

Approved April 1, 1991  
Date

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Representative Diane Gjerstad at  
Chairperson

3:40 ~~am~~ p.m. on Tuesday, March 26, 1991 in room 423-S of the Capitol.

All members were present except:

Representatives Baker, Dean, Wagnon and Wisdom. Excused.

Committee staff present:

Lynne Holt, Research  
Jim Wilson, Revisor  
Betty Manning, Secretary

Conferees appearing before the committee:

Representative Tom Thompson  
Dan Owen, Interested Party, Topeka  
Steve Hurst, State Water Office  
Jean Barbee, Travel TIAK  
Mike Ray, Kansas Recreation and Park Assn.  
Dean Wilson, Kansas Canoe Assn.  
Steve Phillips, Interested Party, Lawrence  
Scott Andrews, Sierra Club  
Rich McKee, Kansas Livestock Association

Chairperson Gjerstad called the meeting to order at 3:40 p.m.

The Chair opened hearings on H.B. 2527 which would create a recreational river system in the State of Kansas. The first conferee in support of this legislation was Representative Tom Thompson.

Representative Thompson introduced the bill to the committee and stated he believed it would no longer be necessary for canoeists to drive to other states to enjoy recreational river activities if this legislation should pass. He stated it is time for Kansas to develop our rivers and streams and take advantage of the economic opportunity this would bring. He urged the favorable support of this bill. Attachment 1.

Daniel Owens, an interested party, testified a law passed in 1945 dedicated all waters of the state to public use unless landowners applied for and received those rights from the State Water Office. At the present time a person is guilty of trespassing and subject to imprisonment if they use public waters to float over private land. Mr. Owen said this legislation does not simply declare a public right to canoe anywhere in the state but must be nominated as a "recreational river", there must be a public hearing, with adequate notice and conducted by Secretary of Wildlife and Parks. The economic impact in Kansas would come from commercial canoe float trips, privately operated launching and landing sites, riverside campgrounds and canoe livery service. Mr. Owen showed a slide of the canoeing areas in Kansas, mostly concentrated in the southeast corner of the state. Attachment 2.

Steve Hurst, Water Resource Planner, Kansas Water Office, appeared in support of this legislation. He listed two policy recommendations (1) the state should enact legislation to provide for limited in-stream public recreation use on designated recreational rivers, and (2) the state should develop a management program for designated recreation rivers to ensure proper resource use and to protect private property rights. He urged support of H.B. 2527 Attachment 3.

Jean Barbee, Travel TIAK, stated TIAK understands the economic benefit the state could derive from one of its natural resources. These benefits include hotels and motels, restaurants, attractions, gas and groceries,

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT,  
room 423-S, Statehouse, at 3:40 ~~am~~ p.m. on Tuesday, March 26, 1991.

and fees from campground fees. It was estimated a canoeist spends approximately \$15 per day above the equipment and outfitting expenditures. This is one more way of meeting the needs of the ever-growing recreational needs of our citizens. Attachment 4.

Mike Ray, Kansas Recreation and Park Association, testified he believed allowing public use of designated rivers would increase significantly recreational opportunities for all Kansans and felt this bill ensures proper resource use and protection of private property rights. Attachment 5.

Dean Wilson, Kansas Canoe Association, testified Kansas is blessed with a diversity of rivers, however in order to canoe you have to go to other states. He represented a 200 family membership of canoeists who feel the bill would help define who would administer the development of these recreational waters. He urged the committee to support this legislation. Attachment 6.

Steve Phillips, interested party, testified that at the present time it is trespass to canoe in Kansas except on the Kansas, Arkansas and Missouri rivers. The passage of this bill would open up potential economic benefits along the designated recreational streams and rivers. He challenged the opponents of the bill to provide real examples of problems that have caused by canoers in other states. He closed his testimony with a short paragraph from the case of Kansas Supreme Court that said that canoeing on these other rivers is trespass. "Where the legislature refuses to create a public trust for recreational purposes in nonnavigable streams, courts should not alter the legislature's statement of public policy by judicial legislation. If the nonnavigable waters of this state are to be appropriated for recreational use, the legislative process is the proper method to achieve this goal." The subject quote is from Meek v. Hays. Attachment 7.

Scott Andrews, Sierra Club, final proponent, testified he strongly supported the concept of this legislation. A recreation survey was conducted last year which showed 32 states currently have some form of scenic or recreational river laws. Also, Kansas has the most restrictive river access laws in the nation. He did feel that this particular legislation fails to address a number of legal and administrative problems and recommended sending the bill to interim study. Attachment 8.

Greg Gilstrap, Director of Travel and Tourism, submitted written testimony in support of this legislation. Attachment 9.

Rich McKee, Kansas Livestock Association, the only opponent to appear in opposition of this legislation. He testified this one bill has generated more opposition for their association than any other proposed legislation. It is also upsetting to the KLA membership in the taking of private property rights. He urged the committee to consider the position of the KLA. Attachment 10.

The conferees responded to questions by the committee members.

Chairperson Gjerstad closed the hearings on H.B. 2527.

The meeting was adjourned at 4:40 p.m.

March 26, 1991

GUEST REGISTER

HOUSE

Committee on Economic Development

<u>NAME</u>	<u>ORGANIZATION</u>	<u>ADDRESS</u>
mike Ray	KS. Recreation & Park Assoc.	700 Jackson Jayhawk Tower
Jean Barbee	Travel Industry Assn	Topeka
Stephen A. Hurst	Kansas Water Office	Topeka
Rep. Tom Thompson	Kansas Legislature	Mission Kansas
Dick Isaacs	Coleman Co	Wichita
Mary Mae Hardt	KS Dept Wildlife Parks	Topeka
Steve Phillips	NONE	2235 Westchester Lawrence
Warren D. Lutz	DWR, KSBA	901 Ki. Ave Topeka
George Austin	DWR KSBA	Topeka
Scott Andrews	Sierra Club	Topeka
Dan Owen	Topeka	Topeka
Armand Corpolongo	DEPT. OF HUMAN RES	Topeka
DEAN W. WILSON	KANSAS CANOE ASSOCIATION	3509 SE HIGHLAND AVE TOPEKA 66605
Dave Clendenen	Dept. of Commerce	Topeka
Eileen Edlund	NFB of Kansas	7061 Riverside
Don Morris	NFB	" "
Martin Burke	none	4013 SW 34th Terr. Topeka

TESTIMONY

before

The Economic Deveopment Committee

by Conferee:

Representative Tom Thompson

Proponent for HB 2527

Kansas Recreational River Act

Today I would like to introduce you to an idea that is in no way new or unique. An idea that opens recreational and scenic opportunities for Kansans and visitors to Kansas alike. An idea that could bring jobs and tax dollars to Kansas helping it to fulfill its legacy of being the "Land of Ahs."

Being in a district that is essentially on the Missouri border in Kansas City, I know many Kansans who talk about canoeing and other forms of river recreation. However, when they talk about it, they talk about going to Missouri. In many cases they talk about driving several hours to get to a certain area to enjoy recreational river activities.

I never hear them talk about going to Kansas. Is this because Kansas has no rivers worth canoeing or enjoying? I don't believe that. Kansas has many beautiful areas that are well worth developing for recreation.

In the next few minutes you will hear from a variety of organizations and individuals who will testify about why HB 2527, the Kansas Recreational River Act, is needed to help Kansas develop its rivers. As you listen, I am sure you will agree that this is a good bill and will help Kansas live up to its billing as the "Land of Ahs." I hope you will pass HB2527 out of committee favorably for passage.

*Eco-Devo  
Attachment #1  
03-26-91*

**TESTIMONY BEFORE THE HOUSE ECONOMIC DEVELOPMENT  
COMMITTEE**

**H.B. 2527. The Kansas Recreational River Act**

Daniel D. Owen -- March 26, 1991

**I. Introduction.**

I appear before this committee today to support H.B. 2527, the Kansas Recreational River Act. The purpose of this act is to legalize canoeing in Kansas. The notion the canoeing is largely illegal in this state strikes most people as unbelievable, but it is the unfortunate truth. The current state of the law has utterly prevented the development of a recreational canoeing industry in our state, forces Kansans to vacation outside the state in order to enjoy canoeing, and discourages tourism in Kansas by visitors who might otherwise be attracted by our many beautiful streams and rivers. H.B. 2527 is intended to correct all of these problems, without requiring the appropriation of a single dollar of public funds.

**II. Canoeing and the Law of Kansas.**

An examination of the legalities of canoeing in Kansas must begin with one critical and indisputable fact-- the public owns all of the flowing waters in the state. K.S.A. 82a-702, passed by the legislature in 1945, dedicates all of the waters of the state to the public use. No landowner in the state has any rights whatsoever in the water flowing over his land unless he has applied for and obtained those rights from the state Water Office. If the Water Office

*Eco-Devo  
Attachment #2  
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denies the request to "appropriate" water, the landowner may not divert a single drop legally.

Given that the public owns all the waters in the state, it would seem natural to assume that members of the public can use the waters to float canoes, but under the current law a person is guilty of trespassing, and subject to imprisonment, if they use the public waters to float over private land. In the very recent decision of *Meek v. Hays*, 246 Kan. 99, the Kansas Supreme Court held that the public has no right to canoe on the public waters which flow across private land, and that there was nothing wrong with a landowner stretching barbed wire across a popular canoeing stream.

The only exception to the rule in *Meek v. Hays* is that the public may canoe on the three rivers that were "navigable" in 1861, when Kansas was admitted to the Union. Those three rivers are the Arkansas, the Missouri, and the Kansas River. The reason for this curious result is that the state owns the beds of rivers that were "navigable" at statehood. "Navigability" of rivers is an elusive, archaic concept (the last Kansas navigability case prior to *Meek* was decided in 1927). The court in *Meek* defined navigability as "susceptible of being used...as a highway of commerce."

None of the three navigable rivers in Kansas provide good opportunities for canoeing. The Arkansas is so frequently slow and shallow that it is nonexistent in many places (Kansas and Colorado are currently locked in the most expensive legal battle in the state's history over the Arkansas, and the U.S. Supreme Court will soon decide if Colorado has actually stolen billions of gallons of water and dried up the river as Kansas has alleged). The Missouri, which only

skirts the extreme northeastern edge of the state, is generally so wide, swift, and filled with debris, barges, and dredges, that canoeist must risk life and limb to travel on it. The Kaw can be quite picturesque, but its wide, meandering, sluggish nature keeps it from being a good canoeing river.

The best canoeing in Kansas is found on several dozen rivers and streams in the eastern half of the state, and particularly in the southeast. A recent Kansas Travel Guide, widely distributed by the state Travel and Tourism Division, encourages tourist to "put your canoe in a Crawford County stream and float toward the Ozarks." Unfortunately, just a few miles south of Crawford County, the tourists whom we have invited to our state for canoeing might be garroted by barbed wire. Shoal Creek is one of the southeast Kansas streams on which a tourist could conceivably float to the Ozarks, and it was also the subject of the *Meek v. Hays* decision.

### III. The Law of Canoeing in Other States.

In most other states where the issue has arisen, courts have held that because the public owns the water, the public has the right to use it for canoeing. Missouri and Montana are examples of states with a judicially recognized right of recreational boating. Other states, like Alaska, have made sweeping legislative declarations that recreational boating is one of the uses for the public water. Wisconsin opened its streams to canoeing, without needing a judicial decision, by statutorily altering the definition of navigability to include any body of water that could float a canoe. The Wisconsin law did not change the ownership of the underlying streambeds, but

simply allowed the public to use the water flowing across them. Nebraska took another tack, and simply changed the trespassing law to make boating on the public waters a defense to the charge.

States which recognize the public's right to canoe over any public water have had little difficulty defining the limits of canoeists rights to touch the privately owned streambed, portage around obstacles in the stream, or land their canoes when necessary. A recent Missouri case simply said that canoeists may make only such use of the banks and bed as is reasonably necessary to use the stream for canoeing; any further encroachment on private land is still trespassing.

#### **IV. The Kansas Solution -- H.B. 2527**

The Kansas approach to opening its streams to canoeing will be unique and well-crafted if H.B. 2527 was adopted. Rather than simply declaring a public right to canoe anywhere in the state, H.B. 2527 sets up a system whereby streams are nominated for the designation of "recreational river," studied by the appropriate state agencies, and then added to the recreational river system if appropriate. Before any portion of a stream or river can be added to the system, there must be a public hearing, with adequate notice, conducted by the Secretary of Wildlife and Parks. H.B. 2527 sets forth a list of five factors, including "riparian landowner rights," to be considered by the Secretary in determining whether a stream should be designated as a recreational river.

H.B. 2527 contains no request for any type of state funding. The only expenditure of state resources would be found in the time



spent by employees evaluating nominated streams. This would be a "one-time" task that could be spread over as much time as needed. At this time, no "fiscal note" for H.B. 2527 has been generated.

#### **V. The Payoff -- Benefits of Adopting H.B. 2527**

H.B. 2527 presents the state legislature with an opportunity to create a canoeing industry in Kansas, where none exists now, at virtually no cost to the state. This is economic development legislation in its purest form. Kansas has an opportunity to take advantage of a public resource, which currently sits unused, and to expand economic activity in the state. We could benefit from "legalized" canoeing, just as our sister states of Nebraska and Oklahoma do, and, best of all, no additional appropriations would be required.

Nearly 9.7 million Americans went canoeing in 1988, the last year for which statistics are available, and the number has been steadily growing. Kansas should seize a piece of this market as so many other states have done. Just how much economic activity canoeing in Kansas could generate is a matter for speculation, but it must certainly be an improvement over the current level of zero. One need only look to neighboring states to see commercial canoe float trips, privately operated launching and landing sites, riverside campgrounds, and canoe livery services. If H.B. 2527 passes, the market mechanism will dictate which stretches of Kansas waterways will support commercial canoeing. Enterprising landowners, who are fortunate enough to have a scenic river flowing through their

property, will have the opportunity to make more profit from their land by selling river access or other services to canoeists.

Tourists will have yet another reason to travel to Kansas as well as another facet of our state to enjoy while they are here. Kansans will have many new recreational opportunities and will have more incentives to stay in their own state to play, rather than take their vacation dollars elsewhere. Better yet, these benefits all come from the simple act of using a public resource which has always existed, but has heretofore been denied to the people of the state.

Finally, H.B. 2527 is simply the fair, just, and equitable way to handle the public waters of Kansas. Recreational boating is just as valid a use of public waters as municipal, industrial, or agricultural use. Furthermore, boating is a nonconsumptive use that removes no water from its natural flow, and leaves every drop for other beneficial uses. It is illogical and indefensible that private landowners have been able to prevent the public from using the public waters in a perfectly reasonable way. H.B. 2527 eliminates this paradox in the current law.

## **VI. Possible Amendments.**

One way to simplify H.B. 2527, and cut out the state bureaucracy involved in designating recreational rivers, would be to reduce the bill to a declaration that recreational boating is one of the permissible uses for all the public waters of Kansas. This approach has been taken by several states, including Alaska. The resulting use of the state's rivers would probably be no different than under the

current bill. This is because canoeists only want to go where the canoeing is good; and where the canoeing is good the streams would be designated as recreational rivers under the current H.B. 2527. If there was no bureaucratic mechanism for naming recreational rivers, the market mechanism would name them anyway.

The procedural framework was written into H.B. 2527 to make it more palatable to landowners who would otherwise want to keep stream access restricted. The proponents of the bill would be happy to see the procedural portion cut out, but only if the committee believes the bill has a good prospect of becoming law in a shortened form.

One concern about canoeing that landowners have voiced in the past is the problem of litter along streams and rivers. Littering is already illegal in Kansas, but it would be a simple matter to add another section to the statute making littering a recreational river a more severe offense. Finally, some may worry about landowner's liability for canoeists that were injured while crossing a privately owned streambed. That problem was eliminated 25 years ago by K.S.A. 58-3201 *et seq* which absolves landowners of any liability arising from the recreational use of his or her land.

## **VII. Opposition to H.B. 2527.**

The proponents of H.B. 2527 expect vigorous opposition from the Kansas Livestock Association and the Kansas Farm Bureau. All of their arguments will seek to justify the denial of the public's right to use public waters. We submit that private property rights should never be allowed to prevent the full enjoyment of a public resource.

Paradoxically, under the current law, a landowner could canoe on a river running through his property, even though the public actually owns the water, but the public would be excluded. This state of affairs is indefensible.

The Livestock Association and the Farm Bureau may represent themselves as speaking for many thousands of Kansas ranchers and farmers. We submit that relatively few of their members have streams or rivers flowing through their land, and still fewer have waterways suitable for canoeing. Furthermore, we predict that some shrewd or fortunate members will be able to cash in on canoeing, if they are blessed with a good stretch of river or an ideal place to launch.

Opponents of H.B. 2527 may try to suggest that it somehow deprives landowners of property rights. It does not. H.B. 2527 does not change the ownership of the water or the streambed, it merely defines acceptable uses of the public waters. H.B. 2527 does not constitute a "taking" of private property. Prior to 1945, farmers could freely draw water from streams running through their land. In 1945, the Water Appropriation Act forbid this practice unless prior approval was obtained from the Water Office, and such approval may be denied. The Kansas Supreme Court held that this was not a "taking." The simple fact is that the water belongs to the public, which may do with it as it please, subject only to prior appropriations under the law.

We also anticipate that the committee will be presented with dire warnings about vandalism, theft, littering and other depredations to be wrought by canoeists if H.B. 2527 passes. We

challenge the opponents of the bill to provide real examples of significant problems associated with recreational canoeing. With 9.7 million Americans canoeing, there should be an abundance of horror stories if the fears of some landowners are really valid. In reality, the most disturbing incidents in Kansas have involved landowners threatening canoeists. The time has come to allow orderly development of a canoeing industry in Kansas.

### **VIII. Conclusion.**

H.B. 2527 provides a unique opportunity for the legislature to promote economic development, tourism, and recreation without any new appropriation of tax dollars. The bill does this by simply allowing the public to make full use of a public resource, which has been denied for so long. H.B. 2527 is good for Kansas.

Testimony on House Bill 2527

House Committee on Economic Development  
by  
Stephen A. Hurst  
Water Resource Planner, Kansas Water Office

March 26, 1991

Madam Chairman and Members of the Committee, I am Stephen A. Hurst, a Water Resource Planner and Attorney with the Kansas Water Office. I appear today on behalf of the Kansas Water Office and the Kansas Water Authority to support House Bill 2527 enacting a Kansas Recreational Rivers Act and providing for the creation of a recreational river system in Kansas.

In 1986, the Kansas Water Authority approved a sub-section of the *Kansas Water Plan* entitled River Recreation. This sub-section recommended the development of a state managed recreational river program quite similar to the program set out in the bill currently before this committee. The specific policy recommendations of the River Recreation Sub-section of the *Kansas Water Plan* include the enacting of legislation to provide for the limited in stream public recreational use of designated recreation rivers, and the development of a management program for these designated recreation rivers to ensure proper resource use and to protect private property rights.

The Kansas Water Office and the Kansas Water Authority feel that House Bill 2527 meets the criteria as set out in the *Kansas Water Plan* recommendations. We believe that the creation of a managed recreational river system could enhance tourism in the state and, thus, contribute to economic development.

Eco-Devo  
Attachment #3

03-26-91



Travel  
Industry  
Association of  
Kansas

810 Merchants National Bank  
8th & Jackson  
Topeka, Kansas 66612  
913/233-9465 FAX 913/357-6629

## STATEMENT

DATE: March 25, 1991  
TO: HOUSE ECONOMIC DEVELOPMENT COMMITTEE  
FROM: Jean Barbee, Executive Director  
RE: Kansas Recreational River System (HB-2527)

My name is Jean Barbee. I am the Executive Director of the Travel Industry Association of Kansas, which we call simply, TIAK. TIAK is made of members which represent both the private and public sectors of tourism promotion in the state. That includes, for example, hotels and motels, restaurants, attractions, chambers of commerce, convention and visitors bureaus, advertising agencies and sign companies.

TIAK is in support of HB2527. The travel industry understands the economic benefit the state could and should derive from its natural resources.

The following economic impact information has been provided to me from the **Economic Impacts of Protecting Rivers, Trails and Greenway Corridors: A Resource Book**, prepared by Rivers and Trails Conservation Assistance, National Park Service, 1989.

Americans purchased approximately 90,000 canoes in 1988, a fourteen percent increase over purchases in 1985.

For every \$1 paid to canoeing outfitters, customers spent \$5 for gas, groceries, restaurants, campgrounds, and other lodging.

Each canoeist spends approximately \$15 per day above equipment and outfitting expenditures.

We concur that Kansas does not have the flowing stream resources that are found in Colorado and Arkansas. Canoeing and river running bring in \$50 million and \$20 million respectively to those state economies. The Kansas travel industry, however, would be happy with a fair share of that market. We would -- and we believe this committee would -- be pleased to increase our state's economy by a mere \$5 - \$10 million.

That same National Park Service information forecasts a participation by a wider segment of society in river boat activities and an increased representation by family groups. Additional trends reported

Eco-Devo  
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are longer participation throughout people's lifetimes, increased numbers of participants from older age groups, and increased sport expertise and equipment ownership.

If you add this information to that recently compiled by Economic Research Associates in a market study for the Kansas Division of Travel & Tourism, the need for increasing our ability to meet the recreational needs of our populous and our tourists is clear.

The Kansas tourism market study indicates that future trends in the tourism industry point to an increase in short, family vacations -- for example more long week-end trips -- and fewer traditional one and two week vacations. Our study also indicates that Kansas is likely to lose much of our pass-through tourism. That is why our experts in travel promotion have been so intent in recent years in promoting Kansas as a destination state. We are promoting our historic sites and events, our cultural and ethnic activities, and our sports attractions and events.

We do not understand all the intricacies and ramifications of the 1990 Supreme Court decision regarding navigable rivers. We simply know that Depending upon which index you refer to, Kansas ranks, at best, 47th in public land ownership. We do not have the federal and state parks that most other states have. We must provide access to the natural resources in our state that offer recreational opportunities to our own citizens and to our tourists.



HOUSE BILL NO. 2527

Chairwoman Gjerstad, members of the Committee, I am Mike Ray, Past-Chairman of the Parks and Natural Resources Section for the Kansas Recreation and Park Association. The Association represents over 600 members from approximately 175 governmental agencies throughout the State of Kansas. I am here to speak in behalf of the Association's membership in support of Bill 2527, whose intent is to create a recreational river system within the State of Kansas (for the benefit of the citizens of Kansas).

The Association believes that parks, open space and recreational services are basic needs of all Kansans and that the quality of life for our State will be greatly enhanced, through the provision of adequate areas for our public's recreational pursuits.

Presently there are not adequate public lands or river areas in the State of Kansas for recreation. Rivers represent a valuable recreational resource, and they are a source of tremendous scenic beauty and diversity in the Kansas landscape. Allowing public use of designated rivers would increase significantly recreational opportunities for the citizens of our State.

The Water Appropriation Act dedicates all waters to the people of the State; however, the vast majority of these same people are not allowed access to these waters for instream recreation.

Rivers in the State are an underused resource both recreationally and economically. The Association believes communities near these rivers would benefit through enhanced recreational services for their citizens and from the influx of tourism revenue.

The Association supports provisions of this bill which would allow recreational use of designated rivers while at the same time ensuring proper resource use and protection of private property rights. We believe this can be accomplished, and we should not let concerns over a small percentage of problem creators inhibit the use of our rivers by the majority of law-abiding, responsible citizens who appreciate and respect both the natural resource and private property rights.

*Eco-Devo  
Attachment #5  
03-26-91*

Testimony Presented to the  
House Economic Development Committee  
for HB2525 on March 26, 1991

My name is Dean Wilson and I am here to represent the Kansas Canoe Association (KCA). KCA was founded in 1976. Our membership is approximately 200 family members. Our membership has canoed in Arkansas, Colorado, Georgia, Idaho, Kansas, Michigan, Missouri, Nebraska, New Mexico, Oklahoma, Pennsylvania, Tennessee, Texas, and West Virginia, as well as Costa Rica.

Kansas is blessed with a diversity of rivers. We have rivers similar to Northern Missouri - muddy water and dirt banks, Nebraska - sandy bottomed rivers flowing through "endless" grasslands, as well as the Missouri Ozarks - rocky-gravelly rivers of Southeastern Kansas. This diversity is unique to Kansas.

When you look at where canoeing is popular in the other states, several factors appear. First, the majority of canoers don't own a canoe, so canoe liveries are important near or on a river if it is to be utilized. The second biggest factor is the availability of improved camping facilities (flush toilets and showers). As a child, it seemed you couldn't wait to get down and get dirty and hated baths. As an adult, you can't wait to wash off the experience of getting dirty. Surveys taken on the most utilized streams in the Ozarks show the highest river usage is on Saturday, with Sunday a distant second. This shows people are interested in day long reaches and not the extended 2-3 day trips.

I was approached by a farmer on Mill Creek who a couple of years ago advertised in the Topeka classifieds that he had a campground and canoeing available on Mill Creek. He received 3 calls the whole summer. Where are all these campers and canoeists, he asked. In questioning him, his campground was primitive camping only and he had a 100 yard section of Mill Creek to float. This points out the misconception farm groups have of the demand. It has taken Missouri 30 years of publicity to get to where canoeing is a cottage industry. The misconception that our streams will become overcrowded as has some of Missouri's has, is also years and years away, even if it does occur.

One last problem Kansas has with its present law is who administers the rivers in Kansas? The water is held in public trust, but there is no definition of what state agency or office is to responsible in developing these water. This bill would help to define a program of developing our rivers for all Kansans to enjoy. We support this bill.

TESTIMONY BEFORE THE HOUSE ECONOMIC DEVELOPMENT COMMITTEE

HB 2527. THE KANSAS RECREATIONAL RIVER ACT.

STEVE PHILLIPS

I appear before this committee today to support H.B. 2527. By way of introduction, I am Steve Phillips. I'm a life long Kansas resident. Currently I am employed by Kansas Supreme Court Justice Abbott as a research attorney.

Today, I'm here as an individual. I like to canoe. As you have heard from the Kansas Canoe Association, there are many other Kansans who like to canoe. Currently, canoeing opportunities in Kansas are very limited. Although there are a number of good rivers in Kansas, it is currently trespass to canoe any but the Kaw, the Arkansas, or Missouri. Consequently, most Kansans travel out of state for canoeing trips. Passage of this bill would open new opportunities for myself and other canoeists.

There are potential objections to this bill from groups representing landowners. One objection is that canoeists will litter. In my experience, this is not true. Canoeists go canoeing because they love the out of doors. Littering is incompatible with the spirit of canoeing. Trash along the rivers will not be a problem.

Landowners might also object that trespassing on their land will become a problem. Again, the canoeists that I know are responsible people. I've canoed in Missouri dozens of times with a variety of groups, and I've never seen a canoeist have a problem with landowners along and of the rivers. Canoeists are

interested in the river and make use of it. They do not trespass on private land.

In fact, there is great potential economic benefit to landowners along canoeable streams. One only needs look at Missouri where there are many people who make a lot of by money renting canoes and outfitting trips. Landowners along rivers can also charge for access to the rivers and for parking while people are on trips.

This bill provides opportunities for many Kansans. It provides an opportunity for canoeists to float rivers that are currently off limits. It also provides an opportunity for landowners along rivers to gain an economic benefit from the rivers.

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*State ex rel. Meek v. Hays*

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susceptible of being used as a highway for commerce at the time this state was admitted to the union."

This bill was killed in the House Energy and Natural Resources Committee on February 27, 1986.

House Bill 3038 was also introduced during the 1986 session. Known as the Kansas Recreational River Act, this bill would have allowed the legislature to designate "selected rivers within this state [which possess] outstanding fish and wildlife, recreational, geologic or scenic values" as recreational rivers. This designation would have allowed the public "to enjoy and use such rivers through noncontact river recreation." Noncontact river recreation was defined as "the public use of a recreational river by means of a vessel." This bill died in the House Energy and Natural Resources Committee without action.

House Bill 3038 was resurrected in 1987 as Senate Bill 94 and was killed by the Senate Energy and Natural Resources Committee on February 6, 1987.

Owners of the bed of a nonnavigable stream have the exclusive right of control of everything above the stream bed, subject only to constitutional and statutory limitations, restrictions, and regulations. Where the legislature refuses to create a public trust for recreational purposes in nonnavigable streams, courts should not alter the legislature's statement of public policy by judicial legislation. If the nonnavigable waters of this state are to be appropriated for recreational use, the legislative process is the proper method to achieve this goal.

The public has no right to the use of nonnavigable water overlying private lands for recreational purposes without the consent of the landowner.

Affirmed.

- ① Give your testimony
- ② Challenge Livestock assoc to provide real examples of degradation.
- ③ Read the section of Meek v. Hays



# SIERRA CLUB

## Kansas Chapter

Testimony to House Economic Development

H.B. 2527 - Recreational River System

I am Scott Andrews Representing the Kansas Chapter of the Sierra Club. We strongly support the concept H.B.2527 and the creation of a state recreational river system. Many of you may know the Sierra Club as a conservation organization, and we do think a bill such as this would aid in the protection of designated rivers and riparian systems. However, the Club is also an outdoor recreation group. Our statement of purpose, little changed since our founding in 1892, begins "to enjoy, explore and protect the wild places of the Earth". We believe the creation of a recreational river system would allow our members, the citizens of Kansas and visitors to our state to enjoy, explore and protect the beauty of our state's rivers and streams.

The Department of Wildlife and Parks did state-wide outdoor recreation survey last year which included why participants in various activities did not participate more. In river recreation (canoe/kayak/rafting) after lack of time, the major problem was "lack of public facilities". In this case a place to float. At 17% this was the highest response for lack of facilities in any of the activities in the survey.

- 32 states currently have some form of scenic or recreational river laws.

- 13 state legislatures currently have bills (2 are new programs, the rest are expansions of existing systems).

- Kansas, to our knowledge, has the most restrictive river access laws in the nation. No other state restricts recreational floating of rivers to the same extent.

Unfortunately, there are a number of legal and administrative problems that this bill fails to address in the creation of such a system and opening recreational access to rivers (see fact sheet).

The Sierra Club strongly supports the creation of a recreational river system that could open access to a few of our most scenic rivers for recreational use and urges the members of this committee to work towards making this a reality in Kansas.

*Eco-Devo  
Attachment #8  
03-26-91*

## Fact Sheet

### H.B. 2527 - Recreational River System

3 Rivers (Kansas, Arkansas and Missouri) are currently open to recreational access.

- Declared navigable at statehood.
- All land along them below mean high water line is state property.
- no agency currently has justification to manage these lands.

No other rivers or streams (unless bounded by public land) are open to public access.

The legislature could open any or all of these streams to such access (floating) by declaring them navigable.

- This remains to be tested in court but the State Supreme Court strongly hinted at it last year.

Management of Riparian areas (other than on that below mean high water on the main rivers) would probably require purchase of easements or property, or special legislation.

Really three main issues:

- Management authority on 3 public rivers
- Opening of streams to floating though declaration of navigable.
- creation of Recreational River System including management and protection of riparian areas.

WRITTEN TESTIMONY FOR  
THE HOUSE ECONOMIC DEVELOPMENT COMMITTEE

H.B. 2527. The Kansas Recreational River Act

Greg Gilstrap, Kansas Travel and Tourism Director

March 26, 1991

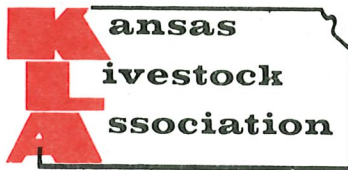
The potential for adding new dollars to communities is a factor that should be considered when the state examines efforts to legalize canoeing in Kansas. In 1988, the National Sporting Goods Association estimated more than 9.7 million American's annually went canoeing. The association also indicated the people who canoe generally have incomes in excess of \$25,000, and the largest group of people who canoe have incomes that exceed \$50,000.

This means the communities that are allowed to promote recreational use of streams will be opening doors to a group of people who have money to spend. If Kansas successfully allows access to many of our attractive water ways, the chances are there will be a significant amount of "new" money spent in several communities. The people who travel here to canoe will most likely eat in restaurants, purchase food, seek lodging, buy gas and spread the word about the intrinsic beauty of Kansas. At a time when many rural communities are facing economic struggles, it is important that we look at ways to bring this type of "new" dollars into their areas.

*Eco-Devo  
Attachment # 9  
03-26-91*



It is important that the legalization of canoeing include steps to strongly discourage littering and to forbid trespassing on private lands. It appears H.B. 2527 includes mechanisms to accomplish this goal. It is also encouraging to note that the public will have a say in what is designated as a "recreational river." Since this could represent change, we owe the people the right to have a say in what happens in their areas. We believe that many people will be motivated to take advantage of an opportunity to promote their communities, and we believe many will take a long look at the opportunity to solicit the expenditure of dollars from individuals who live outside of their region.



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March 26, 1991

STATEMENT OF THE  
KANSAS LIVESTOCK ASSOCIATION  
TO THE COMMITTEE OF  
ECONOMIC DEVELOPMENT  
REPRESENTATIVE DIANE GJERSTAD, CHAIRMAN

WITH RESPECT TO HB 2527

Presented by

Rich McKee

Executive Secretary, Feedlot Division

*Madam Chairman and members of the committee, I am Rich McKee, representing the Kansas Livestock Association. KLA speaks for a broad range of over 10,500 members involved in the production of livestock. Their operations can be found in virtually every geographic corner of the state. Many are landowners.*

*The Kansas Livestock Association strongly opposes HB 2527, known as the recreational river act or canoe bill. There are few bills that draw as much opposition from the KLA membership as this proposal.*

*This legislation has been considered by the Kansas legislature on several previous occasions:*

- In 1986 the House Energy and Natural Resources Committee considered and rejected HB 3038 (Recreational River Act).*
- In the summer of 1986 the Special Committee on Energy and Natural Resources "was directed to review State Water Plan legislation that was not enacted in the 1986 Session and make recommendations, including proposed legislation, needed to implement the State Water Plan." There were nine bills reviewed by interim committee. The Committee recommended introduction of all of the State Water Plan proposals, "except for the legislation to create a Kansas Recreational River Act."*

*Eco-Devo  
Attachment #10  
03-26-91*

- Notwithstanding the Special Committee's recommendation against introduction of such bill, the Senate Committee on Energy and Natural Resources introduced the same proposal during the 1987 session (SB 94). After a hearing by the Senate Committee, it was reported adversely.

Trespassing onto private property is a serious problem. Many well meaning people, who may or may not have permission to enter private property, leave gates open, scare livestock through fences, start range fires and damage natural resources. Too often all that is left behind are ruts from all-terrain vehicles, empty beer cans and other trash. This is especially true for landowners adjacent to public land areas.

HB 2527 is an open invitation to trouble for our members. In essence it will encourage trespassing and raises the question of liability. Who would be held liable for accidents to people making non-consumptive use of any given body of water? Most upsetting to our membership is the taking of private property rights contained in this proposal.

Thank you for considering the position of the Kansas Livestock Association.