

Approved: 3-26-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 4:30 p.m. on March 18a, 1996 in Room 254-E- of the Capitol.

All members were present except:

Senator Tim Emert, excused
Senator Barbara Lawrence, excused
Senator Phil Martin, excused
Senator Carolyn Tillotson, excused
Senator Robert Vancrum, excused

Committee staff present:

Ardan Ensley, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

David F. Waldo, Bureau of Water
Don Moler, League of Kansas Municipalities
Dennis Schwartz, Director, Kansas Rural Water Association
George Barbee, Kansas Consulting Engineers
Bob Berry, E.W.T. Instructor, Fort Scott Community College
Tim Hobson, Environmental Technology Department, Salina Area Vo-Tech School
Written fact sheet Rails to Trails Conservancy provided to committee members by Steve Kearney

Others attending: See attached list

HB 2965--Concerning public water supply systems

David F. Waldo, Bureau of Water, KDHE, presented testimony stating **HB 2965** makes four changes to public water supply statutes as shown in Attachment 1. Mr. Waldo noted inclusion of a balloon of the bill with a proposed change. The recommendations were from the League of Kansas Municipalities environmental law task force.

Don Moler representing the League of Kansas Municipalities presented testimony in support of **HB 2965** stating the legislation contains provisions recommended by the 1995 environmental law task force (Attachment 2). The testimony sets forth in detail the requested changes encompassed by the bill.

Dennis Schwartz, Director, Kansas Rural Water Association, appeared in support of and presented comments suggesting minor changes on **HB 2965** (Attachment 3).

George Barbee, Kansas Consulting Engineers, appeared concerning **HB 2965** requesting one small part of the bill be changed to provide proper assignment of liability for changes or extensions made (Attachment 4).

Bob Berry, E.W.T. Instructor, Fort Scott Community College, appeared and presented testimony concerning **HB 2965** noting a request by the Fort Scott Community College Environmental Water Technology Department which recommended that other groups be included on the prescribed advisory committee (Attachment 5).

Tim Hobson, Environmental Technology Department, Salina Area Vo-Tech School, presented testimony on **HB 2965** requesting inclusion of representation for their school on the advisory committee (Attachment 6). Mr. Hobson stated their school has three fulltime instructors providing a program for Kansas water and wastewater operators and noted said instructors are well informed about classroom and on-site technical assistance targeted to water and wastewater operators.

Noting the number of proposed amendments to **HB 2965** the Chairperson questioned whether any conferee objected to those amendments. Dennis Schwartz, Kansas Rural Water reiterated the position that the advisory committee was to be representative of those entities that are funding the .2 cent per thousand gallons for the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 4:30 p.m. on March 18a, 1996.

purpose of sharing compliance with the State drinking water act and believed the committee was very adequately represented with the present prescribed membership.

HB 2041--Concerning oil and gas; relating to natural gas gathering systems and underground storage facilities; providing for licensure and regulation of certain entities; concerning certain natural gas public utilities

Senator Morris presented a Sub-Committee report on **HB 2041** noting the Kansas Corporation Commission requested Section 1 containing definitions remain in place to allow the KCC to begin the process of licensing. Without Section 1 the KCC does not have proper authority to begin the process. Senator Morris stated basically the bill was gutted, with the exception of Section 1.

A framework for a Task Force was established to study the issue and would meet possibly once each month starting in July through December and reporting to the 1997 Legislature. The Task Force would meet no more than 15 days. The membership of the Task Force was outlined. The charge for the Task Force is to study the implications of deregulation on the natural gas gathering system in Kansas including but not limited to approximately 16 items.

The sub-committee reported to be in full agreement to the report noting the opinion that a great deal of effort had been put into providing a balanced task force.

Donald P. Schnacke commented on the definition of gas gathering and suggested the definition furnished for the task force and the definition used in the KCC report differ and adjustments may need to be changed.

A fact sheet concerning the Rails-To-Trails Conservancy was furnished and handed to committee members for their information (Attachment 7).

There was some discussion concerning **HB 2965**, also the additions requested to the task force on **HB 2041**.

Due to lack of a quorum the meeting adjourned at 5:15 p.m.

The next meeting is scheduled for March 19, 1996.

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: March 18a, 1996

NAME	REPRESENTING
Dave Watole	KDHE
Tim Hobson	Salina Area Vo-Tech School
Bob Berry	Fort Scott Community College
Don Moler	League of KS Muni.
Ken Peterson	KS Petroleum Council
Jack Slawson	Ken Easter Energy
Karl Jandig	Western Resources
Kevin Peterson	WNG/ENRON Corp.
Alan Barber	Barber & Assoc.
Dick T. Danner	The Coleman Co.
Michael L. Engeman	Kansas Horse Council
Jon K. Miles	KHC
Meggan Briggs	Rails to Trails Conservancy
Mike Beam	Ks LUSTK Assn
ED SCHAUB	WESTERN RESOURCES INC.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

SENATE ENERGY AND NATURAL RESOURCES

by

The Kansas Department of Health and Environment

House Bill 2965

This bill is one of several introduced to implement recommendations of the League of Kansas Municipalities environmental law task force. As amended by the House, the bill makes four changes to public water supply statutes.

The bill allows KDHE to establish a program where public water suppliers with qualified staff could approve the extension of their distribution systems without applying for individual permits from KDHE for each extension. Instead, these systems would provide an annual report to KDHE listing the work completed in the previous year. KDHE would provide general oversight.

The bill adds duties to the public water supply fee fund advisory committee which was created to advise the secretary on expenditures from the fee fund. The committee would also make recommendations on how to strengthen on-site technical assistance to public water supply systems and standards for on-site and classroom water and waste water operator certification programs. Under the bill, the fee fund could also provide support for on-site technical assistance to water supply systems by KDHE or a contractor. Meetings of the advisory committee would be held quarterly, or upon the request of a majority of committee members. KDHE has no objections to these modifications, but believes the committee's duties are too narrow in scope. We suggest modifying line 43 on page 3 to include language allowing the committee to make recommendations on other matters concerning public water supplies, to avoid restricting the committee. If language pertaining to wastewater certification is retained, the committee may need participation from additional stakeholders with an interest in wastewater issues.

When the public water supply revolving loan fund was established by the 1994 legislature, the definition of project was limited to those projects which the secretary determined to be primarily for the purpose of compliance with the federal safe drinking water act (SDWA) or regulations adopted under the act. This definition limits the potential pool of applicants eligible to receive loans. Many worthwhile projects necessary to maintain and improve public water supply infrastructure will not qualify for the revolving loan program with the existing statutory definition of project. The proposed change resolves this problem. This fund has never been capitalized, so no loans have been made.

The House also amended the bill by modifying K.S.A. 65-163u to include the language concerning projects necessary to comply with the SDWA or associated regulations. Under the amendment, bonds issued by municipalities for projects necessary to comply with the SDWA or associated regulations would not be subject to bonded debt limits provided by law. While KDHE can certainly make these determinations, we question whether our involvement is necessary in local decisions concerning project financing.

KDHE supports HB 2965 with the suggested change to the fee fund advisory committee duties. A balloon amendment is attached.

Testimony presented by: David F. Waldo
Bureau of Water
March 18, 1996

Senate Energy & Natural Res.
March 18a, 1996
Attachment 1

1 secretary, relating to any alleged violation of the provisions of the permit
 2 for placement or storage of municipal water treatment residues in such
 3 basins, the public water supply system operator shall furnish all infor-
 4 mation the secretary requires. If the secretary finds that there is any
 5 violation of the terms of the permit, that the means of placement and
 6 storage exceed the terms of the permit or that any other condition exists
 7 by reason of the means of placement and storage that may be detrimental
 8 to the health of any inhabitants of the state or to the environment, the
 9 secretary shall have the authority to issue an order amending the permit
 10 or otherwise requiring the operator to perform remedial measures to
 11 curtail or prevent such detrimental conditions.

12 (d) Any action of the secretary pursuant to this section is subject to
 13 review in accordance with the act for judicial review and civil enforcement
 14 of agency actions. The court on review shall hear the case without delay.

15 (e) The secretary shall establish by rule and regulation a system of
 16 fees for the inspection and regulation of public water supplies. No such
 17 fee shall exceed \$.002 per 1,000 gallons of water sold at retail by a public
 18 water supply system. All such fees shall be paid quarterly in the manner
 19 provided for fees imposed on retail sales by public water supply systems
 20 pursuant to K.S.A. 82a-954 and amendments thereto. The secretary shall
 21 remit to the state treasurer all moneys collected for such fees. Upon
 22 receipt thereof, the state treasurer shall deposit the entire amount in the
 23 state treasury and credit it to the public water supply fee fund created by
 24 K.S.A. 65-163c and amendments thereto.

25 (f) There is hereby created an advisory committee to make recom-
 26 mendations regarding fees to be adopted by the secretary under subsec-
 27 tion (e) and to advise the secretary regarding expenditure of moneys in
 28 the public water supply fee fund created by K.S.A. 65-163c and amend-
 29 ments thereto. Such advisory committee shall consist of one member
 30 appointed by the secretary to represent the department of health and
 31 environment, one member appointed by the director of the Kansas water
 32 office to represent such office and two members appointed by the sec-
 33 retary as follows: One from three nominations submitted by the Kansas
 34 section of the American waterworks association, and one from three nom-
 35 inations submitted by the Kansas rural water association. Members of the
 36 advisory committee shall serve without compensation or reimbursement
 37 of expenses.


38 (f) There is hereby created an advisory committee to make rec-
 39 ommendations regarding: (1) Fees to be adopted by the secretary
 40 under subsection (e); (2) means of strengthening on-site technical
 41 assistance to public water supply systems; (3) standards for on-site
 42 and classroom water and waste water treatment operator certifi-
 43 cation programs; ~~and (4)~~ to advise the secretary regarding ex-

(4) other matters concerning public water supplies;
 and (5)



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: Senate Energy and Natural Resources Committee
FROM: Chris McKenzie, Executive Director 
DATE: March 18, 1996
RE: HB 2965

Thank you for the opportunity to appear today in support of HB 2965. This legislation contains provisions recommended by the 1995 Environmental Law Task Force. Those changes and the reasons for them are as follows:

K.S.A. Supp. 65-163

■ **Page 1:** New paragraph (3) (line 37) would allow the Secretary of Health and Environment to establish a certification program to provide for local approval of water system expansions without the cost and delay associated with the submission of the expansion to KDHE. The Task Force recommended this change to provide greater efficiency in the process of planning and implementing system expansions.

■ **Page 3:** Lines 23 - 37 originally would have struck the authorizing language for the advisory committee on water supply fee of \$.002 per 1,000 gallons provided for in subsection (e) of this statute. The committee has been inactive since 1992, and it was the advice of the Task Force that unless KDHE is going to make use of the committee it should be considered for repeal. The House Committee amendments would appear to strengthen the role of the committee in dealing with a broad range of public water supply matters.

K.S.A. Supp. 65-163d

■ **Page 5:** K.S.A. Supp. 65-163d, et seq. was enacted in 1994 to provide for the financing of water supply system projects through a public water supply loan fund similar to the successful wastewater loan program administered by KDHE. It also authorizes municipalities to issue general obligation bonds to finance such system costs. The definition of a water supply system project in paragraph (c) of K.S.A. Supp. 65-163d which restricts the act to financing projects "which the secretary determines to be primarily for the purpose of compliance with the federal safe drinking water act (42 U.S.A. 300f et seq.) or regulations adopted under such act" acts as a limitation on these financing options. Some water system projects simply involve repair, replacement, expansion, etc., and can not always be said to be tied directly to the purposes of the Safe Drinking Water Act. Therefore, this amendment is recommended.

K.S.A. Supp. 65-163u

■ **Page 6:** This section was added by the House Committee to qualify the action taken by the Committee in approving the previous section. Lines 36 - 39 provide that any bonds issued under the authority of K.S.A. Supp. 65-163d without an election shall only be exempt from the general 30% bonded debt limitation of a city if it is for the purpose of complying with federal law. The League would urge the Committee to further clarify this restriction by inserting the words "general obligation" between "Such" and "bonds" on line 35 since revenue bonds are not currently subject to mandatory referendum.

Thank you for your consideration of this legislation.

Senate Energy & Natural Res.
March 18 a, 1996
Attachment 2



KANSAS
RURAL
WATER
association

Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 913/336-3760 • FAX 913/336-2751

COMMENTS ON
HOUSE BILL No. 2965
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
March 18, 1996

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present comments on House Bill No. 2965. I am Dennis Schwartz; I am a member of the board of directors of the Kansas Rural Water Association and also am Manager of Rural Water District No. 8, Shawnee County. The Kansas Rural Water Association provides technical assistance to public water and wastewater systems and training to system operators and governing bodies. The Association has active members of over 300 cities and 293 rural water districts.

The Kansas Rural Water Association supports HB 2965. We respectfully suggest three minor amendments. Each of these has been discussed with Members of the House Energy and Natural Resources Committee, the Department of Health & Environment and League of Municipalities as well as the investment banking industry.

These amendments are:

1. On page 3, in line 42, remove the words "waste water". The original legislation in 1992 established that this advisory committee address public water system issues.
2. We understand from KDHE that they would like to have five words be added on page 3, line 43, "and other matters concerning public water supply systems." Kansas Rural Water Association supports that as encompassing language.
3. On page 6, line 35, insert "general obligation" after "Such". This would eliminate possible misunderstanding; revenue bonds are not subject to the bonded debt limitation. Also, we suggest that the italicized amendment on lines 36 to 39 be removed; in our opinion it brings an involvement by KDHE which is not necessary.

The Kansas Rural Water Association encourages your favorable support of HR 2965 with these changes.

Respectfully submitted,

Dennis Schwartz
Director, Kansas Rural Water Association

Senate Energy & Natural Res.
March 18a 1996
Attachment 3



Statement to
Senate Energy and Natural Resources Committee
on House Bill-2965
Monday, March 18, 1996

Mr. Chairman and members of the Committee my name is George Barbee, appearing today on behalf of the Kansas Consulting Engineers. The members of KCE design a variety of infrastructure projects including public water supply systems. We are listed today as an opponent to House Bill 2965, but our opposition is only to one small portion of the bill.

Section 1, (3) beginning on page 1, line 38, which reads "the Secretary may adopt rules and regulations establishing a program of annual certification by public water supply systems that have staff qualified to approve the extension of distribution systems without the necessity of securing an additional permit for the extension."

When the system was originally constructed it was designed by professional engineers who assumed the responsibility for their negligent acts, errors, and omissions. If they are subject to a claim alleging that they failed to perform to a standard of care by being negligent, that is okay. They accept responsibility for their errors and usually have professional liability insurance to defend themselves. Engineers are agreeable to being held responsible for their own acts. Our concern with this bill is that it could expose the design firms to claims for someone else's negligence by allowing non-licensed engineers to modify the original design. If another licensed professional engineer, another design firm, or the original design firm prepares the extension plan then the liability is properly placed.

Our suggestion is to amend Section 1, (3) on line 42 by deleting the period and inserting "provided the plans for the extension are prepared by a professional engineer as defined in KSA 74-7003."

Senate Energy & Nat'l Res
March 18^a, 1996
Attachment 4

GEORGE BARBEE, EXECUTIVE DIRECTOR ♦ 700 SW JACKSON ST., STE 702 ♦ TOPEKA, KS 66603-3758 ♦ (913) 357-1824 ♦ FAX (913) 357-6629

AFFILIATED WITH:

KANSAS ENGINEERING SOCIETY AMERICAN CONSULTING ENGINEERS COUNCIL PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

In discussing this with one KDHE staff member, it was my understanding that KDHE would include such a requirement in the rules and regulations to implement Section 1, (3). This amendment would make it clear that the legislative intent was to require involvement of a professional engineer.

Mr. Chairman, this is a friendly amendment, and I urge you to adopt our suggested amendment.

Thank you for the opportunity to appear today, and I will be glad to stand for questions should you have any.



FORT SCOTT COMMUNITY COLLEGE

2108 South Horton
Fort Scott, Kansas 66701
Phone (316) 223-2700
FAX # (316) 223-6530

Testimony Presented to
House Energy and Natural Resources Committee
on
House Bill No 2965
by
Fort Scott Community College
March 18, 1996

This testimony is submitted in response to House Bill No. 2965 and the Supplemental Note on House Bill No. 2965 as amended by the House Committee on Energy and Natural Resources. This bill and amendment refer to an advisory committee to consist of one representative from the Kansas Water office and two representatives, one each from the Kansas Section of the American Water Works Association and the Kansas Rural Water Association. The purpose of this advisory committee is to "make recommendations regarding (1) Fees to be adopted by the secretary under subsection (e); (2) means of strengthening on-site technical assistance to public water supply systems; (3) standards for on-site and classroom water and waste water treatment operator certification programs; and (4) to advise the secretary regarding expenditure of moneys in the public water supply fee fund created by K.S.A. 65-163c and amendments thereto.

We, at the Fort Scott Community College Environmental Water Technology Department would like to recommend that other groups be included on this advisory committee. We recommend that a representative be included from the Environmental Technology Departments at Fort Scott Community College (FSCC) and Salina Area Vo-Tech School (SAVTS) as well as a representative from the Kansas Water Environment Association. (KWEA)

The Kansas Water Environment Association is an affiliate of the national Water Environment Federation and is devoted exclusively to training and management issues affecting wastewater plants and operators in the State of Kansas. The Environmental Technology Departments at FSCC and SAVTS are both accredited by the North Central Association of Colleges and Schools as well as the Kansas State Board of Education. Both of these departments have been active for over fifteen years in training water and wastewater operators in the State.

They have also been active in providing technical assistance to wastewater plants for over ten years through a contract with the Kansas Department of Health and Environment. This grant is made available to the State through the federal Environmental Protection Agency. During this ten year period both schools have

Senate Energy & Natural Res.
March 18, 1996
Attachment 5

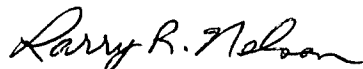
aided well over 100 wastewater plants in returning to compliance with state pollution discharge regulations. Both FSCC and SAVTS have received several national awards for being responsible for the training and technical assistance to wastewater plants through this program

Both schools provide training and on-site technical assistance to water plants through their semester courses and workshops. Instructors at these institutions all possess a combination of teacher certification; associates, bachelors, and masters degrees, and pertinent plant and management experience.

For the reasons delineated above, we ask that you consider inclusion of one member from each of these institutions and the Kansas Water Environment Association on the advisory committee as outlined in the proposed legislation.

Thank you for your consideration of this recommendation.

Charles Walker
Bob Berry
Warren Nilchee
E.W.T. Instructors



Larry R. Nelson
Dean of Technical Instruction

March 5, 1996

Honorable Senator Don Sallee
State Capitol
Topeka, Kansas 66612

Senator Sallee:

Kansas House Bill 2965 recently was passed to the Senate. We believe it contains some problems that should be repaired before it is passed and sent to the Governor for his signature. We are asking for your support in this matter.

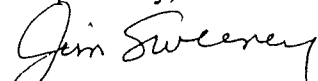
The problem lies in Section 1(f). In our copy of the House Bill it starts on page 3, line 38. The purpose of that paragraph is to establish an advisory committee to make recommendations to the Secretary (of Kansas Department of Health and Environment) regarding: "(1) Fees to be adopted by the secretary under subsection (e); (2) means of strengthening on-site technical assistance to public water supply systems; (3) standards for on-site and classroom water and waste water treatment operator certification programs; and (4) to advise the secretary regarding expenditure of moneys in the public water supply fee fund created by K.S.A. 65-163c and amendments thereto."

The Environmental Technology Department of Salina Area Vocational-Technical School has three full-time instructors providing an instruction program for Kansas water and wastewater operators. The program delivers this technical assistance through classroom and on-site technical assistance sessions. This program has been providing Kansas Department of Health and Environment (KDHE)- and Kansas State Board of Education-approved technical assistance continuously since 1976. More than 4,000 water and wastewater operators have participated in our training. Our point is that the Environmental Technology Department at Salina Area Vo-Tech School is well informed about classroom and on-site technical assistance targeted to water and wastewater operators.

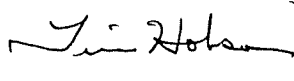
The next phrase in the House Bill is the one that troubles us. It lists the sources for members for the advisory committee. The Bill recommends that advisory committee members be chosen from people nominated by KDHE, the Kansas Water Office, Kansas Section of the American Water Works Association and the Kansas Rural Water Association. This recommendation leaves out Salina Area Vo-Tech School and Fort Scott Community College which has a program similar to ours. Fort Scott Community College's program was established in 1979 and has had as many as five full-time instructors. Another organization, Kansas Water Environment Association is also active in training water and wastewater operators.

We believe that we and instructors in the program at Fort Scott Community College are as qualified to advise the Secretary concerning these matters as the organizations mentioned in the Bill. We request that the Bill be amended to include advisory committee members nominated by Salina Area Vo-Tech School's and Fort Scott Community College's Environmental Technology Departments and Kansas Water Environment Association. The advice given to the Secretary will then truly represent all the major groups that provide classroom and on-site technical assistance to water and wastewater operators in the State of Kansas.

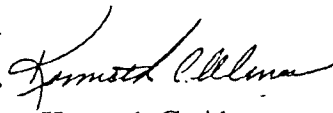
Respectfully,



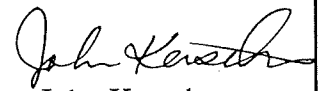
Jim Sweeney, SAVTS Director
Environmental Technology Department
Salina Area Vo-Tech School
2562 Scanlan Avenue
Salina, Kansas 67401-8195
1-913-825-2261



Tim Hobson



Kenneth C. Almes



John Kerschner

Senate Energy & Natural Res.
March 18, 1996
Attachment 6

FACT SHEET

RAILS-TO-TRAILS CONSERVANCY

THE MISSION: The mission of Rails-to-Trails Conservancy (RTC) is to enhance America's communities and countrysides by converting thousands of miles of abandoned rail corridors, and connecting open space, into a nationwide network of public trails.

RAIL-TRAIL STATISTICS:

- ◆ 750 rail-trails totaling more than 7,700 miles have been built in 48 states.
- ◆ An additional 950 rail-trail projects are in the works in all 50 states.
- ◆ The longest rail-trail is the Katy Trail, which stretches for nearly 200 miles along the Missouri River.
- ◆ The most heavily-used trail is Virginia's Washington & Old Dominion Trail, with two million users annually.

RTC FRIENDS: Rails-to-Trails Conservancy has a membership base of 70,000 individuals and families, as well as 50,000 donors.

RAIL-TRAIL USE: In 1995, 90.5 million Americans used rail-trails, including:

- ◆ bicyclists
- ◆ walkers
- ◆ runners
- ◆ in-line skaters
- ◆ people with disabilities
- ◆ cross-country skiers
- ◆ equestrians
- ◆ outdoor enthusiasts

USER STATISTICS: In 1993, 66 million American adults walked for exercise, while 55 million adults rode bicycles.

THE VISION: A vast network of trails across the nation connecting city centers to rural landscapes and countless communities to each other... linking neighborhoods to workplaces and congested areas to open spaces... serving both transportation needs and the demand for close-to-home recreation.

As a non-profit public charity, Rails-to-Trails Conservancy is supported by its membership. Help make our vision a reality by joining today at one of the following membership levels: regular (\$18); supporting (\$25); patron (\$50); benefactor (\$100); advocate (\$500); or Trailblazer Society (\$1,000).

2/96



RAILS-TO-TRAILS CONSERVANCY ♦ 1400 Sixteenth Street, NW, Suite 300, Washington, DC 20036
(202) 797-5400 ♦ FAX (202) 797-5411

Senate Energy & Natural Res.
March 18a, 1996
Attachment 7

FACT SHEET

RAIL-TRAIL Q & A

The 12 Most Frequently Asked Questions About Rail-Trails

What is a rail-trail?

Rail-trails are multi-purpose public paths created from abandoned railroad corridors. Flat or following a gentle grade, they traverse urban, suburban and rural America. Ideal for many uses, such as bicycling, walking, horseback riding, in-line skating, cross-country skiing and wheelchair recreation, rail-trails are extremely popular as recreation and transportation corridors. To date, more than 7,000 miles of rail-trails have been created across the country. Rail-trails also serve as historic and wildlife conservation corridors, linking isolated parks and creating greenways through developed areas. They also may stimulate local economies by increasing tourism and promoting local business.

Do rail-trails encourage railroad abandonment?

No. Rail-trails are built after all possibilities for continued rail service have been exhausted. Rail-trails preserve the linear corridor in public ownership and provide the silver lining to the tragic decline in the nation's railroad network, still one of the most environmentally sound forms of transportation.

What does 'abandoned' mean?

A railroad corridor is generally considered abandoned when:

(1) rail service is discontinued; (2) the Interstate Commerce Commission (ICC) officially approves the abandonment; and (3) tariffs (pay-schedules) are canceled. A rail corridor can be legally abandoned even if the tracks and ties are still in place. Conversely, even if the tracks are out it might not be legally abandoned.

Are the tracks and ties left in place when a trail is created?

No. After abandonment the railroad company usually removes the tracks and ties for salvage. Generally the corridor is then re-graded with the original ballast left behind by the railroad. Many trails are later surfaced with asphalt, crushed stone, wood chips or another material appropriate for the intended trail uses.

How can I find out if a corridor is actually abandoned?

This is sometimes harder than you might think. In most cases you can find out through the Rail Office of your state Department of Transportation. You might also be able to find out through the railroad, although you may need to get a high-quality historical map from your library to determine the railroad that operated on that line. *To learn more about converting abandoned corridors into trails — and to get a listing of key agency contacts in each state — order a copy of Secrets of Successful Rail-Trails: An Acquisition and Organizing Manual for Converting Rails into Trails from the Rails-to-Trails Conservancy (\$19.95, \$16.95 for RTC members, plus \$4.00 shipping and handling).*

What is 'railbanking'?

Railbanking (as defined by the National Trails System Act, 16 USC 1247(d)) is a voluntary agreement between a railroad company and a trail agency to use an out-of-service rail corridor as a trail until some railroad might need the corridor again for rail service. Because a railbanked corridor is not considered abandoned, it can be sold, leased or donated to a trail manager without reverting to adjacent landowners.

Who owns the abandoned corridor before it becomes a trail?

Ownership of a rail corridor is generally mixed, often including the railroad, federal, state or local governments, as well as adjacent landowners. Historically, when the railroad built a line it bought some of the land and leased the rest from adjacent landowners or the federal government. When abandoned, a corridor may revert to the lease holders and, in effect, be owned by many people.

-over-



STB**What is a 'public use condition' and a 'notice of interim trail use'?**

Both are documents that can be issued by the ~~JCC~~ during the abandonment process. A public use condition (PUC) gives public agencies the exclusive right to negotiate for 180 days with the railroad for purchase of an abandoned corridor. During this time, bridges, culverts, surface material, and any other features essential to building a trail must be kept intact. A notice of interim trail use (NITU) permits the railroad and trail manager to negotiate for railbanking and use of the line for a trail.

What happens to the bridges or tunnels, and what about road crossings?

Ideally, bridges and tunnels are left intact after abandonment so that the trail agency need only add wooden decking, appropriate railings and other safety features. Although road crossings tend to be relatively few and far between on most rail lines, they must be properly striped and signed for both trail and road users. *To learn about all aspects of rail-trail design, including surfacing materials, width, plantings, crossings and amenities, order a copy of Trails for the Twenty-First Century: A Planning, Design, and Management Manual for Multi-Use Trails from the Rails-to-Trails Conservancy (\$24.95 plus \$4 shipping and handling).*

Who builds the trail?

In most cases, the public agency that buys or manages the corridor builds the trail as well. The agency either develops it using its own labor and equipment or hires an independent construction company. In a few cases, a group of citizen volunteers has constructed a trail.

Who manages the trail?

Trails are generally managed by local, state or federal government agencies, but some are operated by other types of organizations, including non-profit "friends of the trail" citizen groups, land trusts and community foundations.

Where are the trails located?

As of July 1994, RTC has identified more than 615 rail-trails in 45 states. An additional 650 rail-trail projects are in progress, with new projects beginning each month. *For a directory of 500 of the best rail-trails, order RTC's 500 Great Rail-Trails, available for \$9.95 (\$7.95 for RTC members), plus \$4.00 shipping and handling. If you order more than one RTC publication, include \$4 shipping and handling for the first book and \$1 for shipping each additional book.*

I want to get involved! Where do I start?

If you're not a member of Rails-to-Trails Conservancy, now is the time to become one! As a non-profit public charity, Rails-to-Trails Conservancy is wholly supported by its membership. Help make our vision a reality by joining today at one of the following membership levels: regular (\$18); supporting (\$25); patron (\$50); benefactor (\$100); advocate (\$500); or Trailblazer Society (\$1,000).

FACT SHEET

RAILBANKING

What, Where, Why, When and How?

In 1983, concerned by the rapid contraction of America's rail network, the U.S. Congress amended the National Trails System Act to create the railbanking program. Railbanking is a method by which lines proposed for abandonment can be preserved through interim conversion to trail use.

If the title to an about-to-be-abandoned rail corridor is in question and there is any interest in trail use, the line should be preserved through railbanking. On the reverse side of this fact sheet is a 'boilerplate' letter that can be used to file railbanking and public use condition requests with the Surface Transportation Board (STB), formerly the Interstate Commerce Commission.

Some railroad rights-of-way contain easements that revert back to adjacent landowners when an abandonment is consummated. However, if a line is railbanked, the corridor is treated as if it had not been abandoned. As a result, the integrity of the corridor is maintained, and any reversions that could break it up into small pieces are prevented.

Railbanking can be requested by either a public agency or a qualified private organization. The railbanking request must be sent to the STB in Washington, D.C., and must at the very minimum include a "Statement of Willingness To Assume Financial Responsibility" (see reverse side). Since the abandoning railroad company must agree to negotiate a railbanking agreement, a copy of the request for railbanking must be served on the railroad at the same time it is sent to the STB.

A Public Use Condition (PUC) request is a separate request that is complementary to a request for railbanking. If a PUC request is made to the STB, the STB will place a restriction on the abandonment that prevents the railroad company from selling off or otherwise disposing of any property or trail-related structures, such as bridges or culverts, for a period of 180 days after the abandonment is authorized. This public use condition gives the prospective trail manager some breathing room for preparing an offer to the railroad. (The public use condition is also a good backup device should the railroad not agree to railbanking since the STB will issue public use conditions regardless of whether the railroad agrees.)

There are several other important points regarding railbanking:

1. A railbanking request is not a contract and does not commit the interested party to acquire any property or to accept any liability. It invites negotiation with the railroad company under the umbrella of railbanking. A party filing a "Statement of Willingness To Assume Financial Responsibility" is not accepting any financial responsibility. It is merely expressing an interest in possibly doing so.
2. The tracks and ties on a railbanked line can be removed. However, bridges and trestles must remain in place, and no permanent structures can be built on the right-of-way.
3. Under railbanking, there will likely still be an actual sale of the property, and the railroad will likely still want compensation. Railbanking is not generally a method for obtaining a free trail.
4. A railbanked line is subject to possible future restoration of rail service. Any railroad can apply to the STB to resume rail service on a railbanked corridor. However, if the STB restores rail service, the trail agency is entitled to fair market value for the corridor. The terms and conditions of a transfer back to rail service would be determined by the STB.
5. The attached letter can only be filed on a rail line that is still under the authority of the STB. Generally, the STB loses authority 30 days after the effective date of an abandonment. Even if you miss the deadline, you should file the letter anyway along with an explanation as to why you need additional time. The STB may be able to reassert jurisdiction over the abandonment.

A more thorough discussion of railbanking and other legal issues related to rails-to-trails conversions is available in *Secrets of Successful Rail-Trails: An Acquisition and Organizing Manual for Converting Rails into Trails*, which is available from RTC for \$19.95 (\$16.95 for RTC members) plus \$4.50 for shipping and handling.

For text of "boilerplate" letter, see other side.

RAILS-TO-TRAILS CONSERVANCY ♦ 1400 Sixteenth Street, NW, Suite 300, Washington, DC 20036
(202) 797-5400 ♦ FAX (202) 797-5411



The following letter requests both a public use condition and railbanking. The items in italics are to be completed by the prospective trail agency or group.

[Date]

Mr. Vernon A. Williams
 Secretary
 Surface Transportation Board
 12th & Constitution Ave., NW
 Washington, DC 20423

Re: [Name of Railroad Company]-Abandonment-[Name of County and State] AB-xx (Sub-no. yy)STB Docket Number]

Dear Mr. Williams

This comment should be treated as a protest or a petition for reconsideration in the above-captioned proceeding. This comment is filed on behalf of [Agency Name] which is a [political subdivision or government agency interested in transportation and/or natural resources, private public interest organization interested in conservation and/or recreation, etc.] which is hereinafter referred to as 'Commenter'.

While not taking a position on the merits of this abandonment, Commenter requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization between [endpoint a] and [endpoint b].

A. Public Use Condition

Commenter requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that [example: the rail corridor in question is along a scenic river and will connect a public park to a major residential area. The corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. In addition, the corridor provides important wildlife habitat and greenspace and its preservation as a recreational trail is consistent with that end.] The time period sought is 180 days from the effective date of the abandonment authorization. Commenter needs this much time because [example: we have not had an opportunity to assemble or to review title information, complete a trail plan or commence negotiations with the carrier.]
2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

B. Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Commenter also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(c), and 49 C.F.R. §1152.29, [Agency Name] is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by [Name of Railroad Company] and operated by _____.

The property, known as the _____ extends from railroad milepost ____ near [endpoint a] to railroad milepost ____ near [endpoint b] a distance of ____ miles in _____ County, _____. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB-xx (Sub-no. yy).

A map depicting the right-of-way is attached.

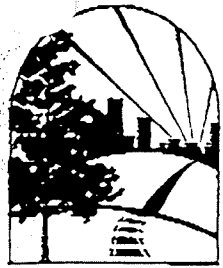
[Agency Name] acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon [Railroad Company and address], by U.S. Mail, postage prepaid, first class, this ____ day of 19____.

Respectfully submitted,

 Name
 on behalf of: _____

RAIL-TRAIL MILEAGE 3/01/96



RAILS
- TO -
TRAILS
CONSERVANCY

State	Number of Trails	Open Mileage	Mileage When Complete
Alabama	4	17.2	48.6
Alaska	1	2.5	2.5
Arizona	2	6.7	6.7
Arkansas	4	11.2	11.2
California	46	196.8	230.1
Colorado	18	76.1	117.6
Connecticut	12	117.4	123.4
Florida	27	209.4	237.9
Georgia	4	16.0	37.0
Idaho	6	63.5	78.9
Illinois	30	344.5	440.4
Indiana	11	35.5	79.8
Iowa	40	457.0	667.2
Kansas	2	2.4	2.4
Kentucky	2	3.5	6.2
Louisiana	1	8.5	31.0
Maine	8	224.2	226.4
Maryland	9	54.4	65.6
Massachusetts	9	116.8	118.6
Michigan	88	1023.4	1156.3
Minnesota	36	830.9	938.6
Mississippi	2	11.2	11.2
Missouri	6	170.2	225.2
Montana	10	36.0	62.1
Nebraska	9	56.1	80.3
Nevada	1	6.0	7.5
New Hampshire	35	130.1	130.1
New Jersey	21	151.1	164.0
New Mexico	3	4.1	9.6
New York	39	283.6	517.8
North Carolina	3	9.7	9.7
North Dakota	1	17.0	17.0
Ohio	30	249.6	336.9
Oklahoma	3	15.3	17.3
Oregon	8	151.5	157.0
Pennsylvania	60	510.9	733.6
Rhode Island	4	21.3	22.2
South Carolina	6	24.7	27.4
South Dakota	2	47.8	110.3
Tennessee	11	33.8	33.8
Texas	5	78.7	107.4
Utah	2	43.0	45.1
Vermont	8	90.9	90.9
Virginia	10	155.6	163.6
Washington	44	400.6	488.3
West Virginia	20	227.3	253.1
Wisconsin	58	1064.6	1107.8
Wyoming	1	22.0	22.0
Total	762	7830.6	9577.6

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