral trespass and conversion brought by unleased mineral owners would

likely fall on oil and gas producers. But the ultimate responsibility for wrongly paid royalties would likely fall on the original recipients—those mineral owners who claimed title to a future interest following the grantor's reservation. These persons would be left without any mineral interest and potentially liable for repayment of royalties. *See Waechter v. Amoco Prod. Co.*, 217 Kan. 489, 515–16, 537 P.2d 228 (1975) (permitting lessee to recover wrongly paid royalty payments from payees).

Although it is impossible to precisely estimate, the potential aggregate monetary impact of the title uncertainty depicted in this hypothetical is huge. Appendix B approximates the total proceeds from the sale of oil and gas produced in Kansas from 2012–2016. As can be seen on Appendix B, if even 1% of oil and gas production would be affected (a conservative estimate), as much as $216.8 Million in proceeds could be at stake. If 5% of production would be affected, the amount may exceed $1 Billion.

HYPOTHETICAL 2: THE BEVERLY HILLBILLIES[4]

Fact 1: On December 1, 1985, Jed executed a deed in favor of Granny conveying the Clampett Place. The deed contained a reservation materially identical to the reservations in this case, *i.e.*, saving and excepting all oil, gas and other minerals for a period of 20 years and as long thereafter as oil, gas and/or other minerals are produced.

Fact 2: On December 1, 2005, there was no production of oil, gas and/or other minerals on or from the Clampett Place and no drilling had ever occurred on the land.

Fact 3: On December 1, 2006, Jed died testate leaving all of his property to Jethro. Reasonable Law Firm prepared the inventory for Jed's estate and did not show him owning an interest in the Clampett Place.

[4] *The Beverly Hillbillies* (Filmways Television and McCadden Productions 1962–1971) (television series) (depicting the fictional Clampett family whose chance discovery of oil on their rural homeplace led them to a tony neighborhood of Beverly Hills).

Fact 4: On December 2, 2006, Granny died testate leaving all of her property to Elly May. Rational Law Firm prepared the inventory for Granny's estate and showed her owning the Clampett Place, including ownership of all oil, gas and other minerals.

Hypothetical 2 could be more ubiquitous than hypothetical 1 because it would arise even in the absence of oil or gas production. If the Court were to apply the Rule in this case, the inventories in both hypothetical estates would be rendered incorrect, and title to the minerals in the Clampett Place would immediately become unmarketable. Jethro and Elly May would likely litigate their adverse claims to the minerals, or, at a minimum, reopen both estates to amend the inventories and journal entries of final settlement. This scenario, like the first, would be reproduced across Kansas.

Other ripple effects may be less obvious. If, for instance, Elly May ever conveyed and warranted her interest in the minerals to a third party after purportedly taking title from Granny's estate, she may be liable to her grantees for breach of warranty. Since Jethro never believed he owned an interest in the minerals, it is unlikely he or his successors in interest cared to maintain a chain of title to the interest, which could increase the legal costs of development. Elly May might have wrongly paid county property taxes on the severed mineral interest and, if the interest had ever produced oil or gas, state mineral severance tax on royalties received. The potential claims that could arise from this or the first hypothetical are limited only by the collective imagination of our state's bar.

These hypothetical scenarios are far from the only foreseeable disruptions that would result from nullifying the grantee's interest under the Rule. To apply the Rule in

this case, the Court must be willing to sacrifice the state's public policy of maintaining certainty in land titles. But is applying the Rule worth it? *No*. On the contrary, there are no policy gains whatsoever to be achieved by invalidating the grantee's interest. These interests serve an important social and commercial function by fostering oil and gas extraction. To strike them down in the name of the Rule would be counterproductive to the Rule's own policy.

IV. Invalidating future interests following retained term mineral interests is not justified by the purpose and public policy of the Rule and therefore is not required under the Rule.

Briefly, the Rule "precludes the creation of any future interest in the property which does not necessarily vest within twenty-one years after a life or lives presently in being." *Gore v. Beren*, 254 Kan. 418, 428, 867 P.2d 330 (1994). The Rule "springs from" considerations of public policy. This Court has articulated the Rule's policy as follows:

> The underlying reason for and purpose of the rule is to avoid fettering real property with future interests dependent upon contingencies unduly remote which isolate the property and exclude it from commerce and development for long periods of time, thus working an indirect restraint upon alienation, which is regarded at common law as a public evil.

First Nat'l Bank v. Sidwell, 234 Kan. 867, Syl. ¶ 8, 678 P.2d 118 (1984). The Rule, though concerned solely with the remoteness of vesting of future interests, ultimately serves the "fundamental purpose of keeping property freely alienable." *Id.* at 875.

But, in modern times, the Rule "is not a favorite of the courts." *Drach v. Ely*, 237 Kan. 654, 657, 703 P.2d 746 (1985). Courts today avoid a strict, slavish application of the Rule and instead attempt to "temper the rule where its rigid application would do

violence to an intended scheme for the disposition of property." *Id.* at 656; *e.g.*, *Rucker v. Delay*, 295 Kan. 826, 831, 289 P.3d 1166 (2012) (adopting the Restatement (Third) of Property's approach to categorizing all future interests as either reversions or remainders). In the present case, a rigid application of the Rule would do violence not to one intended scheme for the disposition of property, but to thousands made across the state over the last century.

A. The policy from which the Rule springs does not support invalidating the form of conveyance at issue here.

The evil the Rule was designed to avoid is not apparent in interests following retained term mineral interests. Kuntz, *supra*, § 17.3 at 524. "In most cases the very existence of a future interest tends indirectly to fetter the alienability of the property which it affects," because the property is not marketable unless an absolute interest is offered for sale. Lewis M. Simes, The Law of Future Interests § 108 at 362 (1951). At least when the property involved includes the surface estate, it is often necessary to unite the present and future interests to develop or sell the property. For example, in hypothetical 2 Elly May would be unlikely to construct improvements on the surface of the Clampett Place if her surface interest were subject to an executory interest that might defease her of the interest and the benefit of her improvements. Third parties would also be unlikely to purchase her interest for the same reason without also obtaining the executory interest.

This is not so where the property involved is only a mineral estate. As Williams & Meyers observes,

> Full utilization of oil and gas in place depends upon exploration for and production of the minerals. Almost invariably this development is secured by the execution of an oil and gas lease. Thus, so long as there is no interference with the power to lease, there is, for practical purposes, no interference with alienability of the mineral estate. In short, when "alienability" is used in connection with property interests in oil and gas, it means the power to lease.

Williams & Meyers, *supra*, § 325 at 71. A mineral estate remains "alienable" even if subject to an executory limitation like the cessation of production because it can be developed or leased as though it were a fee simple absolute. And because it can be developed or leased, such an interest is marketable even though an absolute interest is not offered for sale. This is borne out by the experience of KIOGA's members, who routinely lease and develop mineral estates subject to executory interests, and the Kansas cases involving these interests, which often arise from issues surrounding oil and gas production.

Far from reducing the marketability and commercial use of the property, a defeasible term mineral interest actually increases the probability of the property's development. It incentivizes the possessory owner to lease or develop the minerals to extend the duration of the present estate. Transforming the possessory owner's interest into a fee simple absolute removes the incentive to timely develop and defeats the principal aim of the Rule—to make property more marketable and valuable to the present owner. Further, if defeasible term mineral reservations were struck down, many parties would likely resort instead to reserving a fractional undivided mineral interest in fee simple absolute. This would fractionalize ownership of the minerals and make development more difficult. *See, e.g.*, *Holland v. Shaffer*, 162 Kan. 474, 476, 178 P.2d

235 (1947) (involving a mineral partition brought to unite minerals so fractionalized no company would develop them).

The Rule is designed to forward the circulation of property in commerce. It would be a travesty—in the name of the Rule—to do the opposite by invalidating reservations of defeasible term mineral interests. *See generally* Williams & Meyers, *supra*, § 326 at 76–77.

Moreover, even though the Appellees' future interest in this case is an executory interest, it was certain to vest (*i.e.*, become possessory at some future time) at the moment of its creation. It is possible to create an executory interest to take effect on an event certain to occur. Simes, *supra*, § 110 at 377. Parties to term mineral reservations universally understand that production of minerals from any given tract of land will eventually cease. The only unknown is the time of cessation. *Williams v. Watt*, 668 P.2d 620, 632 (Wyo. 1983). A future interest following such a reservation is not contingent, can be readily valued and marketed, and is properly exempt from the Rule. *See* Simes, *supra*, § 110 at 377.

B. Where application of the Rule would not accomplish its goals of fostering free alienability and development of land in commerce, it does not apply.

Even Professor John Chipman Gray, who advocated for a far-reaching application of the Rule, recognized that the Rule does not apply where its policy does not support it. Williams & Meyers, *supra*, § 325 at 70 n.22 (citing John Chipman Gray, The Rule Against Perpetuities § 603.1). The authors of Williams & Meyers believe courts should simply exempt the grantee's future interest from the Rule "on the straight-forward basis

that they serve social and commercial convenience and do not offend the policy of the Rule Against Perpetuities." *Id.* § 335 at 187. Professor Hemingway offers a concurring solution in which courts would exempt such interests from the Rule as *sui generis*. Richard W. Hemingway, The Law of Oil and Gas § 109 n.259 (3d ed. 1991).

A similar approach is proposed by Professor David Pierce, writing for *amicus curiae* EKOGA, whereby the Court would conduct a tripartite public policy analysis focusing on the interests of the parties to the conveyance, the public policies surrounding the Rule, and the impact on the Kansas real property system of applying it. Br. of *Amicus Curiae* EKOGA 10–11, Jan. 9, 2017. This framework recognizes the Rule as a creature of public policy and provides a principled means of applying it to modern-day transactions.

There is precedent in Kansas for not applying the Rule where it would not serve to foster alienability and development. *See, e.g.*, *First Nat'l Bank & Tr. Co. v. Sidwell Corp.*, 234 Kan. 867, 876, 678 P.2d 118 (1984) (electing not to apply the Rule to rights it characterized as "purely contractual"); *Howell v. Coop. Refinery Ass'n*, 176 Kan. 572, 578, 271 P.2d 271, 276 (1954) (finding the future interest owner's overriding royalty rights to be "vested" and thus not subject to the Rule); *Kenoyer v. Magnolia Petroleum, Co.*, 173 Kan. 183, 187, 245 P.2d 176 (1952) (characterizing the lease interests at issue as "vested" and outside of the Rule). Perhaps the clearest example of this policy is found in *Singer Co. v. Makad, Inc.*, 213 Kan. 725, 729–33, 518 P.2d 493 (1973). In that case, the Court declined to apply the Rule to a common species of commercial lease where it would needlessly burden parties to an accepted form of commercial transaction. *Singer*

Co. recognizes that the Rule is servient to its policy and should not be applied to contravene it.

V. Conclusion

Applying the Rule in this case would violate the public policy in favor of maintaining certainty in land titles. It would further violate the policy reason for the Rule, both by instantaneously clogging the marketability of countless acres of land and by removing from commerce a useful form of mineral ownership. Modern Kansas courts have eschewed slavish devotion to the letter of the Rule in favor of a more reasoned, policy-oriented approach. This Court should as well.

The Court has many alternatives to applying the Rule at it its disposal. The best approach is to adopt a public-policy based analysis and exempt interests following reserved defeasible term mineral interests from the Rule on the straightforward basis that they serve social and commercial convenience and do not offend the policy of the Rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this **KIOGA *AMICUS CURIAE* BRIEF** was filed this 15th day of January, 2018, using the Court's electronic filing system and that a Notice of Electronic Filing was sent to: John L. Richeson, Robert Emmett Bauer, Jeffrey Alan Wilson, David E. Pierce, and Kenneth L. Cole.

/s/ Joseph A. Schremmer
Joseph A. Schremmer, #25968
Counsel for KIOGA

Appendix A – Federal Land Bank of Wichita and Federal Farm Mortgage Deeds Containing Mineral Reservations: January 1, 1940 to December 31, 1945[5]

County	Total Deeds Containing Reservation	Gross Acres Covered by Deeds	Net Mineral Acres Reserved by Deeds
Franklin	46	6,880	1,840
Greenwood	25	5,101	1,305
Russell	19	4,518	1,130
Trego	24	8,917	2,229
Total	114	25,416	6,504

[5] The reservation language used in each deed was in substantially the same format as the following: "Excepting and reserving unto party of the first part, its successors and assigns, an undivided ________ of all oil, gas and other minerals and mineral rights, in, upon and under the above described real estate for a period of ______ years from and after the ______________, and so long thereafter as oil, gas and/or other minerals or any of them are produced therefrom, or the premises are being developed or operated."

Appendix B – Estimated Oil and Gas Proceeds at Risk From Rule Against Perpetuities Claims: 2012 to 2016

Year	Total Oil Production[6]	Average WTI Price[7]	Estimated % of Total Oil Proceeds Affected by Rule Against Perpetuities Claims				
			1.0%	*2.0%*	*3.0%*	*4.0%*	*5.0%*
2012	43,750,558	$94.05	$41,147,400	$82,294,800	$123,442,199	$164,589,599	$205,736,999
2013	46,845,544	$97.98	$45,899,264	$91,798,528	$137,697,792	$183,597,056	$229,496,320
2014	49,504,847	$93.25	$46,163,270	$92,326,540	$138,489,809	$184,653,079	$230,816,349
2015	45,467,562	$48.66	$22,124,516	$44,249,031	$66,373,547	$88,498,063	$110,622,578
2016	37,938,634	$43.15	$16,370,521	$32,741,041	$49,111562	$65,482,082	$81,852603
Total	223,507,145		$171,704,970	$343,409,940	$515,114,910	$686,819,880	$858,524,849

[6] KAN. GEO. SURVEY, State Production and Historical Info, http://www.kgs.ku.edu/PRS/petro/state.html (last visited Jan. 12, 2018).

[7] STATISTA, Average Annual West Texas Intermediate (WTI) Crude Oil Price from 1976 to 2017 (In U.S. Dollars Per Barrel), https://www.statista.com/statistics/266659/west-texas-intermediate-oil-prices/ (last visited Jan. 12, 2018).

Appendix B – Continued

Year	Total Gas Production[8]	Average HH Price[9]	Estimated % of Total Gas Proceeds Affected by Rule Against Perpetuities Claims				
			1.0%	*2.0%*	*3.0%*	*4.0%*	*5.0%*
2012	299,051,000	$2.76	$8,253,808	$16,507,615	$24,761,423	$33,015,230	$41,269,038
2013	293,437,001	$3.71	$10,886,513	$21,773,025	$32,659,538	$43,546,051	$54,432,564
2014	288,090,066	$4.35	$12,531,918	$25,063,836	$37,595,754	$50,127,671	$62,659,589
2015	285,773,485	$2.60	$7,430,111	$14,860,221	$22,290,332	$29,720,442	$37,150,553
2016	245,572,714	$2.46	$6,041,089	$12,082,178	$18,123,266	$24,164,355	$30,205,444
Total	1,411,924,266		$45,143,438	$90,286,875	$135,430,313	$180,573,750	$225,717,188

[8] KAN. GEO. SURVEY, State Production and Historical Info, http://www.kgs.ku.edu/PRS/petro/state.html (last visited Jan. 12, 2018).

[9] STATISTA, Average U.S. Henry Hub (HH) Natural Gas Price from 2003 to 2016 (In U.S. Dollars Per Million British Thermal Units), https://www.statista.com/statistics/383557/us-henry-hub-average-natural-gas-price/ (last visited Jan. 12, 2018).