

Approved: 4-9-97
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Steve Lloyd at 3:30 p.m. on March 18, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Hank Avila, Legislative Research Department
Mary Torrence, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Senator Robert Tyson
Ed Alvis, KS Department of Wildlife and Parks
Dale Crawford, Johnson County Bicycle Club
Bill Maasen, KS Recreation and Park Association
Janice Hodgson, Mayor of Garnett
Katherine Dietrich, Princeton, KS
Mike Beam, KS Livestock Association
Charles Benjamin, KS Natural Resource Council and Sierra Club
Cynthia Abbott, Audubon Council
Tom Morgan, Morgan Research Group, LTD.
Orville Cole, Attorney
George Tumberlin, Princeton, KS
Beth Sobba, Richmond, KS
Clyde Boots, Welda, KS

Others attending: See attached list

Chairman Steve Lloyd called the meeting to order at 3:30 p.m. He announced the committee agenda for the remainder of the week. He opened public hearing on SB 278 and SB 293:

SB 278: An act designating Prairie Spirit Rail Trail as part of state park system; amending K.S.A. 32-837 and repealing the existing section.

SB 293: An act concerning Prairie Spirit Rail Trail; providing for a moratorium on further development of phase III until finding for construction is available; establishing a Prairie Spirit Rail Trail task force.

Mary Torrence, Revisor of Statutes, explained both bills.

The Chairman welcomed Senator Robert Tyson to the committee. He testified as a proponent on both bills. (See Attachment 1) These are companion bills and deal with the Prairie Spirit Rail Trail consisting of three phases running from Ottawa to Iola in east central Kansas. He feels it would be a travesty to pass SB 278 and not SB 293.

The Chairman welcomed Ed Alvis, Wildlife and Parks, to the committee. Mr. Alvis spoke in support of both bills. (See Attachment 2) SB 278 would amend K.S.A. 32-837 to include the first two phases of the Prairie Spirit Rail Trail as part of the state park system and repeal the existing section. SB 293 as amended and passed by the Senate would allow continued development of Phase II of the Prairie Spirit Rail Trail. It would also place a moratorium on development of Phase III until funding for such was obtained.

The Chairman welcomed Dale Crawford, President of Johnson County Bicycle Club. He testified in support of the two bills (See Attachment 3) and feels the Prairie Spirit Rail Trail offers an opportunity to join 47 other states that have undertaken rail trail projects, many of which are designated as state parks.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on March 18, 1997.

Written testimony was distributed from Jean Barbee, Travel Industry Association of Kansas, in support of both bills. (See Attachment 4)

The Chairman welcomed Bill Maasen, Kansas Recreation and Park Association. He spoke in support of both bills, (See Attachment 5) and feels both bills represent a compromise to the original bills. Both the Kansas Recreation and Park Association and Johnson County Park and Recreation District endorse the changes.

The Chairman welcomed Janice Hodgson, Mayor of Garnett. She provided testimony in support of both bills. (See Attachment 6) The Prairie Spirit Rail Trail between Richmond and Welda, with Garnett as the central point, is now completed and is providing tremendous economic development and tourism results for the city of Garnett.

The Chairman welcomed Katherine Dietrich, Princeton, KS, to the committee. She spoke in support of both bills. (See Attachment 7) She feels the trail will be well maintained and should be shared and enjoyed by both rural and urban residents.

The Chairman welcomed Mike Beam, KS Livestock Association. He spoke in support of **SB 293**, (See Attachment 8) which includes a section creating a task force to collect and examine legislative and legal issues impacting the Prairie Spirit Rail Trail and adjoining landowners. Since the KLA is one representative named in the bill, they support this approach and would be willing to serve on the task force if the bill is passed.

The Chairman welcomed Charles Benjamin, KS Natural Resource Council and Sierra Club. He supports **SB 278** that would place Prairie Spirit Rail Trail in the state park system and is neutral on **SB 293**. (See Attachment 9) He feels if the Prairie Spirit Rail Trail is a success there may be future additional rail trails in the state.

The Chairman welcomed Cynthia Abbott, Audubon Council, to the committee. She spoke in support of **SB 278** and neutral on **SB 293**. (See Attachment 10) She believes in order for funding for the Prairie Spirit Rail Trail to come from the Park Fee Fund, as well as from the state General Fund, it is necessary to designate it as a state park. Discussion and questions followed.

Trent McCown, Trail manager of Prairie Spirit Rail Trail was in attendance and offered comments from time to time during the meeting concerning funding and maintenance of the trail.

The Chairman welcomed Tom Morgan, Morgan Research Group LTD. He provided testimony in opposition to both bills, (See Attachment 11) The Economics of the Prairie Spirit Rail Trail. He believes from an economic and social perspective, the Prairie Spirit Rail Trail is a mistake and provides no economic or social net benefit.

The Chairman welcomed Orville Cole, Attorney, to the committee. He provided testimony in opposition to the bills, (See Attachment 12) and feels the question of who owns the railroad right-of-ways is the subject of much confusion. He believes until this is solved the legislature should block the spending of further tax dollars, which along with the millions already spent may all go down the drain.

The Chairman welcomed George Tumberlin. He spoke in opposition to the bills and provided signatures from landowners along the old Santa Fe railroad right-of-way between Ottawa and Richmond. They do not recognize any claim of the Kansas Department of Wildlife and Parks to such right-of-way. (See Attachment 13)

The Chairman welcomed Beth Sobba, Richmond, to the committee. She provided testimony (See Attachment 14) in opposition to the bills. She is concerned with the safety of children playing along the trail, of their livestock, of trail users and of the litter problem.

The Chairman welcomed Clyde Boots, Welda, KS, to the committee. Mr. Boots (no written testimony) spoke in opposition to the bills. He is concerned with the loss of privacy if the Prairie Spirit Rail Trail is completed and feels the people wanting it are not the landowners along the trail. Discussion and questions followed.

The Chairman, hearing no others to testify, closed the hearing on **SB 278** and **SB 293**.

Rep. Hutchins announced the subcommittee on **SB 276** will meet at 7:30 a.m. Wednesday, March 19, in room 521-S.

The meeting adjourned at 5:55 p.m.
The next meeting is scheduled for March 19, 1997.

HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 3-18-97

NAME	REPRESENTING
Lind Mc Lown	KDWP
Janice Hedegum	City of Danett
Joyce Martin	Friends of Prairie Spirit
Richard Dross	City of Skeneff
Ruth Carey	PS/RT Ottawa Friends Group
Katherine Deterich	Self - Adjacent Property
Dave Crawford	Johnson County Bicycle Club
Leslie Kaufman	Ks Farm Bureau
Carl Sobla	landowner opposing rail trails
Mrs. Carl Sobla	landowner - opposing trail + park
Joan (Mannere) Neshet	" " "
Dakum Cole	Landowner - opposition of trail
Joan Booth	Land owner oppose trail
Mr George Tremblin	Land owners Opposed Trail
Allen Tambelin	Land owners Opposed to Trail
Ed E. Anderson	land owner Trail Opponent
William J. Mannes	LAND OWNER
Hisa Meyer	Ks Gov. Consulting
Bill Maasen	Johnson County P. Rec / Ks Rec & Park Assoc.

HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 3-18-97

NAME	REPRESENTING
Cynthia Abbott	Ks. Audubon Council
Orville J. Cole	Landowners on Trail
Elyse Booth	" " "
Amelia McIntyre	Ks Dept. of Wildlife and Parks
Ed Elvis	KDWP
Dick Werth	KDWP
Thomas H. Morgan	Morgan Research Group
Linda Ast	Morgan Research Group
Beth Solba	our selves - we are landowners
Marvin Solba	Landowners on Trail
U. Pitt Spear	Senate
Dore Waterworth	Division of the Budget
Ann Stowell	Intern
Leahna Schmidt	Ks Livestock Assn
Mike Beam	Ks LIVSTK. ASSN.
Joe Marasso	Landowner
Maryann Moore	Franklin Co. Tourism
Charles Benjamin	KNRC/KS Sierra Club
Dee DeBauer	The Coleman Co



TOPEKA

KANSAS SENATE

Testimony before the
House Committee on Environment
By
Senator Robert Tyson
March 18, 1997

COUNTIES

ANDERSON, BOURBON,
FRANKLIN, LINN & MIAMI

COMMITTEE ASSIGNMENTS

MEMBER: AGRICULTURE
ENERGY AND NATURAL RESOURCES
TRANSPORTATION AND TOURISM
JOINT COMMITTEE ON PENSIONS,
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ROBERT TYSON

SENATOR, TWELFTH DISTRICT

Home Address: ROUTE 1, BOX 229

PARKER, KANSAS 66072

(913) 898-6035

Office: STATE CAPITOL BUILDING—143-N

TOPEKA, KANSAS 66612-1504

(913) 296-7380

1-800-432-3924

Chairman Steve Lloyd and Members of the Committee:

I have come here today to testify as a proponent on two bills that I worked on in committee and carried on the Senate floor, SB 278 & SB 293. These are companion bills and it would be a travesty to pass SB 278 and not SB 293. These bills deal with the Prairie Spirit Rail Trail consisting of three phases running from Ottawa to Iola in east central Kansas.

SB 278 puts Phase 1 and Phase 2 of the Prairie Spirit Rail Trail into the state park system. Phase 1 from Welda (just south of Garnett) to Richmond has been completed and Phase 2 from Richmond to Ottawa is scheduled for construction this year. Phase 3 from Welda to Iola is not scheduled for construction and has not been funded and therefore was not included (see enclosed map).

SB 293 has two parts. The first part puts a moratorium on Phase 3 becoming part of this state park until it receives funding. The second part creates a Prairie Spirit task force to study federal legislation, federal case law, and state legislation pertaining to the reversionary interest of owners on property adjoining rail banked property. And it develops a Kansas plan for compliance with federal and state law and protects the reversionary interest of owners on

*House Environment
3-18-97
Attachment 1*

property adjoining the Prairie Spirit Rail Trail. This is a very necessary task force as both Wildlife and Parks and I, and many others, believe there will be major federal court cases decided and possible major changes in Washington over the next 24 months that will affect us and the trail.

Let me give you a little history. In the beginning, when the railroad acquired the property from the landowners they basically acquired a right-of-way easement much like the one inclosed, which is on the trail near Richmond. Concerning railroad right-of-ways, the historic prospective is that acquiring easements are not giving title to land. The landowners along the railroad gave the railroads easements across their land with the written understanding that the land would be returned to them when the tracks were removed. This reversionary interest was not easily obtained as our forefathers considered property rights as a fundamental constitutional right.

Over the last 100+ years Kansas law, through the courts, have upheld this historic right and landowners along the trail have anticipated that these strips will be returned to them eventually (see attached Kansas court case). The landowner has been able to control the public use of the railroad right-of-way as it is private property. With the original abstracts along with the history of Kansas court cases the landowners expected the land to be returned when the rails were removed.

Current Kansas law is very short and plain. 66-525 (f) says that the land must be returned to the landowner when the tracks are taken up (see attached current Kansas law). With the original abstracts, the Kansas court case history and the existing Kansas law the landowners expected the land to be returned when the rails were taken up.

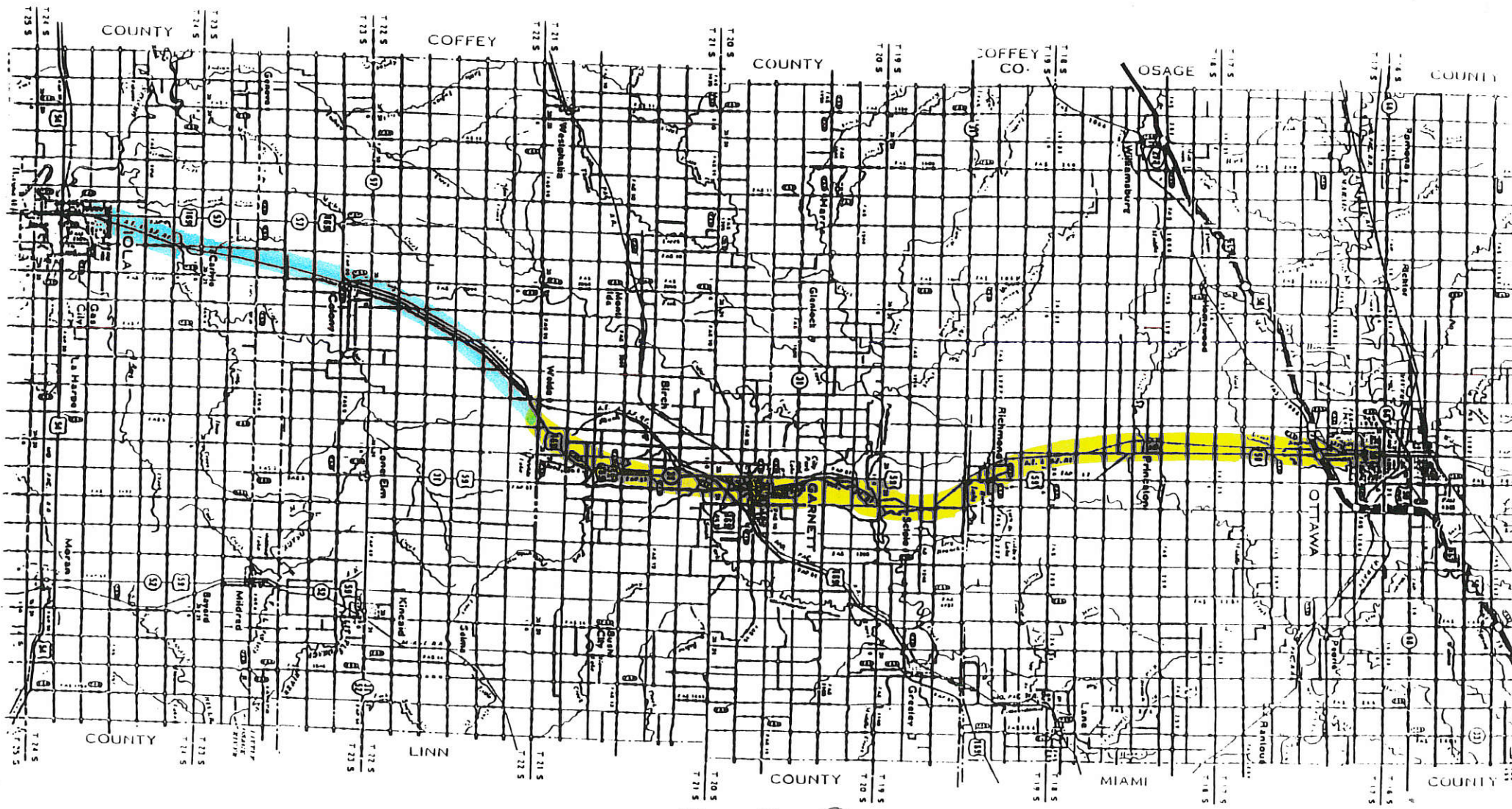
Then the federal government stepped in with rail banking which allowed the tracks to be removed but didn't allow the reversionary interests to kick in. At this point in time, the landowners were not happy and were concerned about the future of their rights. The real problem arises when the federal government, with our help, deeds this land to the state government for a park. This action suspends our Kansas law. With this federal action, along with our action today, the Kansas landowners feel the expectations of their property rights are lost forever -- all without due process.

We must not let this happen. My original proposal would have kept this trail from becoming a part of the park system in order to give us time to address fundamental property rights and to allow the federal government time to sort this out on the federal level. Wildlife and Parks came forward in our Senate committee and asked if they could work out a compromise with me. The committee agreed and after several meetings we came up with these two bills. One putting Phase 1 & 2 into the park system and one developing the Prairie Spirit task force which will keep the reversionary property rights alive to allow the new court cases to be decided and to allow debate in Washington, and also to develop a Kansas plan for compliance with federal and state law. Both Wildlife and Parks and I believe many changes will take place and conclusions reached in the next two years on the federal level concerning rail trails.

I do not know what your decision will be on these bills. However, if you should make this trail a park then I sincerely and humbly ask that you protect property rights of our Kansas landowners. If you pass SB 278 then you surely must pass its companion SB 293. By doing so you allow time for developing an avenue for us to consider property rights. I believe Colorado is addressing this

issue by requiring multiple use plans for each trail to ensure a balance between recreation and landowners' rights. If the land cannot be obtained through donations, easements or exchanges, Wildlife and Parks may authorize expenditures of state money for the strips.

Whatever the solution, we must take the time to consider landowners' rights and "due process". With this action today we are the ones who are taking this land into government. Can we take the time to find solutions or will we be the instrument that possibly allows our landowners' constitutional rights to be violated?



- ① Ottawa to Williamsburg 18
- ② Williamsburg to Ottawa 15
- ③ Ottawa to Ida 17

SO. 2
miles to
length

Mary Johnson,

to

Leavenworth, Lawrence
and Galveston
Railroad Company
and their
successors.

DEED

Dated July 16, 1869
Recorded January 27, 1870
Book "M" page 251
Consideration \$193.00

Conveys the right of way and the land necessary therefor not exceeding 100 feet in width, where the said Railroad is now located through the N.E.1/4 of Sec. 23, Twp. 18, Rng. 19, Franklin County, Kansas. Said right of way over the land therefor being by me conveyed to said Railroad Company for the purpose of said road only and to revert to the grantor their heirs and assigns in the event of said line of road not being located on said lands.
Ack. July 16, 1869 before J.C. Richmond, Justice of the Peace, (Seal) Franklin County, Kansas.

The undersigned hereby certifies that this is a true and exact copy of the ABSTRACTED Deed recorded in Book "M" at page 251, in the office of the Register of Deeds of Franklin County, Kansas.

Dated at Ottawa, Kansas, this 7th day of April, 1995.

Haley Abstract & Title Co, Inc.



Abstracter

paid the receipts whereof is hereby acknowledged, I do hereby grant, bargain, sell and convey unto the Leavenworth Lawrence & Galveston Railroad Company and to their successors the right of way and the land necessary therefor not exceeding One Hundred feet in width where the said Leavenworth Lawrence & Galveston Railroad now is located through the following described lands, to wit

The North East-quarter (N E 1/4) of Section twenty three (S 23) Township Eighteen (T 18) Range Nineteen (R 19) Situated in the County of Franklin State of Kansas. Said right of way and the land therefor being by me conveyed to said Railroad Company for the purpose of said road, only and to revert to the grantor their heirs and assigns in the event of said line of Road not being located on said lands

In Witness Whereof The said Mary Johnson has hereunto set her hand and seal this 16th day of July A.D. 1869

(60 cent-stamp.)

Mary Johnson (Seal)

State of Kansas }
Franklin County } 20

Before me J. L. Richmond a Justice of the Peace in and for said County of Franklin State of Kansas. On this 16th day of July A.D. 1869. personally came Mary Johnson to me well known to be the identical person whose name is affixed to the foregoing conveyance as grantor, and acknowledged the same to be her own voluntary act and deed.

In Testimony Whereof I have hereunto subscribed my name and affixed my seal on the day and year last above written

J. L. Richmond
J. P.

Recorded January 27th 1876
at 3rd P. M.

W. H. Sheldon
Reg of deeds -

The undersigned hereby certifies that this is a true and exact copy of the original Deed recorded in Book "M" at page 251, in the office of the Register of Deeds of Franklin County, Kansas.

Dated at Ottawa, Kansas, this 7th day of April, 1995

Haley Abstract & Title Co, Inc.

W. C. Haley
Abstracter

Harvest Queen Mill & Elevator Co. v. Sanders

"But where there is an implied restriction, as is often the case in regard to the right of way, or the like, of a railroad company, the grant does not ordinarily vest a fee in the company, but vests such an estate, usually an easement, as is requisite to effect the purpose for which the property is required.

"The fact that the deed contains covenants of warranty, or that the right acquired is designated as a fee, is not necessarily controlling.

Although the railroad used a general warranty deed containing covenants of warranty, the court held:

"... the deed and those things to which we may look in its interpretation plainly show that the strip was sold on the one part, and purchased on the other, as and for a right of way for a railroad. This use, being within the contemplation of the parties, is to be considered as an element in the contract, and limits the interest that the railroad acquired. It took the strip for a specific purpose, and could hold it so long as it was devoted to that purpose. Whether the right of way purchased should be designated as an easement or as a qualified or determinable fee may not be very important. A right of way, although commonly designated as an easement, is an interest in land of a special and exclusive nature, and of a high character.

"Whatever its name, the interest was taken for use as a right of way, it was limited to that use, and must revert when the use is abandoned."

Able and industrious counsel for plaintiffs have reviewed cases from foreign jurisdictions relative to conveyance of fee simple absolute and fee simple determinable title and assert that the public policy of this state as adopted in *Abercrombie v. Simmons*, supra, is not in accord with the decisions of other states, that the *Abercrombie* case was incorrectly decided under the applicable statutes and judicial decisions, that it should now be disapproved and overruled insofar as it holds that regardless of the language and form of the deed, a railroad cannot take a fee simple absolute or a fee simple determinable title in land that is to be used for right-of-way purposes, and that this court should now hold that a railroad may acquire by grant or deed a fee simple absolute or a fee simple determinable estate in land purchased for right-of-way purposes.

In the instant case the 1887 deed and those things to which we may look in its interpretation plainly show that the strips were sold by the grantor and purchased by the grantee railway company as and for a right-of-way for a railroad. This use being within the contemplation of the parties, it is to be considered as an element in the contract and limits the interest that the railroad acquired, *i. e.*, an easement for railroad purposes.

We have held that when land is devoted to railroad purposes

it is immaterial whether the railway company acquired it by virtue of an easement, by condemnation, right-of-way deed, or other conveyance. If or when it ceases to be used for railway purposes, the land concerned returns to its prior status as an integral part of the freehold to which it belonged prior to its subjection to use for railway purposes. (*Federal Farm Mortgage Corp. v. Smith*, 149 Kan. 789, 792, 89 P. 2d 838.) This court has uniformly held that railroads do not own fee titles to narrow strips taken as right-of-way, regardless of whether they are taken by condemnation or right-of-way deed. The rule is in conformity with this state's long-standing public policy and gives full effect to the intent of the parties who execute right-of-way deeds rather than going through lengthy and expensive condemnation proceedings. (*Abercrombie v. Simmons*, supra; *Bowers v. Atchison, T. & S. F. Rly. Co.*, 119 Kan. 202, 237 Pac. 913, 42 A. L. R. 228; *Disney v. Long*, 90 Kan. 309, 313, 133 Pac. 572.)

In *Midland Valley R. Co. v. Corn*, 21 F. 2d 96, 98, it was held that land acquired by a railroad company, whether by purchase or compulsory proceedings, shall be held and used for such grant only and where it was conveyed for right-of-way purposes it was limited to that use. The railroad, of course, is entitled to the exclusive use of the right-of-way while it is used for railroad purposes, but any right not inconsistent with the easement remains in the abutting owner. It must therefore be inferred that the legislature did not intend to confer upon the railroad the power to acquire title to any greater interest in land either by condemnation or by deed than was necessary for right-of-way purposes.

Generally a railroad company in acquiring land for railroad right-of-way, whether it be by grant or condemnation proceedings, is held to take not the fee, but only a special interest therein, usually termed an "easement," which special interest or title is taken for railroad purposes, that is, public purposes, so that the railroad has no right to take from such right-of-way any underlying minerals and appropriate them to its own use or convey them to others. Where a railroad merely acquires an easement of way the title to the underlying minerals found or existing within the limits of the right-of-way and below the grade of the road remain in the owner of the fee who might mine for them so long as he does not interfere with the operation of the railroad nor imperil the surface support. (*Harvey v. Railroad Co.*, 111 Kan. 371, 372, 373, 207 Pac. 761; *Railroad Co. v. Schmuck*, 69 Kan. 272, 76 Pac. 836; *Abercrombie v. Sim-*

of-way and provides the notice of such abandonment required by this subsection shall incur no civil or criminal liability for failure to notify any person who claims, or may claim, ownership of property servient to the abandoned right-of-way, nor shall such grantee or assignee incur any civil or criminal liability for notifying any person who has no legal claim to ownership of property servient to the abandoned right-of-way. The notice required by this subsection shall not create any legal right, be construed as a warranty or guarantee, nor shall such notice impair or cloud any lawful claim, right, title or interest of any person.

66-525
 (f) Any conveyance by any railroad company of any actual or purported right, title or interest in property acquired in strips for right-of-way to any party other than the owner of the servient estate shall be null and void, unless such conveyance is made with a manifestation of intent that the railroad company's successor shall maintain railroad operations on such right-of-way, and the railroad owns marketable title for such purpose.

(g) As used in this section, "railroad company" has the meaning of such term as defined in K.S.A. 66-180, and amendments thereto.

History: L. 1986, ch. 247, § 1; L. 1987, ch. 258, § 1; July 1.

Article 6.—HOURS OF LABOR

66-601. Hours of labor of employees. It shall be unlawful for any corporation or receiver operating a line of railroad in whole or in part in the state of Kansas, for any officer, agent or representative of such corporation or receiver, to require or permit any conductor, engineer, fireman, brakeman, train dispatcher, telegraph operator or any trainman who has worked in his respective capacity for sixteen consecutive hours, to continue on duty or perform any work for such railroad until he has had at least eight hours' rest: *Provided*, That this act shall not apply in case of washouts, wrecks, or unavoidable blockades, nor shall it be construed to prevent the crew of a train which contains livestock or perishable freight in carload lots from running to the next division point after the expiration of the time limit provided for in this act: *Provided further*, That this section shall not apply to employees of sleeping-car companies, baggagemen, and express messengers.

History: L. 1905, ch. 342, § 1; L. 1907, ch. 280, § 1; May 27; R.S. 1923, 66-601.

Research and Practice Aids:

Labor Relations — 1368, 1381.

C.J.S. Master and Servant § 15.

66-602. Penalty for violations; complaint; investigations. Any corporation or receiver operating a line of railroad in whole or in part in this state who shall knowingly violate any provisions of this act shall be liable to the state of Kansas for a penalty of not less than one hundred dollars nor more than two hundred dollars for each offense, and such penalties shall be recovered and suits thereof shall be brought in the name of the state of Kansas in a court of competent jurisdiction in any county in the state into or through which any such railroad may run, by the attorney general or under his direction, or by the prosecuting attorney of the proper county through or into or out of which trains may be operated by said company; and upon complaint being made to the state corporation commission it is hereby authorized to investigate such complaint, and shall be empowered to examine the train sheets, registers, and dispatchers' reports, and to hear such other evidence as may be offered by officers or employees of such railroad company, to determine whether such complaint is well founded; and if the complaint appears to be well founded, it shall be the duty of said state corporation commission to file a complaint before the county attorney of the proper county through which said company may operate.

History: L. 1905, ch. 342, § 2; L. 1907, ch. 280, § 2; May 27; R.S. 1923, 66-602.

Article 7.—RAILROAD AND MOTOR CARRIER PASSES

Cross References to Related Sections:

Free transportation, see, also, 66-145, 66-152.

RAILROAD PASSES

66-701. Passes or free transportation. It shall be unlawful for any railroad company to issue, give, or offer to issue or give, any free pass, ticket or transportation, in any form, to passengers, for use upon its lines within this state, except to its officers and directors and employees and their families; the officers, directors and employees of other railroads and their families; the employees of express, telegraph, telephone and sleeping-car companies and their families; a representative from any of the labor organizations of employees of railway companies; railway employees incapacitated by reason of disease or injury from

PRAIRIE SPIRIT RAILS TO TRAILS DEVELOPMENT

19-Nov-

FY	APPROVED	ACTUAL	FUNDING SOURCE
1995	200,000	146,322	EDIF
	75,000	0	Private Sources
	1,101,000	0	Fed. ISTEAFunds
1996	75,000	0	State General Fund
	75,000	53,678	EDIF
	27,000	84,270	Private Sources
	808,000	1,083,686	Fed. ISTEAFunds
1997	0	75,000	State General Fund
	0	75,000	EDIF
	0	17,730	Private Sources
	0	825,314	Fed. ISTEAFunds
TOTALS	2,361,000	2,361,000	

Total Approved Funding:	Percent of Total
75,000	3.2% State General Fund
275,000	11.6% EDIF
102,000	4.3% Private Sources
1,909,000	80.9% Fed. ISTEAFunds
TOTALS	2,361,000

Estimated Total Cost for Stages:

First Stage	1,376,000
Second Stage	985,000
Third Stage	885,000
Total	3,246,000

LOTUS\Psrtsum

PSRT Phase II
Schedule
January 2, 1997

March 31, 1997	Complete plans and specifications
Late April '97	Open Bids
Mid June '97	Begin Construction
October '97	Open trail for public use



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953



TO: Representative Steve Lloyd, 64th District
FROM: Steven A. Williams, Secretary of Wildlife and Parks
SUBJECT: Testimony on SB 278
DATE: March 18, 1997

Senate Bill No. 278 would amend K.S.A. 32-837 to include the first two phases of the Prairie Spirit Rail Trail as part of the state park system, and repeal the existing section. The bill indicates that the southerly trailhead within the city limits of the city of Welda, Kansas is to be the southern terminus of such state park.

The Kansas Legislature passed a joint resolution in 1991 in support of trails in general and preserving historic rail corridors in particular. Subsequently, in 1992, the Department railbanked the 50.2 mile long right-of-way which is now known as the Prairie Spirit Rail Trail. Phase I was completed and opened to the public on March 30, 1996. A meeting was held in Ottawa on February 1, 1997 to receive public input on development of Phase II. The public and local communities along the trail now fully expect Phase II to be completed and opened this fall. Design of Phase II is currently estimated to be 85% complete.

Senate Bill No. 278 would enhance the opportunity for the trail to be a regionally popular attraction and would result in immediate economic benefits to local communities along the trail, reduce maintenance costs paid from the State General Fund (SGF), and allow nearby state park staff and equipment to be used for maintenance and special projects.

The bill would help to ensure the future success of the project, and would stimulate economic development activity along the trail corridor.

Opponents of the Prairie Spirit Trail have raised legal concerns about land ownership along and adjacent to the railbanked corridor. Senate Bill No. 293 addresses those concerns with the creation of the "Prairie Spirit Rail Trail Advisory Task Force."

*House Environment
3-18-97
Attachment 2*



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953



TO: Representative Steve Lloyd, 64th District
FROM: Steven A. Williams, Secretary of Wildlife and Parks
SUBJECT: Testimony on SB 293
DATE: March 18, 1997

Senate Bill No. 293 as amended and passed by the Senate would allow continued development of phase II of the Prairie Spirit Rail Trail. It would also place a moratorium on development of Phase III until funding for such was obtained.

Opponents of the Prairie Spirit Trail have raised legal concerns about land ownership along and adjacent to the railbanked corridor. This bill addresses those concerns by creating a "Prairie Spirit Rail Trail Advisory Task Force" to monitor and review any federal and state legislation and case law pertaining to the reversionary interest of owners of property adjoining rail banked property and to develop a Kansas plan for compliance with federal and state law and to protect the reversionary interest of owners of property adjoining the Prairie Spirit Rail Trail.

It should be noted that Senate Bill No. 293 does not impact other current trail projects being planned or undertaken by other entities in the state. The Task Force created by Senate Bill No. 293 is intended to focus upon the Prairie Spirit Rail Trail. It also does not limit development of Phase III of the project from Welda to Iola once funding for construction of that portion is received. The drafters of this compromise understand that certain planning for Phase III, including submission of grant applications may proceed.

The Kansas Legislature passed a joint resolution in 1991 in support of trails in general and preserving historic rail corridors in particular. Subsequently, in 1992, the Department railbanked the 50.2 mile long right-of-way which is now known as the Prairie Spirit Rail Trail. Phase I was completed and opened to the public on March 30, 1996. A meeting was held in Ottawa on February 1, 1997 to receive public input on development of Phase II. The public and local communities along the trail now fully expect Phase II to be completed and opened this fall.

Design work on Phase II is approximately 85% complete at this time.

PROJECT LOCATION MAP



PRAIRIE SPIRIT TRAIL PHASE II

March 18, 1997

House Committee on Environment
State Capitol, Room 526-N
300 SW 10th Avenue
Topeka, KS 66612

Regarding: Senate Bill 278

As president of the Johnson County Bicycle Club, I am before you speaking on behalf of the bicycle clubs of Kansas including the Kaw Valley (Topeka), Lawrence, Leavenworth, Oz (Wichita) and Johnson County Bicycle Clubs with over 1,000 combined members, to ask your support of Senate Bill 278.

As I am sure you are aware, the state of Kansas ranks the among the lowest in the county for accessible, public recreational lands. The Prairie Spirit Rail Trail offers an opportunity to join the 47 other states that have undertaken rail trail projects, many of which are designated as state parks. The state park designation, as stipulated by SB 278, would allow user fees generated by our memberships and the many other users of the trail to remain within the state park system to assist with operations and maintenance of the state park system. As users and financial supporters of the Prairie Spirit Rail Trail through charitable contributions we would like to see our user fees remain within the system, much as hunting and fishing license fees provide revenue for improved habitat to support their recreation and as camping and boating access fees to state parks support those related facilities. The trail's state park designation would also provide much needed diversification to the state park's tradition water-based recreation facilities and provide a new opportunity for promoting tourism in Kansas.

Thank you for your time and your support of bicycling, recreation, tourism and rural economic development in the state of Kansas.

Sincerely,



Dale Crawford, President
Johnson County Bicycle Club

Home Address:
512 N. Curtis Street
Olathe, KS 66061-3322
Phone: (913)829-6588

*House Environment
3-18-97
Attachment 3*

March 18, 1997

House Committee on Environment
State Capitol, Room 526-N
300 SW 10th Avenue
Topeka, KS 66612

Regarding: Senate Bill 293

As president of the Johnson County Bicycle Club, I am before you speaking on behalf of the bicycle clubs of Kansas including the Kaw Valley (Topeka), Lawrence, Leavenworth, Oz (Wichita) and Johnson County Bicycle Clubs with over 1,000 combined members, to ask your support Senate Bill 293.

In the spirit of constructive compromise and open dialogue, the we support the amended Senate Bill 293 placing a moratorium on Phase III and creating an advisory task force with the duties as described in the bill. The advisory task force created by Senate Bill 293 allows agricultural representatives with concerns regarding the reversionary aspects of rail bank the Prairie Spirit Rail Trail to discuss the legal rights of adjacent property owners in a forum with representatives of the local governments providing and supporting the trail and of the trail provider. It is our hope the information derived in such a forum will set the stage for a productive coexistence for adjacent property owners, the trail operators and the trail users. As a representative of the bicycle clubs of Kansas, I offer my assistance, if needed, to the advisory task force to further the dialogue between all parties involved and impacted by the creation of the Prairie Spirit Rail Trail.

Thank you for your time and your support of bicycling, recreation, tourism and rural economic development in the state of Kansas.

Sincerely,



Dale Crawford, President
Johnson County Bicycle Club

Home Address:
512 N. Curtis Street
Olathe, KS 66061-3322
Phone: (913)829-6588



Travel
Industry
Association of
Kansas

Jayhawk Tower
700 S.W. Jackson St., Suite 702
Topeka, Kansas 66603-3758
913 /233-9465 FAX 913 /357-6629

DATE: March 18, 1997
TO: HOUSE ENVIRONMENT COMMITTEE
FROM: Jean Barbee, Executive Director
RE: Prairie Spirit Rail Trail as a part of the State Park System (SB-278)

Mr. Chairman and members of the committee, my name is Jean Barbee. I am the Executive Director of the Travel Industry Association of Kansas (TIAK). The legislative goals of TIAK are to support public policy which will:

- **Insure adequate public access to natural resources which provide recreational opportunities**
- **Sustain historical preservation**
- **Create an environment conducive to tourism business**
- **Provide for the promotion and marketing of tourism activities, attractions, events and businesses**
- **Assure the adequate servicing of the tourist**
- **Encourage efficiency in state government through partnerships**

TIAK supports SB-278.

Although TIAK has supported railbanking for several years, this bill is not about the pros and cons of railbanking. The issue of railbanking has already been determined by Congress and upheld by the U. S. Supreme Court. It would seem to be sound judgment, and good public policy on your part, to maintain state control over the trail by making it a state park.

*House Environment
3-18-97
Attachment 4*



Travel
Industry
Association of
Kansas

Jayhawk Tower
700 S.W. Jackson St., Suite 702
Topeka, Kansas 66603-3758
913 /233-9465 FAX 913 /357-6629

DATE: March 18, 1997
TO: HOUSE ENVIRONMENT COMMITTEE
FROM: Jean Barbee, Executive Director
RE: Moratorium - Prairie Spirit Rail Trail (SB-293)

Mr. Chairman and members of the committee, my name is Jean Barbee. I am the Executive Director of the Travel Industry Association of Kansas (TIAK). The legislative goals of TIAK are to support public policy which will:

- **Insure adequate public access to natural resources which provide recreational opportunities**
- **Sustain historical preservation**
- **Create an environment conducive to tourism business**
- **Provide for the promotion and marketing of tourism activities, attractions, events and businesses**
- **Assure the adequate servicing of the tourist**
- **Encourage efficiency in state government through partnerships**

TIAK supports SB-293 as amended.

Currently, 42 states have rail trails with a total of 4,925 miles open for walking, running and bicycling (this is 1992 information – that number of miles has most likely increased). Our neighboring states of Missouri, Colorado, Nebraska and Oklahoma all maintain rail trails. Missouri has one of the premier systems and boasts at least 205 miles currently open for public use.

Research conducted by the University of Wisconsin Extension Service and published in January 1989 found that users on the Elroy Sparta Trail in that state spend \$25.14 per person and traveled an average of 228 miles to get to the trail. Once there, they stayed an average of 1.43 nights. Because of the proximity of the Prairie Spirit Rail trail to Missouri, the opportunity for importing new dollars and not just Kansas regional dollars is very high.

Rail trails have been shown to have a positive effect on property values. In many instances, people living adjacent to rail trails become the most frequent users and supporters of the facilities. The advantages of living near a safe, traffic-free recreational trail becomes a major selling point of property located in the vicinity of rail trails.

Those of us who have been in the business for many years of promoting Kansas as a tourist destination understand the need to "use what we have" to attract tourists. What we have are miles and miles of trails that outdoor enthusiasts are looking for.

If you act on this bill, we encourage you to leave the amendments placed by the Senate committee in tact.



TESTIMONY

to

HOUSE OF REPRESENTATIVES
COMMITTEE ON ENVIRONMENT

by

William R. Maasen, Land Acquisition Specialist
Johnson County Park and Recreation District
Kansas Recreation and Park Association
March 18, 1997

SHAWNEE MISSION
PARK OFFICES

7900 Renner Road
Shawnee Mission, KS
66219-9723

Voice (913) 438-7275
TDD (913) 831-3342
Fax (913) 492-7275

SENATE BILLS NO. 278 AND 293

Honorable Chairperson Lloyd and Committee Members:

Thank you for the opportunity to appear before you today as a proponent to Senate Bills 278 and 293. I am Bill Maasen, Land Acquisition Specialist for Johnson County Park and Recreation District, representing the Kansas Recreation and Park Association. I have the responsibility of acquiring land and overseeing development of the Streamway Park System in our County. The Streamway Park System is a voter-approved initiative to fund the construction, operation, and maintenance of multi-use trail system, similar to the Prairie Spirit Rail Trail.

Both bills represent a compromise to the original bills. Both the Kansas Recreation and Park Association and Johnson County Park and Recreation District endorse the changes. The passage of these bills will allow for the development of phase two of the Prairie Spirit Rail Trail and grants State Park status to the facility located in Anderson and Franklin Counties. Johnson County citizens will be able to take advantage of this new facility because of its proximity to I-35.

If the Committee so desires to amend Bill 293 to incorporate a recreation users group into the task force structure, the Kansas Recreation and Park Association and Johnson County Park and Recreation District would endorse this change. Our endorsement of Bill 293 is not contingent on this change.

Thank you for the opportunity to present the position of the Kansas Recreation and Park Association and the Johnson County Park and Recreation District.

1997 BOARD OF
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House Environment
3-18-97
Attachment 5



March 18, 1997

The Prairie Spirit Rail Trail between Richmond and Welda, with Garnett as the central point, is now completed and is providing tremendous economic development and tourism results for the City of Garnett. Users are experiencing a healthy, safe place to walk, ride and bike as they enjoy all that nature has to offer.

This is the first major tourism project for this area in the State of Kansas. This project was started by the Kansas Department of Wildlife and Parks and the Kansas Department of Transportation and needs to be seen to the end. All of us will be keeping a close eye on the use of the trail as well as the impact it has on our local economy. I promise that we will do everything we can to insure its success as the City of Garnett has invested a great deal of time and money on the trail and the Santa Fe Depot. We have also committed to maintaining three miles of trail that runs through our corporate limits.

Landowners have expressed concerns about fencing and liability issues. These matters have been taken care of by House Bill 2711 which was called the good neighbor bill. We cannot solve the matter of land reversionary rights -- this must be done by the federal government.

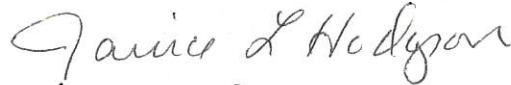
Previous statements have been made that our retail economy is down. We disagree with this statement for the following reasons: 1. Our city sales tax revenues from 1995 to 1996 are up by \$10,000. 2. Our economic development director conducted an informal survey of the downtown merchants, the majority of which reported that their retail sales increased from 1995 to 1996. 3. New businesses are locating in Garnett. 4. Numerous projects that are happening in our community because of the trail. (see attached listing)

We have appeared before the legislators three times in the last two months. I believe this is a clear indication of just how important this trail is to us. We have been willing to take time away from our jobs and personal obligations to let you know what the trail can and is doing for us.

On behalf of the Governing Body of the City of Garnett, I urge this committee to vote in favor of Senate Bills 278 and 293 as proposed. While we support the designation of a task force to monitor land rights, we would like to suggest that a trail user be designated to serve on this task force.

I appreciate the time you have given me to express our opinions. Please visit our area and enjoy Kansas' first rail trail.

Sincerely,



Janice L. Hodgson, Mayor

JLH/jm





If There Was No Prairie Spirit... This Wouldn't Have Been

- **63 members of Volkswalkers, a national walking club wouldn't have visited Anderson County on April 21, 1996.**
- **No one would have given out information on Anderson County at Square Fair, nor greeted the many runners who attended Lions Club 5K & 10K Run on May 11, 1996.**
- **Boy Scout Troops from Topeka, Prairie Village and Edwardsville, bringing more than 75 people, would not have ventured to Anderson County on May 17 & 18, 1996.**
- **Joint advertising by local businesses on ESPN and TNN, which aired outside Anderson County, promoting tourism wouldn't have happened. A special, "thanks" again to Burns Pharmacy, Emporium on the Square, Goodies Antiques, Old American Inn and TCI of Kansas, Inc.**
- **155 senior citizens and physically challenged persons would have missed the scenic tour of the trail by the golf cart caravan which was provided by the Harris family.**
- **80 people wouldn't have visited Anderson County on June 30th for the bike tour sponsored by the Ottawa Friends of the Prairie Spirit Trail.**
- **The 125 people who enjoyed a barbecue at the Santa Fe depot and a poker walk of downtown Garnett as part of the First Kansas Trails Conference wouldn't have come to Garnett on September 6, 1996.**

- **115-120 ghosts and goblins would have missed out on the fun and treats Halloween night at the Santa Fe depot.**
- **The City of Lights ceremony in Garnett on December 7, which featured luminaries on the Prairie Spirit Trail between the Anderson County Courthouse and the newly renovated Santa Fe Depot wouldn't have happened. More than 200 visitors toured the historic courthouse and walked the trail to see the depot. The event was sponsored by the Friends of the Prairie Spirit Rail Trail. The theme of the evening parade of lighted floats was, "A Prairie Spirit Christmas".**
- **What would the fate of the Santa Fe Depot in Garnett be? The depot opened in May of 1996, and serves as a rest stop and picnic area for trail users and is a tourist information center. A current beautification project consisting of individuals, families, organizations, churches and businesses purchasing walking tiles of mahogany granite engraved with their personal message to be placed along the west side of the depot would not be necessary as no one would have a reason to venture to the depot to view these tiles.**
- **Would there be an Anderson County Afghan? The afghan depicts historical places of interest in Anderson County. The Anderson County afghan is a project sponsored by the Friends of the Prairie Spirit Rail Trail with proceeds to fund trail projects. Over 200 have been sold.**
- **Retired Santa Fe engineer, Norman McCleary wouldn't have shared his memories, historical information and memorabilia about life on the Santa Fe railroad at a special event sponsored by the Friends of the Prairie Spirit Rail Trail held on March 12, 1997 at the Anderson County Jr.-Sr. High School in which over 125 people attended.**
- **There wouldn't be a need for March for Parks, to be held April 18-22, 1997 in which daily activities will promote the assets of the**

Prairie Spirit Rail Trail and the city parks within the communities along the trail.

- **Garnett, Kansas wouldn't have been nominated as a "Trail Town U.S.A."!**
- **Mid-Continent Council of Girls Scouts who will host a 4-day camp at Lake Garnett on June 12-15 with activities centered around the Prairie Spirit Trail wouldn't be happening. Eight scout leaders are currently organizing the camp which will bring 200-250 Girl Scouts to the area.**
- **Free State Walkers, a national organization wouldn't be bringing an estimated 200 walkers for a special trail event on October 11, 1997.**
- **The 10 bluebird houses that were donated to the trail wouldn't be there. 10 more are scheduled along with volunteers to do nesting habit studies and report their information to Kansas Wildlife & Parks.**
- **An Easter Parade on the Prairie Spirit Trail planned for March 30, following church services, from 4th Avenue to the Santa Fe Depot would not be a scheduled event. Prizes for Best Dressed Couple, Prettiest Easter Bonnet and Prettiest Easter Basket will be awarded in various age groups. This event is sponsored by the Friends of the Prairie Spirit Trail.**
- **The Prairie Spirit Express, a monthly newsletter about the Prairie Spirit Rail Trail wouldn't exist, which is currently sent to over 200 households.**
- **The more than 22,000 visits to the Prairie Spirit Trail by trail users during the 1996 summer months would not have happened...**

BUT THEY DID!

HOUSE ENVIRONMENT COMMITTEE, March 18, 1997

Chairman Lloyd, House Environment Committee:

I am Katherine Dieterich of Princeton, Kansas.

One of the reasons I am here today is that my farm is adjacent to the Prairie Spirit Trail.

I am a proponent of Bill #278 and Bill #293.

From past experiences with the Wild Life and Parks and from recent conversations with Trent McCowen, Trail Manager, I am confident that the Trail will be well maintained. It saddens me, the condition in which the abandoned railroad was left.

Probably, the #1 reason why I am for Bill #293 is to see the Trail completed before something happens to me. I hope construction begins next month.

I'm in sympathy with city residents who do not have access to the wide open spaces. We should share; those of us who have been fortunate to have lived in the country. My family has always permitted fishing at our ponds---with the stipulation that no litter is left. No problems, to date.

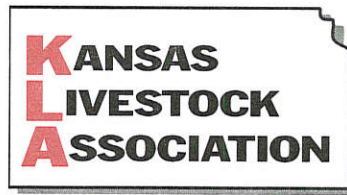
I have no desire to seek remedy in the Court of Federal Claims. It would take a fortune to convert our six acres back to agricultural use.

In this day and age of urging families to become closer, what better way than being together in our beautiful great out of doors. The adults could point out numerous things of interest to the children, not to mention the good exercise.

Many are concerned about litter being left on the trail, as I am. We have that problem now along the roadsides, and no one is patrolling. Littering is everywhere! We parents, grandparents and teachers should strongly urge everyone to have more respect for our wonderful land. I have confidence in our Trail Manager. Let's make it as easy as we can for him and the Wild Life and Parks Department. Do not be a Litter Bug!

Katherine M. Dieterich
2675 Hamilton Road
Princeton, KS 66078-9065

*House Environment
3-18-97
Attachment 7*



Since 1894

March 18, 1997

To: House Environment Committee
Rep. Steve Lloyd, Chairman

Fr: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

Re: **Senate Bill 293** - Establishing a Prairie Spirit Rail Trail Task Force

Senate Bill 293 includes a section creating a task force to collect and examine legislative and legal issues impacting the Prairie Spirit Trail and adjoining landowners.

Since the Kansas Livestock Association is one representative named in the bill, I wanted to appear before this committee this afternoon and tell you we support this approach and we would be most willing to serve on the task force if SB 293 is passed and signed by the Governor.

I'm uncertain if Congress will consider amendments to the National Trails System Act during the next two years, as suggested in this legislation. We believe there are certain issues the Surface Transportation Board and Congress should address in the very near future. If federal legislation starts to move, this task force would be prepared and could provide valuable input to the Kansas Congressional delegation.

There are certain to be legal issues of consideration during the next two years. The latest Preseault case, as summarized in the attached article, presents a potential financial issue or concern for some existing and proposed rail trails.

Again, KLA will be happy to participate on the task force outlined in SB 293. I'll stand for any questions or comments by committee members. Thank you!

Testimony of Charles Benjamin, Ph.D., J.D.
Legislative Coordinator
Kansas Natural Resource Council
Kansas Chapter of Sierra Club

Before the Kansas House of Representatives
Committee on Environment
Re: S.B. 278

March 18, 1997

Thank you for the opportunity to testify in favor of S.B. 278 that would place the Prairie Spirit Trail in the State park system.

At the time H.B. 2324, the bill to place a moratorium on further development of the Prairie Spirit Trail, was introduced in this committee, there were two major arguments made by its proponents. The first was that there were court decisions that might make the state liable for reimbursing landowners for the property used by the state in creating this trail. The second argument was that there was legislation being considered by Congress that would amend the National Trail System Act. I would like to address both issues in turn.

The law that applies in Kansas is as follows:

- 1) Section 8(d) of the National Trail System Act Amendments, passed by Congress in 1983, that created a process called "Rail Banking";
- 2) the 1990 U.S. Supreme Court decision in Preseault v. ICC, in which the Court, in a unanimous 9-0 decision, upheld the constitutionality of rail banking;
- 3) the 1995 U.S. Court of Appeals case in Preseault v. United States in which the Court again upheld the Constitutionality of rail banking. The Court found that in the specific instance of the Preseault case, a "taking" had occurred and the Presaults could take their case the Court of Federal claims for possible compensation. Since this case has been used by trail opponents to argue against railbanking it is important to point out other key points of this case:
 - All corridors presently railbanked would remain railbanked. The Preseault decision was about compensation, not about the legitimacy of the railbanking itself.
 - The Court found that responsibility for compensation lies with the U.S. government, not the trail manager, in this case the railroad or state of Vermont.
 - The decision sent the case back to the Court of Federal Claims to determine the amount of compensation, if any, the Preseaults are entitled to.
 - The decision focused narrowly on Vermont law, and was therefore limited to railbanked corridors in Vermont.
 - The decision does not affect rail corridors in which the railroad held fee simple titles, rather than a railroad easement, to the property.
 - Adjacent property owners who allege a taking of private property as a result of railbanking can only seek remedy in the Court of Federal Claims, they cannot have property returned to them, nor can they demand that the trail be closed or dismantled.

*House Environment
3-18-97
Attachment 9*

The second argument is that Congress is considering legislation to amend the Rail Banking amendments to the National Trail System Act and therefore Kansas should put the Prairie Spirit Trail on hold. The fact is that Congress considers hundreds of bills every year, very few of which actually get through both houses of Congress and are signed by the President. As Kansas legislators I am sure you can appreciate that the process of passing legislation is long and arduous and you would not be wise to advise your constituents to count on legislation that may or may not be passed in the statehouse. Similarly, Kansas should not put its plans on hold for the Prairie Spirit Trail simply because of speculation about what Congress may or may not do.

The Prairie Spirit Trail, 50 miles in length, is one of three major rail banked corridors in Kansas. The others being the Flint Hills Nature Trail, 150 miles in length and the Landon Trail, 37 miles in length. The Prairie Spirit Trail is considered by Governor Graves and the Department of Wildlife and Parks to be a pilot project for trail construction and needs in Kansas. The first state operated "rail trail" in Kansas, it is being used to test public and political support of trails in Kansas. If the Prairies Spirit Trail is a success, there may be more additions in the future. If it is not a success, the development of trails in the state of Kansas will probably end.

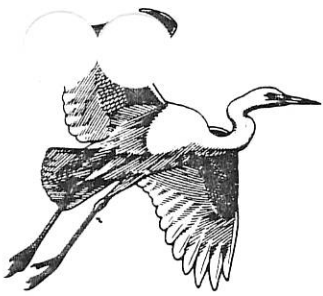
The idea of S.B. 278 is to place the Prairie Spirit Trail into the state park system for several good reasons, all having to do with greater governmental efficiency and saving taxpayer money. If the Prairie Spirit Trail were designated a state park at least three things would happen:

- The trail could be operated jointly out of the Park Fee Fund and the State General Fund, lessening dependence on the latter.
- Nearby state park staff and equipment could be shared to assist with routine maintenance and special projects, lessening future personnel and equipment needs for the trail.
- The trail could be included on maps, in travel directories and other promotional mediums available to state parks, increasing the market of potential users.

The long range impact of S.B. 278 would be to increase the degree to which the trail could be self supporting in operations and maintenance costs. These outcomes have the added benefit of improving the economic climate of the communities along the trail.

Let's not abort this experiment prematurely based upon bad legal analysis and speculation about what might or might not happen in Washington, D.C. Instead, we should let the people of Kansas decide for themselves whether they want the Prairie Spirit Trail and other kinds of trails in Kansas.

Thank you for your time and attention.



Kansas Audubon Council

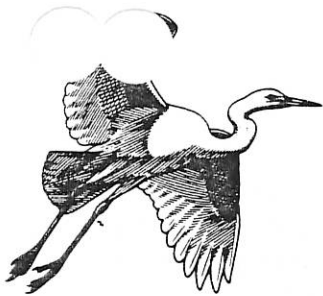
March 18, 1997
House Environment Committee
Testimony on SB 278

Thank you for this opportunity to appear before you today in support of SB 278. My name is Cynthia Abbott, and I am here on behalf of the Kansas Audubon Council and the approximately 5000 members throughout the state of Kansas.

In this time of vociferous public demands for fiscal efficiency on the part of government, SB 278 seems designed to please. On one hand we have a public rail trail, in essence a linear park, and on the other hand we have a state agency, the Kansas Department of Wildlife and Parks, with staff and equipment designed to maintain parks. Currently, however, we have a problem in that the public rail trail is not officially designated as a park, and therefore the Department's park staff and equipment cannot be used for its operation and maintenance without creating financial legal problems.

Rather than maintaining the expense of separate staff and equipment to operate the Prairie Spirit Rail Trail, the members of the Kansas Audubon Council, as taxpayers of the state of Kansas, feel that existing park staff and equipment should be used to operate and maintain this facility as much as possible. Funds to operate it should also be able to come from the Park Fee Fund, as well as from the State General Fund. To allow these fiscally responsible actions to occur, it is necessary to designate the Prairie Spirit Rail Trail as a state park. Please do so by voting in support of SB 278.

*House Environment
3-18-97
Attachment 10*



Kansas Audubon Council

March 18, 1997
House Environment Committee
Testimony on SB 293

Thank you very much for the opportunity to appear before you today during the hearing on SB 293. We are basically neutral on the current, amended form of this bill, but would like to speak about public recreation in Kansas and about the Prairie Spirit Rail Trail in particular. My name is Cynthia Abbott, and I am here on behalf of the Kansas Audubon Council and the approximately 5000 Audubon members throughout the state of Kansas.

The Kansas Audubon Council strongly supports the Prairie Spirit Rail Trail and other similar initiatives that encourage our state's citizens to get outside, learn about and enjoy the natural heritage that is such a major part of our state. We are seeing a split developing in our state's population between those who work the land and obtain their living from it, and those who obtain their living in other ways. Sometimes this split is stereotyped as a rural versus city dichotomy, but it is more complex than that. The Kansas Audubon Council feels that increased public outdoor recreational opportunities located throughout our state can help to mend this widening gap.

One of the big problems creating this gap is a lack of experiential knowledge and understanding. If a person doesn't know about the land and about the plants and animals that live on it, if they have no place where they can go to experience the full effect of spring winds, sudden summer thunderstorms, biting winter cold, hot dry spells, shady groves of trees or wide open spaces, they will have no experience base from which to understand the kinds of issues faced by farmers and ranchers in their everyday business. Whether they live in big or small towns, in the suburbs or in apartment buildings, increasing numbers of our citizens do not have reasonable access to the open lands that allow them to experience these things. It used to be that, through family or friends, most of our citizens were tied closely to the farms and ranches that occupy such a large portion of our state. However, with decreasing numbers of family farms, this is no longer true. Added to the lack of access to farms is the fact that only 3% of our state's land is publicly owned, and only 2/10ths of 1% of our land is managed by Kansas Department of Wildlife and Parks for public recreation. That's not very much land for such a large number of Kansas's citizens to share, and the sites available are not always distributed so that large numbers of our population have public recreational lands within reasonable access of their homes.

Instead of fighting the development of public places like this within the rural landscape, the Kansas Audubon Council would like to call upon the agricultural communities of our state to encourage them, because we believe that with increased interaction comes increased knowledge, increased understanding and increased cooperation.

Whether it's our own citizens learning about the natural environment that shaped their state and its people, or whether it's citizens from other states that come and learn about what makes Kansas unique, the Prairie Spirit Rail Trail provides an important place for people to come and experience our state's natural heritage. As they have fun and gain understanding, these visitors will also provide an economic boon to local economies, helping some area families to remain in the small towns and communities that have been their homes for so long.

On a purely practical note, the Kansas Audubon Council further supports the Prairie Spirit Rail Trail because it gives Kansans a safe place to take their families and enjoy the outdoor experience. I have tried biking with young children on our country and city roads - it is a scary proposition. I have birded from public roads - and felt both unsafe and uncomfortable. Even finding a place to take a quiet walk can be a challenge, since sidewalks are restricted to cities and towns and drivers zoom by at high rates of speed on country roads. We welcome the relative peace and safety of a dedicated rail trail.

Last but certainly not least, public outdoor recreational areas like the Prairie Spirit Rail Trail can help to foster family times together. Not all families have the financial resources to go to Worlds of Fun, the movies or even the mall if they want to spend some quality time together away from the house. Implicit in these commercial, private facilities is their need to make money. At the same time, as I mentioned earlier, fewer and fewer families have ties to farms and ranches or other free (to them) outdoor spaces. Public parks provide an important place for family picnics, walks, frisbee tossing or just long quiet talks "away from it all."

According to testimony that I've heard this session, seven out of the top ten tourist attractions in this state are state parks. People enjoy getting outdoors to relax -many would say that people need to get outdoors to relax. Certainly providing expanded opportunities for people to experience the outdoors on a regular basis will help maintain a citizenry that knows, understands and cares about its land and the people who live on it. As you deliberate on SB 293 and other public recreational issues, please keep in mind the benefits that public parks and recreational areas can provide to the state, including increased public awareness of the Kansas land with its beauty and challenges, increased economic activity for nearby towns, and safe, inexpensive places for families to spend time together. Thank you.

THE ECONOMICS OF THE PRAIRIE SPIRIT RAIL TRAIL

By Thomas H. Morgan

March 18, 1997

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108 East Fifth Avenue, P.O. Box 425, Garnett, Kansas 66032 • (913) 448-6910 • Fax (913) 448-6920

*House Environment
3-18-97
Attachment II*

MORGAN RESEARCH

Morgan Research Group, LTD.

108 East Fifth Avenue, P.O. Box 425, Garnett, Kansas 66032 • (913) 448-6910 • Fax (913) 448-6920

MORGAN RESEARCH GROUP, LTD.

Thomas H. Morgan is President and Chief Economist of Morgan Research Group, Ltd., which he founded in 1986.

Morgan Research Group is an economic and business research and consulting firm as well as an Internet publishing and marketing company. Morgan Research Group has a reputation for accurate forecasts, innovative research, and profitable advice. Morgan Research Group focuses its attention on the agriculture and allied industries. The firm also maintains extensive data in these areas as well as a global network of information.

In recent years, Morgan Research Group has taken the lead in applying modern communication technology to helping agribusinesses become more profitable through reducing costs, improving efficiencies and expanding markets.

Morgan Research Group's websites and web clients have become popular sites on the Internet with visitors from over 30 countries and from private individuals to Fortune 500 companies as well as various governments.

As a result, Morgan Research Group is in demand for speaking and consulting on the use of Information Age technologies.

Morgan Research Group has serviced clients internationally including producers, packers, processors, retailers, food service providers, exporters, importers, renders, hide processors and tanners.

Morgan Research Group offers regular reports with specific price forecasts customized to various segments of the livestock, meat and allied industries. To better service the diverse needs of its clients Morgan Research specializes in providing in-depth customized research reports in an expedient manner to help support businesses in today's dynamic environment.

Morgan Research Group, Ltd. is known for their informative presentations and unique perspectives. They are in demand as authors, speakers, and instructors. They have written for or been cited in a number of business publications including: *Business Week*, *The Wall Street Journal*, the Associated Press, Cable Network News (CNN), the *New York Times*, the *Farm Journal*, *Beef Today*, *Hogs Today*, *Dairy Today*, *Leather Manufacturing*, *Meat and Poultry*, and *Meat Processing* magazine. Mr. Morgan authors the column "Morgan on Meats" on *FarmDayta*, the column "Forage Analysis" in *Feedstuffs* and is a regular on *WIBW Radio's Ag Issues Forum*.

Mr. Morgan has also addressed a number of trade associations including the American Meat Institute, the U.S. Meat Export Federation, the U.S. Hides, Skins and Leather Association, the Leather Industries of America, the American Leather Chemists Association, National-American Wholesale Grocers' Association, the National Grocers Association and Certified Angus Beef.

Prior to founding Morgan Research Group, Morgan was senior livestock economist at Heinold Commodities, Inc. He also has a graduate degree in Agricultural Economics from Kansas State University.

The Economics of the Prairie Spirit Rail Trail

Thomas H. Morgan
President
Morgan Research Group, Ltd.
Garnett, Kansas
March 18, 1997

Executive Summary

Local politicians, businessmen and other professionals have requested the proponents of the trail to produce analysis showing a net economic or net social benefit for this trail.

Instead proponents of the trail have made exaggerated claims as to the gross revenue potential of the Prairie Spirit Rail Trail with little regard to its costs. The proponents have consistently contended that the Prairie Spirit Rail Trail will have similar trail usage and economic revenues as the Heritage Trail.

Research into these claims reveal that the economic potential of the Prairie Spirit Rail Trail will be less than that of the Heritage Trail. This research further reveals that if the gross revenues from the Prairie Spirit Rail Trail were to be like those of the Heritage Trail, they would not be enough to support one business let alone be an economic boon.

When the expected costs of the Prairie Spirit Rail Trail are considered the likelihood of a net economic benefit disappears like a ghost.

Requests for Economic Analysis Ignored

In the last four years there have been an incredible number of claims made as to the economic impact of the Prairie Spirit Rail Trail.

Local politicians, businessmen and other professionals have requested the proponents of the trail to produce analysis showing a net economic or net social benefit for this trail (See appendix A, B, C and D).

These requests seem reasonable given the large expenditure of public funds and the questionable manner in which the land has been obtained as well as the degree of social strife this project has generated.

Heritage Trail Model Pushed by Supporters

However, the proponents of the trail have refused to produce any economic analysis taking into account this trail's potential to produce economic revenue or its true economic costs. Instead they have simply said that the Prairie Spirit Rail Trail is like the Heritage Trail and give similar economic impact.

They have gone on to claim that this impact will be \$1 million from 137,000 visitors per year. No analysis of cost or net benefit are ever given.

We have found these figures grossly over estimate the potential of the Prairie Spirit Rail Trail.

Heritage Trail Economics

The Heritage Trail connects towns with much larger populations Dyersville and Dubuque, Iowa. These towns also have several major tourist attractions to complement the trail. The trail is located farther north and has a milder climate in the summer months and the trail is used for snowmobiling in the winter. Consequently, the Heritage will likely have more usage than the Prairie Spirit Rail Trail.

Trail Usage

The touted usage of 137,000 is a outrageous exaggeration of the trail's relevant traffic. This large estimate of trail use comes from a study conducted by the National Park Service to justify and promote trails [The Impacts of Rail-Trails, February 1992]. The authors of the study admit to inflating actual head counts by 10 fold using a methodology that had never been used or tested.

According to this study, the Conservation Board that manages the trail enforces a permit system whereby all users aged 12 to 64 must purchase either a daily pass for one dollar or an annual pass for five dollars. The study also estimated through their survey technique that there would be a compliance rate of 82 percent.

To establish a reasonable estimate of actual trail usage a call was made to the Conservation Board to ascertain how many permits were sold. In 1996, they sold \$15,000 worth of permits. Using their estimate of an 82 percent compliance, then there should have been \$18,293 worth of permits sold.

If we simply assume that these permits were all individual permits or that the annual permit users used the trail five times then it would follow that there were about 18,293 users in 1996. Far short of the touted 137,000 users.

After interviews from several the directors of chamber of commerces along the trail were analyzed, the lower estimate of trail usage seems to be closer to reality.

Trail User Spending

Not only have trail proponents exaggerated about potential trail use, they have also exaggerated about how much will be spent by the users. On close examination of the above mentioned study, we found the estimated expenditures spent in the county where the trail was located was \$6.06 (not \$9.21 as proponents claim).

Gross Revenues and Margin Generated by the Trail

If we combine this with the estimated usage of 18,293, there would be a gross revenue of \$110,856. If we further assume a gross margin of 20 percent, then there is only \$22,171.12 produced by trail users. This is not enough to run one business let alone be an economic bonanza.

Consequently, the potential revenue from this trail is quite small, but look at the mounting costs in comparison.

Confirmation by Prairie Spirit Rail Trail 1996 Usage

There have been 177 daily permits and 158 annual permits sold for \$1,440 in the first five months of permit sales. (This is 67 permits per month and \$288). If we assume that the annual permit holders use the trail three times, then there would be a total of 651 trail uses (130 / month).

Using the trail user spending figures from the Heritage Trail study, there was \$3,945.06 in revenue taken in by Anderson County merchants (\$789.01 per month). This generated \$39.45 (\$7.89 / month) in sales tax to cover any additional costs the trail might impose on the county (such as law enforcement). This would generate \$193.08 in state sales taxes (\$38.66 / month) to cover the states expenses connected with the trail. If the items purchased had a gross margin of 20 percent then \$789.01 (\$157.80 / month) was generated in gross profit to merchants of the county. Is this worth the cost?

Trail Costs

Construction

The construction costs of the trail were originally set at about \$3 million. However, when the costs of the various "improvements" and other "unforeseen" items are accounted for it could easily be twice that.

Rain Damage

In addition, to the construction costs are the repair and maintenance costs. A railroad right-a-way is both another road and a dam running across several counties. The railroad spent considerable resources controlling brush and weeds, fixing fence and making sure the various passages under the tracks drained well (no small task!). These responsibilities and costs are becoming the state's.

During the first year, the Kansas Department of Wildlife and Parks (KDWP) has requested an additional \$137,500 to repair damage caused by the rain washing the crushed off the trail. When compared to the approximately 18 miles of the trail developed so far, it comes to whopping \$7,639 per mile.

Maintenance and Patrol

The cost of trail maintenance and patrol will include the salary, benefits, and training of the trail manager as well as secretary and other help. Added to this is the cost of the truck, motorized trail vehicle and bicycle and their maintenance, repair and fuel.

To these costs of building, maintaining, and patrolling the trail, there are other costs to the communities.

Losses to Adjacent Landowners

To those living along the trail there is the loss of their land as well as losses due to theft and vandalism. There is also loss of privacy.

Losses to Local Governments

To the local governments and schools dependant on property taxes there is the loss tax revenues.

Losses to Communities

To the community there is the loss of good will and community spirit as residents' rights are violated and land is stolen.

There is also the loss of entrepreneurial spirit as the government violates private property rights, a key ingredient to a capitalistic system.

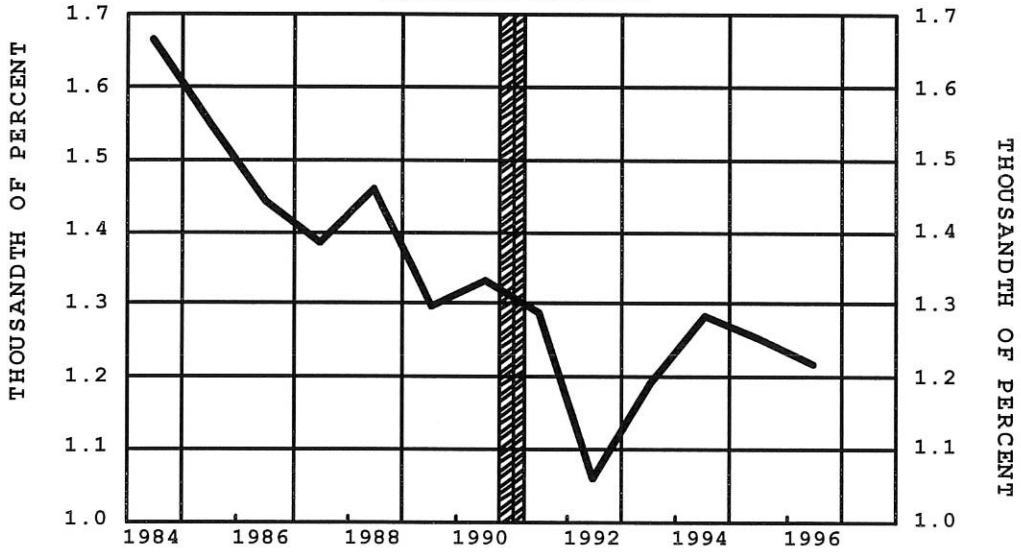
Losses to Merchants

To the merchants of Garnett there has been a loss of business. Loss as upset farmers, land owners and their friends change their purchasing patterns to avoid doing business with trail supporters.

Retail sales growth in Anderson County is no better than that of the whole nation. In fact, Anderson County's share of the total retail sales in the U.S. actually declined in 1996 to below that of 1994 and 1995, putting it at the third lowest in 13 years.

ANDERSON COUNTY % U.S. RETAIL SALES

SEASONALLY ADJUSTED

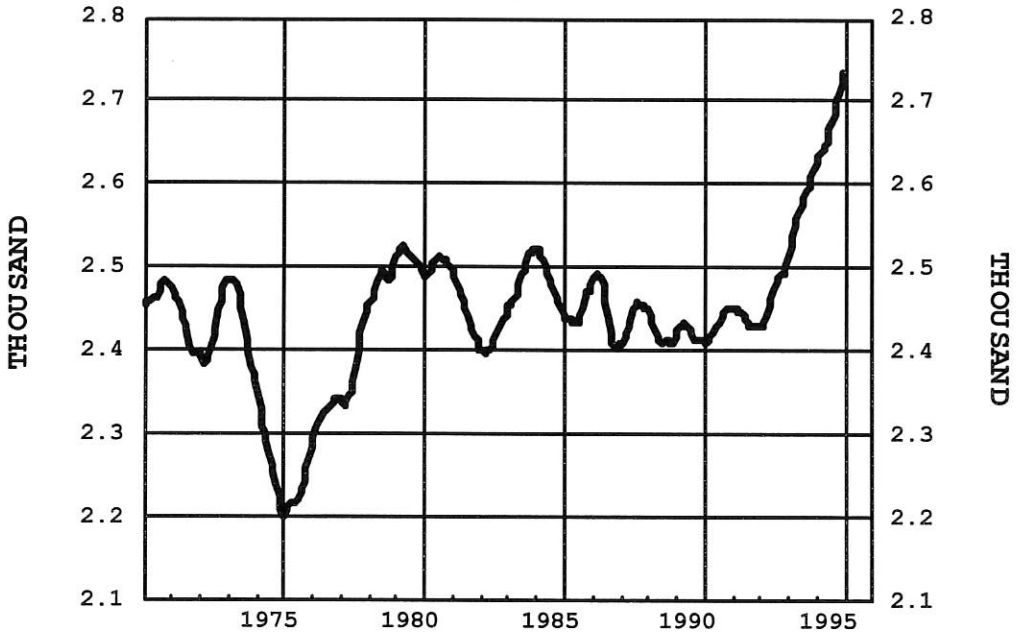


Note: Shaded areas represent periods of economic recessions

Contrast with Other Aspects of the Economy

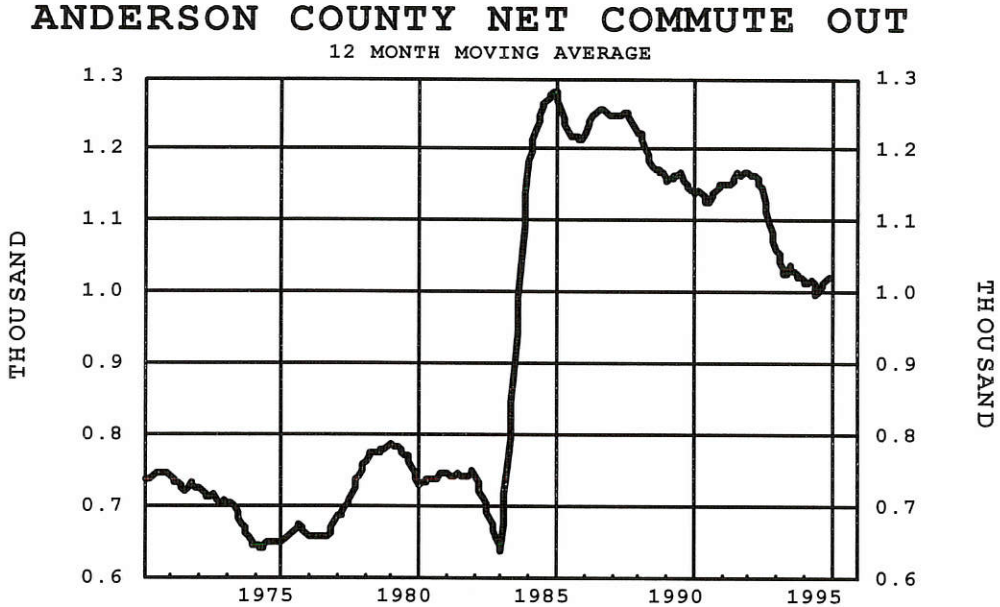
ANDERSON COUNTY JOBS

12 MONTH MOVING AVERAGE



The economy of Anderson county is growing. The number of jobs in Anderson County increased by about 15 percent. (Data on 1996 is still unavailable.)

The local economy has been growing such that the number of residents having to commute out of the county for work has declined over the last decade.



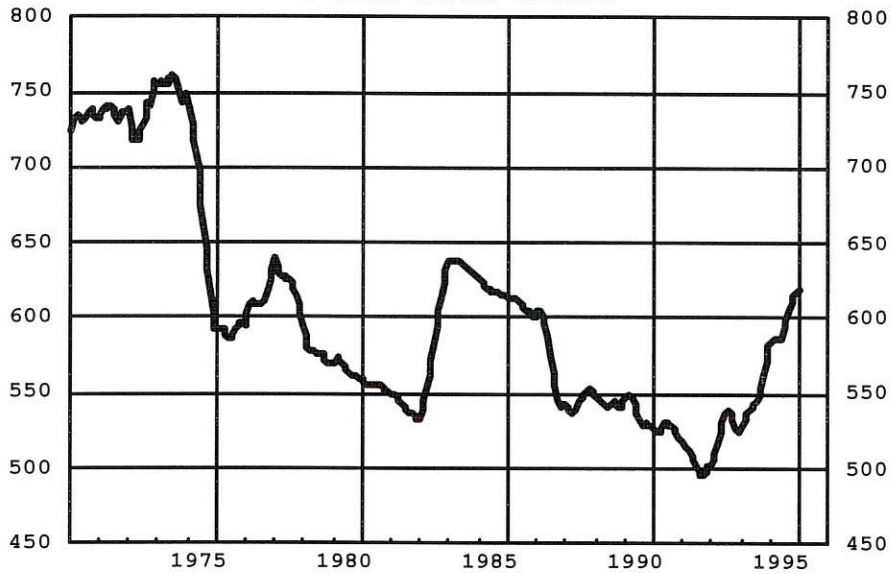
The unemployment rate in Anderson County is the lowest in 16 years.



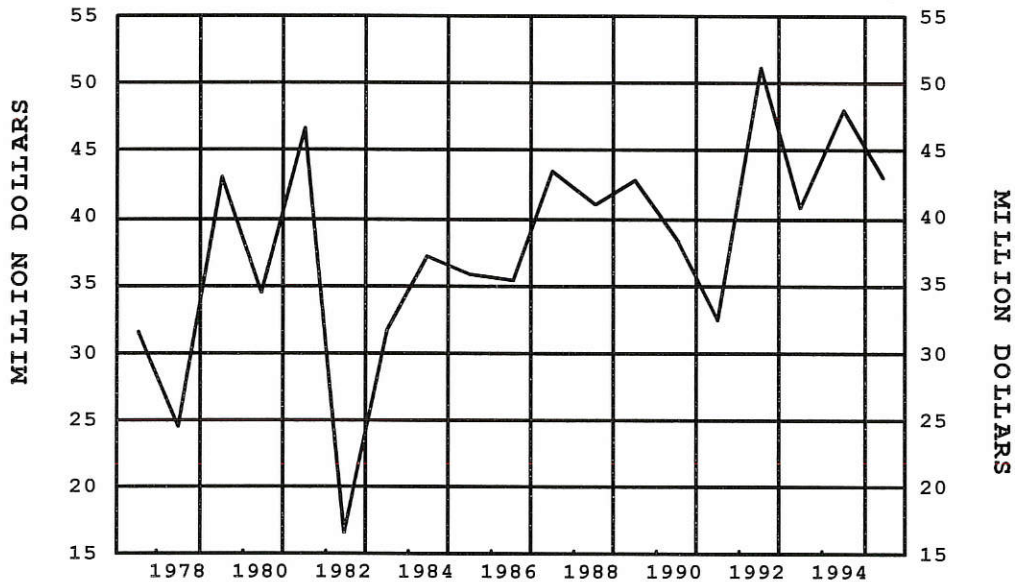
11-8

Anderson County's largest industry, farming has seen a 25 percent increase in jobs during 1993, 1994 and 1995 (data for 1996 is still unavailable). The number of jobs in farming in 1995 reached the highest level since 1984, over a decade ago. The growth of the farm economy is expected to continue. The Hudson Institute calls the next one to two decades **the greatest opportunity in farming history.**

ANDERSON COUNTY EMPLOYED IN FARMING
12 MONTH MOVING AVERAGE



VALUE OF AGRICULTURAL PRODUCTION



Agricultural production added an estimated \$50 million to Anderson County's economy last year, up from \$43 million the year before.

The loss to farmers in Anderson County due to excessive wildlife inventories is estimated to be \$7.5 million last year.

Net Economic Benefit of the Trail

From this analysis, it is plain that the net economic benefit of the trail is negative. Just the loss in sales to Garnett merchants would more than offset the mere gross margin of \$22,171.12 estimated from a Heritage Model Trail.

The cost of the trail manager and his support is several times the estimated gross margin generated by the trail.

The cost of repairing the rain damage will be six times the estimated gross margin.

Add to this the lost economic value by the adjacent landowners and it gets worse yet.

Net Social Value of the Trail

The net social value of this trail is also negative. The positive benefits for these communities is small and can be accomplished without taking private citizens' land.

However, the social costs are huge. There has been a huge rift torn through these communities. There has been much loss of good will and community spirit. In addition, it could result in a loss of entrepreneurial spirit that is so key to our economic and social system.

It is a mistake to think that these social costs will just go away by simply preceding forward. This has been the solution proposed for the last four years and the social costs have only intensified.

Conclusion

From an economic and social perspective, the Prairie Spirit Rail Trail is mistake. It provides no economic or social net benefit. In rural terms, "It is a dog that won't hunt."

Conclusions Supported by Other Economists

The conclusions as to the economic and social merit of the Prairie Spirit Rail Trail by this economist are supported by others. I have included letters from two Kansas economists who have reached conclusions similar to mine own.

The letter from Darrell Holaday of Advanced Market Concepts is in Appendix C.

The letter from Burt Tribble, consultant, of Nortonville, Kansas is in Appendix D.

Appendix A

Statement of Anderson County Commissioner Dudley Feurborn 1994

From the perspective of Anderson County government the Rail Trail poses some significant financial risks and dubious financial returns.

As yet, county government has not received any impact study from the proponents of the trail. Consequently, the environmental, societal and economical impacts are in question. It would be wise that such study be completed and analyzed by interested parties before any more tax dollars are spent.

However, it is hard to imagine the potential risks Anderson County government faces due to this trail. Since the trail will be an attractive nuisance increased staffing in the sheriff's department may be necessary.

Increased resources may be necessary for emergency medical transport and emergency staffing at the county hospital.

Road construction may be necessary so that the sheriff's department will be able to patrol areas around the trail.

Anderson County may need to provide additional services for which there may be no additional tax revenues generated. That could mean a tax increase for the current property owners. If so the tax burden would fall primarily on those outside Garnett, since 81 percent of taxable property is outside the city limits of Garnett.

Therefore, the meager resources of rural Anderson County may go to fund a playground for others.

Appendix B



Morgan Research Group, LTD.

108 East Fifth Avenue, P.O. Box 425, Garnett, Kansas 66032 • (913) 448-6910 • Fax (913) 448-6920

Making Good Economic Choices

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By Thomas H. Morgan
President

March 16, 1994

Have you wondered what everyone means by economic development? Why is it so controversial, and why do we seek it?

I am a professional economist and sometimes I wonder what everyone is talking about!

This confusion is unnecessary. Economics is a science that has been around for quite sometime. This topic is well researched. The knowledge and understanding already exists.

For Anderson County, I believe that economic development should mean sustainable, socially acceptable economic growth.

Anderson County needs economic growth. The economy in Anderson County has not kept up with that of the nation. For the local economy to grow, Anderson County needs highly profitable businesses with positive cash flows.

The combination of large profits and positive cash flow allows the businesses to survive in the short run and grow in the long term. These conditions combine to meet the goal of growth and sustainability. This has been lacking in many of the previous economic development ventures.

These goals can be quantified, therefore managed and predicted.

For example, business plans can be developed and analyzed. Economic development plans can be developed and analyzed. These plans should be critically analyzed before public time and public resources are committed to a project

Those in favor of a project should be required to do an economic impact study. This study should contain among other things a projected cash flow and an internal rate of return forecast.

The cash flow projection should be positive after a reasonable start-up period. The threshold internal rate of return should be at least 20 percent and maybe as high as 30 percent for riskier ventures.

With specific criterion and accountability, meaningful economic development can occur.

In addition to these financial criterion, a project should be evaluated on the basis of its social acceptability. Does this project fit the community? Does it violate local moral, ethical or religious views? Does it have unacceptable environmental impacts?

Does it raise concerns among the citizenry that have yet to be addressed in a satisfactory manner?

To attempt a project that has broad based opposition reduces its chances for success. And if the controversial project is successful, is it worth the community strife?

Lastly, economic development should be left to the private sector as much as possible. Public officials should act as cheerleaders, coaches and facilitators.

They should not attempt to jump in front of every project that comes along in attempt to take credit. These self-promotional activities contribute to good projects being lost and marginal projects being won.

Both the public and private sector should create an atmosphere where the entrepreneurs of the community will create successful businesses.

Public officials should be good stewards of the public funds they disperse. They should keep tax rates as low as possible so as to keep the community competitive and attractive to business.

Taxpayers should provide the necessary infrastructure so that resident business will prosper and other business will want to locate here. This includes roads, recreation facilities, schools, communication facilities, and more.

Additionally, I believe that economic development in Anderson County should be broad based and consistent with the industries already present. It should pursue enterprises that leverage existing businesses and resources.

Economic development in Anderson County should lead to a better standard of living for its residents. Not only is there a need for more jobs, but also jobs that pay a higher wage.

Finally, it should pursue businesses that will provide jobs for our present work force, and also for the future work force. Employment for those young men and women who are still in Anderson County's excellent schools and the state's universities. This will allow all of us to stay closer to our families and friends.

In spite of the worsened economic situation in area rural communities, I believe that economic growth is a realistic, attainable goal for rural communities. Provided, this community uses economic science and sound business practices in making private and public choices.

Appendix C

ADVANCED MARKET CONCEPTS

6075 Flush Rd., St. George, KS 66535

February 21, 1997

Tom Morgan
Morgan Research

Dear Tom:

I wanted to sent you this note in order to make a couple of points regarding the entire Rails to Trails Issue in the State of Kansas. Feel free to consider this when developing your testimony.

The primary point regarding this issue is deep rooted in Economics of Property Rights. Property rights are not a political issue, but a fundamental to the development of a prosperous economy. Studying the history of the land that is being used for Rails to Trails, it is quickly determined that Rails to Trails should be considered a "takings" and then evaluated from that perspective.

Property "takings" is purely an economic issue and that is why the Rails to Trails should come under close economic scrutiny.

Proponents will tout these trails as an economic "shot in the arm" for the region in which they are contained. I certainly question this assumption and feel that more in-depth study is required to accurately reflect the economic impact.

Most proponents of rails to trails have not considered the following:

The decrease in the value of the asset (land) in which the trail is adjacent.

The large amount of public capital that is utilized for a small number of people.

What personal utility is being maximized with public capital?

Is there any data to indicate that there is a significant multiplier effect in the communities that have opened these trails?

Tom, these are a few thoughts in a short amount of time. I certainly feel that sufficient analysis has not been done to satisfy the public takings of private land, which is what I feel is the fundamental issue.

Darrell Holaday
Advanced Market Concepts

11-15

Appendix D

Burt Tribble

Pork Producer, Consultant

15789 202 St Nortonville, Ks 66060

Voice: 913-886-8051 Fax: 913-886-6398

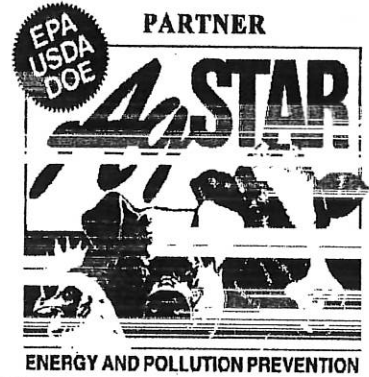
EMail: btribble@ix.netcom.com

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BioGas Feasibility

Specializing in the Economic Evaluation of Swine Projects



To: Orville Cole
Time: 10:33:20
Pages (including cover): 3

Date: 2/27/97

Orville,

For your information.

Regards,

Burt

Senator Vidricksen --

I spoke with your office today and later sent this note to Rep Allen re Rail/Trails.

Representative Allen --

Here are some (unrefined) thoughts on the issue of Rail/Trails which I would like to share. I am not involved with either side of a current conflict. These are simply ideas on what I think might be palatable to both sides in order to reach a reasonable compromise. This does not have to be a shouting match between the two sides, but it will be unless a center ground can be reached.

Basic Assumptions:

1. Adjacent landowners ARE the rightful owners of the abandoned RR property.
2. Trails on the right-of-way can be valuable additions to public accommodations in some (but not all) cases, especially where there is historic value, scenic terrain and public access.
3. In most cases to convert ROW land back to agricultural purposes would cost more than the land is worth.
4. Adjacent property owners must be protected from trespass and damages.
5. What RRs have done with abandoned right-of-way has been mostly a SHAM -- that cannot be denied.
6. Trails will not have a major economic impact on surrounding areas, in most cases.
7. Once rights-of-way are converted to agricultural land, they will never be recovered.

With that basis, here is a framework which could be manipulated to make both sides happy and reach that middle ground.

1. Acknowledge that the land under the trail belongs to the adjacent landowner.
2. Pay that landowner for the use of his property.
 - annual lease payment per acre, much like CRP, for perpetual lease, or
 - one time payment for a permanent easement.
 - provide the opportunity to "forgive" the lease or easement payment, you might be surprised how many will do so if the other conditions are met.
3. Protect against trespass of marauding trail-goers
 - bonded against property damage (insurance, or ??)
 - fenced probably, but maybe not
4. Place placards (or something, perhaps labeled benches) along the trail identify the adjacent property owners, and thank them for the use of their

property. (This is IMPORTANT!!)

5. If the trail is ever abandoned, then the lease or easement is broken -- use once again returns to property owners.
6. "Trail Authority" (as established) has an advisory board composed of both public and landowner interests.
7. Provide for the upkeep of the trail, and if that cannot be done the trail is abandoned.

Some numbers:

A thirty mile trail at 14 acres per mile and \$60 per acre rental is \$25,000 per year for lease payment.

To purchase a permanent easement at \$1,000 per acre is \$420,000.

Both are small compared to the initial development and annual maintenance costs of the trail.

Concluding thoughts

1. Unless the property is acknowledged as belonging to the adjoining property owners, this issue will NEVER be anything but divisive. If the State thinks it can confiscate (steal?) the land and make it into a positive thing -- forget it, and be prepared for perpetual conflict.
2. It doesn't have to be that way. Rail/Trails can be an asset for the public benefit is handled properly.
3. Both sides of the issue must be happy (or at least satisfied). That really is not impossible, in most cases, if private property rights are preserved while land is used for public purposes. One side cannot benefit at the expense of the other. BOTH sides MUST show a benefit.
4. Compromise is a good thing.
5. A program such as this here in Kansas could become a model for other states.

I would be happy to discuss these ideas with you if you would like. I have nothing to gain from this issue, I just know can be a peaceful solution to this issue if we want there to be.

Regards,

Burt Tribble

Nortonville, Ks
913-886-8051

ORVILLE J. COLE

ATTORNEY AT LAW
P.O. Box 351
GARNETT, KS 66032
(913) 448-3477

January 31, 1997

To Governor Graves & Members Of The Kansas Legislature:

Who owns the railroad right-of-ways? This question is the subject of much confusion, particularly among rail-trail supporters. Yet, the law in Kansas is very clear. The present owner of the land from which the right-of-way was originally carved is the sole owner. The railroad, regardless of how it originally acquired the right-of-way, owns nothing except the privilege of maintaining its track across land owned by someone else.

Our Kansas Supreme Court has ruled on this issue numerous times. The following is a statement from its ruling in the case of Harvest Queen Mill & Elevator Co. v. Sanders, 189 Kan. 536. "We have held that when land is devoted to railroad purposes it is immaterial whether the railway company acquired it by virtue of an easement, by condemnation, right-of-way deed, or other conveyance. If or when it ceases to be used for railway purposes, the land concerned returns to its prior status as an integral part of the freehold to which it belonged prior to its subjection to use for railway purposes. This court has uniformly held that railroads do not own fee titles to narrow strips taken as right-of-way, regardless of whether they are taken by condemnation or right-of-way deed."

Our Kansas statutory law contained in KSA 66-525(f) reads as follows: "Any conveyance by any railroad company of any actual or purported right, title or interest in property acquired in strips for right-of-way to any party other than the owner of the servient estate shall be null and void,...."

So, where does this leave the rail-trails? The railroads have nothing to convey once they cease operations. The quit-claim deeds they have executed purporting to convey some interest are void under Kansas law. Our Federal Congress has attempted to delay reversion to the landowners by passing the rail-bank act. Courts have held that these right-of-ways can be moth-balled: but, if they become recreational trails, landowners 5th amendment rights are violated and they must be paid for their land and damages.

Until this chaotic mess is unraveled, our state legislature should block the spending of further tax dollars, which along with the millions already spent may all go down the drain.

Orville J. Cole



House Environment
3-18-97
ATTACHMENT 12

**Statement of Orville J.
Cole, Attorney At Law,
Supporting Moratoriums on Further
Development of the Prairie Spirit
rail-trail and its inclusion into the
Kansas State Park System.**

**Confiscation of Land in Violation of
Constitutional Rights.**

- I am Orville J. Cole from Garnett, Kansas, where I practiced law for 40 years. I own an interest in land which is being confiscated for the Prairie Spirit rail-trail. I oppose the development of this trail for the reason that it violates my private property rights, as protected by the 5th amendment to the United States Constitution, and that it squanders millions of tax dollars to provide recreation for a few hikers and bicycle riders, depriving landowners of their right to privacy and keeping Farms permanently divided.

How Railroads Acquired Right-of-Ways.

- When railroad right-of-ways were Originally acquired between

and Iola, Kansas, around 1870, eastern Kansas was already settled, so the right-of-ways were acquired from private landowners by either buying the right-of-way and obtaining a deed or by condemning the right-of-way for railroad purposes.

Kansas Law on Right-of-Way Reversion when Railroad Abandons Use of Right-of-Way.

- The law in Kansas for 100 years has been that regardless of how the railroad obtained its right-of-way, the railroad had nothing but an easement for railway operation. This terminated when the railroad ceased to operate and the right-of-way reverted to the land from which it was originally taken (189 Kan. 536). The legislature of this state went even further to protect the landowner, passing KSA 65-525 (f). This law provided that a deed from a railroad conveying any part of the right-of-way to anyone but the owner of the land from which the right-of-way was originally taken is VOID. It has long been the declared public policy of this State that strips of land, usually 100' wide, across the countryside will not be allowed to be deeded to outsiders.

Rail-Bank Act.

- In the 1970's, when railroads started abandoning many branch lines, our United States Congress passed the rail-bank act. This was a fiction which held that technically the railroad was not officially abandoned even though the ties and rails were removed. The stated justification for this was that if we got into war the railroads might have to be rebuilt for defense purposes.

actical effect of this legislation was to let the railroads v away from billions of dollars in clean-up costs and to shift this burden to the taxpayer. The railroads were even excused from complying with environmental regulations after 100 years of pollution.

Rail-Trail Act.

- In 1983, Congress passed the Rail-Trail Act. It was one paragraph among hundreds of others, never debated, and only a few understood the far-reaching implications of it. The result has been one of the biggest land grabs in history, the squandering of millions of taxpayer dollars paid as gasoline and diesel-fuel tax (ISTEA), and the denial of landowner's constitutional rights under the 5th Amendment. Without any notice, landowners in Kansas found the federal government had confiscated their private property, aided and abetted by two Kansas governors and two sessions of the Kansas legislature.

Constitutional Issues in First and Second Preseault Cases.

- The supporters of rail-trails claim the United States Supreme Court in the first Preseault case has legitimized this legalized thievery of private property rights. This litigation has been going on for 11 years and is not yet settled. The first Preseault case that went to the Supreme Court held that Congress had the power under the commerce clause of the Constitution to rail-bank or moth-ball abandoned railroad right-of-ways and that

compensation might be payable under the "Tucker Act." Landowner compensation was not determined in this first case. In the second Preseault case in a decision by the United States Court of Appeals, one step under the Supreme Court, that Court holds that while Congress can mothball the right-of-ways for future use for railroad purposes, it cannot change the use of right-of-ways taken for railroads into bicycle and recreation trails without paying the landowners for the land taken. This change of purpose is construed to be a taking of private property for a public use and must be paid for under the 5th Amendment.

Which Government Pays the Landowner for the Land Taken?

- In the second Preseault case the State of Vermont, as a rail-trail manager, argued that compensation to landowners must come from the federal government. The federal government argued that compensation to the landowners should be paid by the State of Vermont, (in our case the Kansas Department of Wildlife & Parks). The Court held that the primary responsibility was with the federal government. If this ruling stands an appeal to the Supreme Court, then each landowner would have to hire lawyers in Washington, D.C. to file their claims in the Federal Court of Claims. Few could stand this expense so the practical effect is government confiscation of private land in violation of a constitutionally guaranteed right. I refuse to believe that members of this legislature will knowingly condone or participate in an act this unjust to the citizens they represent.

Reconsideration by Congress of Rail-Trail Confiscation.

- **Outrage across the nation by property rights groups and landowners against this confiscation of private property is causing Congress to hold hearings to reconsider the rail-bank and rail-trail acts. Hearings that started last fall will begin again this April. Numerous court challenges are working their way towards the Supreme Court. At this time no one knows what the final outcome of the congressional hearings or court challenges will be, or who will get stuck with the bill. The cost will be great. Nationwide over 3,100 miles of rail-trails have been programmed involving over 63,000 private property owners.**

Present Status of Prairie Spirit rail-trail.

- **Over two million tax dollars have already been spent on a trail that the state has no title to and will never have unless the State either condemns the land or makes a deal with each landowner. Estimated cost of policing the trail is \$8,000 per month. Estimated income to the trail from permits sold is \$400 per month. Taxpayers make up the difference. While the federal government may postpone the land reversion to the landowners, it cannot create title and vest it in the State. Kansas Department of Wildlife and Parks has a quit claim deed from a railroad, which under Kansas law had nothing to convey. The deed is declared VOID by Kansas law. Even if the courts finally determine that the federal government is responsible to pay the landowners, this will require a huge appropriation by Congress. I see no mood in Congress to**

ler huge expenditures to pay for bicycle trails and until someone pays, the State and its agent, Wildlife and Parks, are trespassers on private property.

**Sound Judgment Requires a Moratorium Until
These Matters Are Resolved.**

- This whole rail-trail scheme needs to be put on the back burner until some very serious issues are determined. The lure of federal funds should not override the sound judgment and fairness of our legislators and governor. Both private property rights and constitutional rights are involved and these issues are not going to be settled overnight. Until these issues are settled there should be no further expenditure of tax dollars or violation of private property rights, by any level of government.
- Including a rail-trail in the State Park System, when the State has no title to it, further complicates an already confused situation. The only purpose at this stage is to get the State so committed to the trail, if it is included as a park, that the state will have to eventually condemn the entire 50 miles to protect its investment. Wildlife and Parks has had great difficulty keeping it's finances straight and because of misapplication of federal funds has cost Kansas Taxpayers an estimated 6 million dollars. If they can't manage the parks they already have, they should not be burdened with another one.

Orville J. Cole

Merry Christmas **TAXPAYERS**

Thank you for generously paying your taxes
to provide \$84,000.00 per mile for our
rail trail.



Ready To Hit The Trail

(Would you want this bunch in your backyard?)

**TRAILGATE FOOTSIE &
BICYCLE CLUB**

Mary Johnson,

to

Leavenworth, Lawrence
and Galveston
Railroad Company
and their
successors.

DEED

Dated July 16, 1869
Recorded January 27, 1870
Book "M" page 251
Consideration \$193.00

Conveys the right of way and the land necessary therefor not exceeding 100 feet in width, where the said Railroad is now located through the N.E.1/4 of Sec. 23, Twp. 18, Rng. 19, Franklin County, Kansas. Said right of way over the land therefor being by me conveyed to said Railroad Company for the purpose of said road only and to revert to the grantor their heirs and assigns in the event of said line of road not being located on said lands.

Ack. July 16, 1869 before J.C. Richmond,
Justice of the Peace, (Seal) Franklin
County, Kansas.

The undersigned hereby certifies that this is a true and exact copy of the ABSTRACTED Deed recorded in Book "M" at page 251, in the office of the Register of Deeds of Franklin County, Kansas.

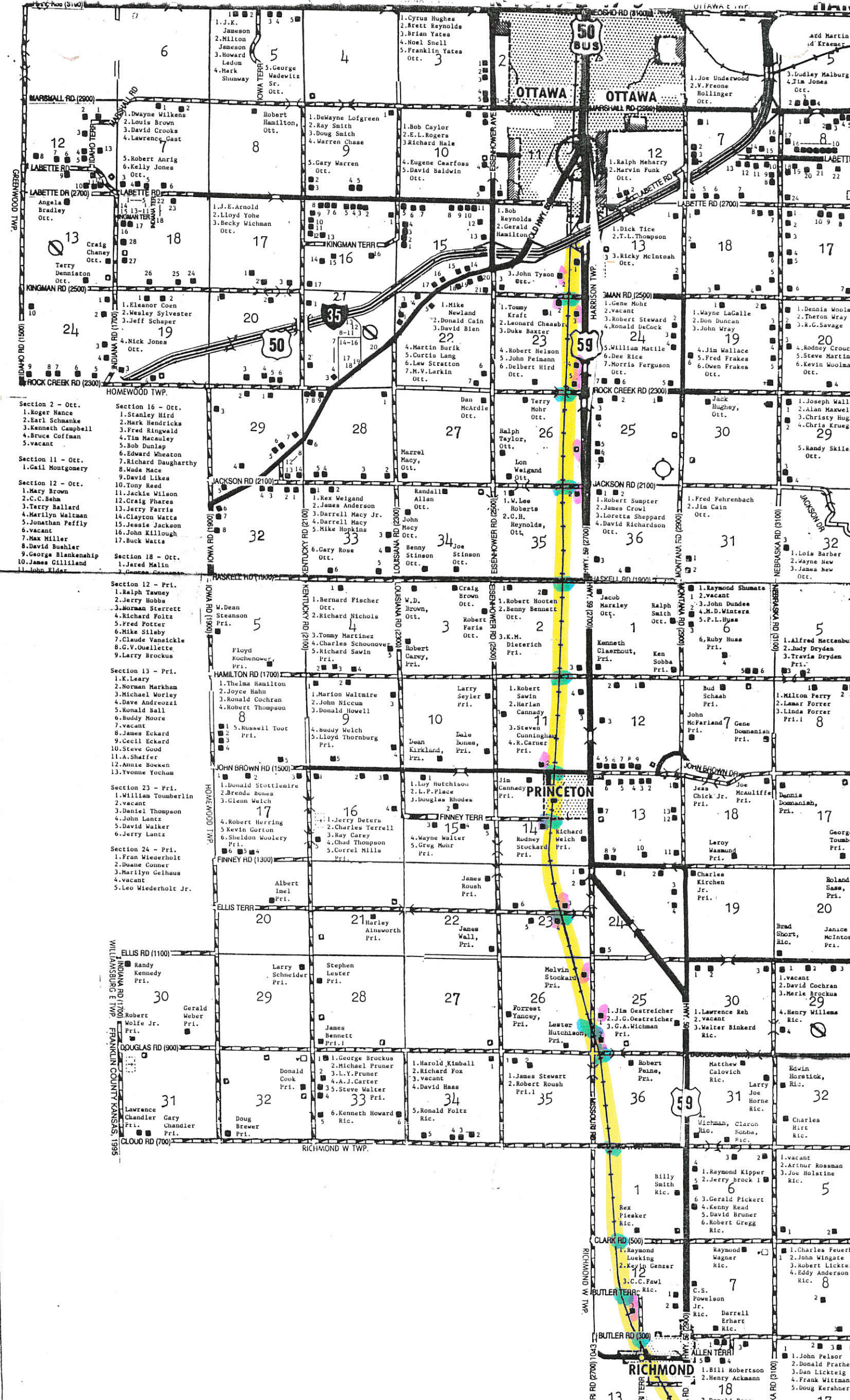
Dated at Ottawa, Kansas, this 7th day of April, 1995.

Haley Abstract & Title Co, Inc.

E. E. Haley
Abstracter

William G. Lumbalini
1252 N. 59
Pawnee Kas 66078

House Environment
3-18-97
Attachment 13



Section 2 - Ott.
 1. Roger Nance
 2. Earl Schmanke
 3. Kenneth Campbell
 4. Bruce Coffman
 5. vacant

Section 11 - Ott.
 1. Call Montgomery

Section 12 - Ott.
 1. Max Brown
 2. C.C. Behm
 3. Terry Ballard
 4. Marilyn Waltman
 5. Jonathan Peffly
 6. vacant
 7. Max Miller
 8. David Buehler
 9. George Blankenship
 10. James Gilliland
 11. John Elder

Section 16 - Ott.
 1. Stanley Hird
 2. Mark Hendricks
 3. Fred Ringwald
 4. Tim Macaulay
 5. Bob Dunlap
 6. Edward Wheaton
 7. Richard Daugherty
 8. Wade Mace
 9. David Likes
 10. Tony Reed
 11. Jackie Wilson
 12. Craig Phares
 13. Jerry Ferris
 14. Clayton Watts
 15. Jessie Jackson
 16. John Killough
 17. Buck Watts

Section 18 - Ott.
 1. Jared Hallin
 2. George Green

Section 12 - Pri.
 1. Ralph Tawney
 2. Jerry Hobbs
 3. Norma Stretrett
 4. Richard Foltz
 5. Fred Potter
 6. Mike Sitsby
 7. Claude Vansickle
 8. V. Ouellette
 9. Larry Brockus

Section 13 - Pri.
 1. K. Leary
 2. Norma Markham
 3. Michael Worley
 4. Dave Andreozzi
 5. Ronald Ball
 6. Buddy Moore
 7. vacant
 8. James Eckard
 9. Cecil Eckard
 10. Steve Good
 11. A. Shafer
 12. Annie Boeken
 13. Yvonne Yocham

Section 23 - Pri.
 1. William Tomberlin
 2. vacant
 3. Daniel Thompson
 4. John Lantz
 5. David Walker
 6. Jerry Lantz

Section 24 - Pri.
 1. Fran Wiederholt
 2. Duane Conner
 3. Marilyn Gulhaus
 4. vacant
 5. Leo Wiederholt Jr.

Section 30
 Randy Kennedy Pri.
 Robert Wolfe Jr. Pri.
 Lawrence Chandler Pri.
 Gary Chandler Pri.

Section 31
 Gerald Weber Pri.
 Donald Cook Pri.
 Doug Brewer Pri.

Section 5
 1. J.K. Jameson
 2. Milton Jameson
 3. Howard Ledom
 4. Mark Shumway
 5. George Wadewitz Sr. Ott.

Section 8
 Robert Hamilton, Ott.

Section 9
 1. DeWayne Lofgreen
 2. Ray Smith
 3. Doug Smith
 4. Warren Chase
 5. Gary Warren Ott.

Section 10
 1. Bob Taylor
 2. E.L. Rogers
 3. Richard Hale
 4. Eugene Cearfoss
 5. David Baldwin Ott.

Section 11
 1. J.E. Arnold
 2. Lloyd Yohe
 3. Becky Wichman Ott.

Section 15
 1. Mike Newland
 2. Donald Cain
 3. David Bien
 4. Martin Burik
 5. Curtis Lang
 6. Lew Stratton
 7. M.V. Larkin Ott.

Section 16
 Dan McArdle Ott.

Section 17
 Marrel Macy, Ott.

Section 19
 1. Rex Weigand
 2. James Anderson
 3. Darrell Macy Jr.
 4. Darrell Macy
 5. Mike Hopkins

Section 20
 1. W. Dean Steanson Pri.
 2. Floyd Kochenower, Pri.

Section 21
 1. Bernard Fischer
 2. Richard Nichols
 3. Tommy Martinez
 4. Charles Schoonover
 5. Richard Sawin Pri.

Section 22
 1. Marion Waltmire
 2. John Niccum
 3. Donald Howell
 4. Buddy Welch
 5. Lloyd Thornburg Pri.

Section 23
 1. Roy Hutchison
 2. L.P. Place
 3. Douglas Rhodes
 4. Jerry Deters
 5. Charles Terrill
 6. Ray Carey
 7. Chad Thompson
 8. Correl Mills Pri.

Section 24
 1. George Brockus
 2. Michael Pruner
 3. L.Y. Pruner
 4. A.J. Carter
 5. Steve Walter
 6. Kenneth Howard Ric.

Section 27
 Randall Allan Ott.
 John Macy Ott.
 Benny Stinson Ott.
 Joe Stinson Ott.

Section 28
 1. Robert Hooten
 2. Benny Bennett Ott.
 3. K.M. Dieterich Pri.

Section 29
 Robert Farris Ott.

Section 30
 1. Robert Savin
 2. Harlan Cannady
 3. Steven Cunningham
 4. R. Garner Pri.

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 1. Cyrus Hughes
 2. Brett Reynolds
 3. Brian Yates
 4. Noel Snell
 5. Franklin Yates Ott.

Section 4
 1. DeWayne Lofgreen
 2. Ray Smith
 3. Doug Smith
 4. Warren Chase
 5. Gary Warren Ott.

Section 6
 1. Ralph Meharry
 2. Marvin Funk Ott.

Section 7
 1. Dick Tice
 2. T.L. Thompson
 3. Ricky McIntosh Ott.

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 2. vacant
 3. Robert Steward
 4. Ronald DeCock
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 6. Dee Rice
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 3. K.M. Dieterich Pri.

Section 22
 1. Robert Savin
 2. Harlan Cannady
 3. Steven Cunningham
 4. R. Garner Pri.

Section 23
 1. Robert Hooten
 2. Benny Bennett Ott.
 3. K.M. Dieterich Pri.

Section 24
 1. Alfred Hattenburg
 2. Judy Brydan
 3. Travis Bryden Pri.
 4. Milton Perry
 5. Lamar Forrer
 6. Linda Forrer Pri.
 7. Dennis Doanish, Pri.
 8. George Tomberlin Pri.

Section 25
 1. Robert Hooten
 2. Benny Bennett Ott.
 3. K.M. Dieterich Pri.

Section 26
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Section 29
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Section 30
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 2. Harlan Cannady
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Section 31
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 3. K.M. Dieterich Pri.

Section 32
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Section 36
 1. Alfred Hattenburg
 2. Judy Brydan
 3. Travis Bryden Pri.
 4

March 29, 1995

We, the undersigned, landowners along the old Santa Fe railroad right-of-way between Ottawa and Richmond, Kansas, claim our reversionary rights in said right-of-way. We do not recognize any claim of the Kansas Department of Wildlife and Parks to such right-of-way. Our position concerning our private property is the same as that expressed by Orville J. Cole in the attached copy of a letter written by him on March 27, 1995.

Name

Address

Dennis Woolman 2526 Hwy 59.

Melrose Fowl 352 Missouri Terran

Charles J. Cannady 2570 John Brown

Jessie Long 2644 Ellis Terrace Princeton Ks

Robert Penn 2706 Doug Rd Princeton, Ks.

Thomas & Carolyn 519 King St Princeton, Kans.

Robert Kelle 2332 Highway 59 Ottawa Kansas

Thomas Kraft 2610 Kingman road Ottawa Kans.

Ken Claiborn 1723 Hwy 59 Princeton, Ks 66078

Melvin Storchard 1066 Missouri Rd Princeton, Ks 66078

Ambror Scheckel 2211 Allen Terr Richmond, Ks 66080

Carl Sobba R1 B48 Gaenett, Ks. 66032

Chryssalbe 2180 Hwy 59 Ottawa, Ks. 66067

William George Lumberlin 1252 Hwy 59 Princeton Ks

May 16, 1995

"1. Abandoned Santa Fe Railroad Right-Of-Way Through Princeton, Kansas"

Our Position Concerning This Property;

We, the undersigned, governing body of Princeton, Kansas claim our reversionary rights as elected officials, do object to a State Linear Park dividing our home town in half. Our position is the same as that expressed by Orville J. Cole in the attached copy of a letter written by him on March 27, 1995. If by what is called, Rail Bank "is law" then so be it, but we must object to a Linear Park through our city limits.

Name

Address

Position

The vote to sign this petition, by Princeton City Council, passed 3-2.

Lyle B. Garton Mayor
6-5-95

Our family owns and my husband and I and two of our sons and their families live on a on a 144 acre farm that the Prairie Spirit Rail Trail cuts in half.

We are approximately 1 mile from the Richmond trail head. Children play in the water there; they turn the faucets on and have a good time; and, of course, with no supervision. They do what they want. Who cares how much the water is costing? Who cares what the children are doing? No one seems to care enough to stop them.

They often walk down the trail to our farm. They play and play and play more. We're talking about children 6 to 11 or 12 years of age. Most children are adventuresome. From my kitchen window I've often watched them play on the trail in our backyard. The don't ever seem to be in a hurry to leave and move on down or back up the trail.

The trail may be several hundred feet east but it is still in our back yard. As I watch from my window I become very concerned - for their welfare and for our future, if one of them became injured on our property.

What if the children become bored on the trail? What if they go under or over our fence to where the cows and bull are grazing? The pasture is adjacent to the trail. Cows and bulls are no play toys but do the town kids know this? No.

What if after they are in our pasture they go to the big pond? The pond is only a few feet from the trail. Think of what danger lurks around a farm pond.

What if they go to the deeper pond that is so very near the trail? It's over 20 feet deep. What if a snake bites one of them? What if they come across a rabid skunk?

What if? We know we are liable and no proponent seems to care.

The south end of the tunnel that goes under 59 highway ends on the north side of our farm. When it was a viaduct, teenagers gathered there. They sprayed all kinds of wordings, pictures and signs on the concrete - occultic, satanic, pornographic, etc.

It hurt my eyes and my heart every time I drove by. How do you explain to your grandchildren when they ask, "Grandma, what is that? or that? What does that mean?"

The tunnel provides secrecy. What potential is there for teenagers to express themselves now? At the end of the tunnel begins one of our ponds. The trail, the tunnel and the pond make for a good plot line for adventure. We hope and pray everyone will be safe.

*House Environment
3-18-97
Attachment 14*

The west side of our farm borders Highway 59. You ought to see the litter tossed from cars. We all know people bring litter. What if one of our cattle chews and swallows litter. A cow from a dairy along Davis Road in Ottawa did that. The cow died and the farmer sued and won. We don't want to lose a cow and we sure don't want to sue anyone.

Who pays for the results of peoples' plights along the trail? At least as it stand now, we all know it will be the landowners.

There have been so many untruths spoken and propoganda spread concerning this trail. Our family and some of our friends have used the trail - from north of Welda to the Franklin county line, just as often or more often than most people.

We had a good time on it last spring. Summer brought so many bugs in the air that we needed face protection. Fall rains brought ridges, and in some cases, erosion to the trail. There is no way we can ride our bikes as we use to.

And now there has been money budgeted for flood problems. As I stand before my God, we have not had flood damage. We had rains. And, if the trail had been designed, we would not have lost tons of rock down the sides of the trail.

When I think about the trail I see millions of dollars lost and to be lost and then I think about we average Kansans who are having one heck of a time trying to make ends meet; trying to pay taxes that just keep going up and up. When are the people in power going to realize what is really happening to us out here and what our priorities should be.

I pray that God opens the eyes, ears, and hearts of those who have the power to change what is happening now, not only concerning the trail, but all of the corruption, lies and deceit spread across the land.

Respectfully,

Beth Sobba

Beth Sobba
Rt. 1, Box 111
Richmond, Kansas
Anderson County

Please ask us how we feel about the park manager & our experiences with him.

I want to mention the copperheads that lie across the trail after 8p.m.