

Approved: 4-1-99
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 18, 1999 in Room 423-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Bill Bider, Director, Bureau Waste Management, KDHE, Forbes 740, Topeka, KS 66620-0001
Representative Carl Holmes, District 125
Leslie Kaufman, Kansas Farm Bureau, 2627 KFB Plaza, Manhattan, KS 66502
Mike Beam, Kansas Livestock Association, 6031 SW 37th, Topeka, KS 66614
Howard Woodbury, 23200 S Stubbs Road, Quenemo, KS 66528
Kevin Jost, Citizens Assoc. of McPherson and Marion Counties, PO Box 203, Hillsboro, KS 67063
Kim Gulley, League of Municipalities, 300 SW 8th, Topeka, KS 66603
Rich Porter, RR 1 Box 64, Reading, KS 66868
Senator Robert Tyson, District 12
Delton Gilliland, Osage County Counselor, 112 E 7th, Lyndon, KS 66451
Orville Cole, PO Box 351, Garnett, KS 66032
Tracy Presnell, 1980 Palomino Trail, McPherson, KS 67460
Ron Klataske, KS Audubon Council, 813 Juniper Dr., Manhattan, KS 66502
Charles Benjamin, KS Natural Resource Council and KS Chapter Sierra Club, 935 S. Kansas Ave., Topeka, KS 66612
Kenneth W. McClintock, 130 W Main, Council Grove, KS 66846
Representative Shari Weber, District 68
Dale Crawford, 512 N Curtis, Olathe, KS 66061

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She reviewed the agenda for next week, the meeting of February 23, the committee will be having possible action on bills previously heard. She welcomed visiting legislators to today's meeting, Rep. Carl Holmes, Rep. Bill Feuerborn, Rep. Shari Weber and Senator Robert Tyson. She opened **HB2480** for discussion and possible action:

HB2480: An act concerning hunting of deer; relating to certain fees; providing for controlled deer shoots in certain areas; amending K.S.A. 1998 Supp. 32-937 and 32-988 and repealing the existing sections.

Chairperson Freeborn recognized Rep. Sharon Schwartz. She thanked the Department of Wildlife and Parks for working with her on drafting **Substitute for HB2480**. She distributed a brochure on Deer Damage, landowners options for addressing the problem, along with a section of the rules and regulations concerning Wildlife Damage Control. (See attachment 1)

Rep. Sharon Schwartz made a motion to introduce **Substitute for HB2480**. Rep. Becky Hutchins seconded the motion. Motion withdrawn.

Secretary Steve Williams, Dept. Wildlife and Parks, addressed the **Substitute for HB2480** and explained the new language. (See attachment 2)

Rep. Sharon Schwartz made a motion to adopt **Substitute for HB2480**, as amended by Secretary Steve Williams, to read "such rules and regulations shall not require an applicant for a big game control permit to

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control deer by means other than efforts to reduce deer numbers through the firearms deer season". Rep. Becky Hutchins seconded the motion. Motion carried.

Rep. Sharon Schwartz made a motion to amend **Substitute for HB2480** to include new section 3 as presented. (See attachment 2) Rep. Ted Powers seconded the motion. Motion carried.

Rep. Sharon Schwartz made a motion to amend in the original **HB2480**, page 2, line 37 and 38, strike the word "and" the additional payment of the permit transfer fee; page 5, line 2, strike "transfer fee minimum \$10.00 and maximum \$40.00"; page 6, technical cleanups, lines 31, 32, 33, 34, and 35 to be consistent with the original **HB2480**. Rep. Laura McClure seconded the motion. Motion carried.

Rep. Becky Hutchins made a motion **Substitute for HB2480** be passed as amended. Rep. Lisa Benlon seconded the motion. Motion carried.

Chairperson opened **HB2404** for discussion and possible action:

HB2404: **An act concerning water appropriation rights; relating to abandonment; amending K.S.A. 82a-718 and repealing the existing section.**

The Chairperson welcomed David Pope, Chief Engineer, Director, Water Resources Division, Department of Agriculture, who was in attendance. He commented on what he feels may come about with the changes in the bill.

Mary Torrence, Revisor of Statutes, explained changes in the balloon. (See attachment 3) It was noted that additional amendments were needed.

Rep. Dan Johnson made a motion to adopt the bill as amended. Rep. Laura McClure seconded the motion. Motion carried.

Rep. Dan Johnson made a motion to pass the bill as amended. Rep. Sharon Schwartz seconded the motion. Motion carried.

The Chairperson opened **HB2124** for discussion and possible action:

HB2124: **An act concerning solid waste; relating to certain accumulations of used or discarded materials; prohibiting certain acts and prescribing penalties for violations; amending K.S.A. 1998 Supp. 65-3402, 65-3406 and 65-3409 and repealing the existing sections.**

Rep. Laura McClure explained changes in proposed **Substitute for HB2124**.

Rep. Laura McClure moved to adopt **Substitute for HB2124** as written. Rep. Tom Sloan seconded the motion. Motion carried.

Bill Bider, Director, Bureau Waste Management, KDHE, answered questions concerning the proposed bill.

Rep. McClure made a motion to adopt an amendment to the substitute bill.(See attachment 4) Rep. Dennis McKinney seconded the motion. Action deferred until later.

Chairperson Freeborn opened the hearing on **HB2264**:

HB2264: **An act concerning hazardous waste; amending K.S.A. 65-3430 and K.S.A. 1998 Supp. 65-3441 and repealing the existing sections.**

Raney Gilliland, Legislative Research Department, explained the bill.

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Bill Bider, Director, Bureau Waste Management, KDHE, appeared in support of the bill, (See attachment 5) which addresses the handling of hazardous waste while in transport. This bill proposes two changes to the hazardous waste statutes. Although the department is supportive of the goals of the bill, they offered amendments which clarify the applicability of the new provisions. (See attachment 6)

Rep. Carl Holmes was welcomed to the committee. He appeared in support of the bill and discussed important changes in the current hazardous waste law contained in the bill. He feels the change in current law is needed to stop a dangerous practice that has occurred in several areas of the state. (See attachment 7) Questions and discussion followed.

Edward Moses, Kansas Cement Council, addressed the committee. He supports the amendments provided by Bill Bider, KDHE and offered comments in support of the bill.

The Chairperson closed the hearing on **HB2264**. She opened the hearing on **HB2490**:

HB2490: An act relating to recreational trails; concerning certain duties of responsible parties; providing penalties for certain violations; amending K.S.A. 1998 Supp. 58-3212 and 58-3213 and repealing the existing sections.

Raney Gilliland, Legislative Research Department, explained the bill.

Leslie Kaufman, Kansas Farm Bureau was welcomed to the committee. She appeared in support of the bill and feels among other things this bill will clarify portions of the Kansas Recreational Trails Act, establish a recourse provision for fencing disputes, provide notice of proposed trail development through public hearings and enact an enforcement mechanism local governments and landowners can rely on. (See attachment 8)

Mike Beam, Executive Secretary, Cow-Calf/Stocker Division, appeared in support of the bill on behalf the Kansas Livestock Association. They believe this law is sound and has addressed most issues that have surfaced since it was passed three years ago. This bill, supported by KLA, is an attempt to clarify and enforce the concepts adopted in 1996. (See attachment 9)

Howard Woodbury, Landowner, Quenemo, KS, testified in support of the bill and believes the proposed amendment to the Kansas Recreational Trails Act contained in the bill clarifies existing language, places authority for bond and liability insurance amounts within jurisdiction of the county commission and provides a specific enforcement mechanism landowners and local government can turn to when a trail sponsor is not fulfilling the requirements of the Act. (See attachment 10) Additional comments. (See attachment 11)

Kevin Jost, Hillsboro, KS, appeared on behalf Citizens Association of McPherson and Marion Counties in support of the bill. This group, like other landowner groups has spent countless hours on research and actively pursuing enforcement and thousands of dollars in legal fees. They need some help on enforcing state laws, they believe this is not a private issue, but a state issue. (See attachment 12)

Kim Gulley appeared on behalf of the League of Kansas Municipalities and their 529 member cities. Although they did not support the original enactment of the current law which imposes state regulation of recreational trails, even when those trails are operated by local governments, believe that the changes proposed by this bill help to clarify the current law and make it more workable for all parties involved in the development of these trails. (See attachment 13)

Richard Porter, Reading, KS, appeared in support of the bill. He believes our Kansas Recreational Trails Act needs teeth to force the trail operators to make a good faith effort toward being a good neighbor. They need to turn their good intentions into good actions. (See attachment 14)

Senator Robert Tyson addressed the committee in support of the bill. He sponsored two bills with The Department of Wildlife and Parks on the Prairie Spirit Trail and believes this bill is the first rail-trail bill to

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come along since then. After giving the bill much thought he offered an amendment with four needed changes. (See attachment 15)

Delton Gilliland, Osage County Counselor, spoke in support of the bill. He provided an outline, Status of Rail Trail "responsible party" compliance; Effect of Rail Trail legislation on local government; Suggestions for improvement in enforcement power; and Problems with **HB2490**. (See attachment 16)

Clint Riley, Attorney, Kansas Department of Wildlife and Parks, appeared in a neutral position to the bill. The department understands this bill is not intended to impact the operation of the Prairie Spirit Trail, but rather to address responsibilities of privately run trails. The department is concerned that certain provisions of the bill, as drafted, may have a negative impact on the state's ability to operate the Prairie Spirit Trail and offered some concerns they recommend be addressed before the bill is recommended favorably by the committee. (See attachment 17)

Amelia McIntyre, Mission, Kansas, appeared in a neutral position to the bill. She was a participant in the drafting negotiations upon the original legislation that resulted in K.S.A. 58-3212 and 58-3213, that are now being sought to be amended and offered her testimony as a Kansas citizen. (See attachment 18)

Orville J. Cole, Attorney and landowner, appeared in opposition to the bill. He believes the railroads never owned the right-of-way strips and had only an easement that expired when they abandoned the right-of-ways for train travel. Because of acts of the U.S. Congress, these right-of-ways extending across Kansas for hundreds of miles, instead of reverting to the landowner, have been turned over to trail groups, many of whom have no assets or means to finance and operate a trail. He agrees with some of the new proposals in the bill but offered changes. (See attachment 19)

Tracy Presnell, McPherson County Rural Resident, testified in opposition to the bill and believes it intends to modify the Kansas Rail Trail Statute. Since he and about 35 of his close neighbors have been dealing with the "proposed" rail trail for nearly four years believes they have first hand knowledge of the statute up for modification. He offered an outlined proposal to the bill. (See attachment 20)

Ron Klatske, KS Audubon Counsel, Manhattan, KS, testified in opposition to the bill. He feels this bill was obviously designed to make it virtually impossible for private entities to develop rails-to-trails opportunities for Kansas residents, and it would diminish the likelihood that state agencies or local units of government would be able to launch additional trail developments. (See attachment 21)

Charles Benjamin, Kansas Natural Resource Council and Kansas Chapter of Sierra Club, appeared in opposition to the bill. He urges the committee to suspend any action on this bill this year, let a Kansas Rails-Trails Committee be formed with representatives of all stakeholders, and see what they report back to the committee at the next legislative session. (See attachment 22)

Kenneth W. McClintock, Attorney, Council Grove, KS, appeared in opposition to the bill. He believes the existing Kansas Recreational Trails Act creates such burdens as to discourage, if not outright prohibit, individuals and organizations from developing interim trails on railbanked corridors. This bill, seeks to markedly increase the disincentives to development of recreational trails; the Kansas Legislature should be seeking to do the opposite. (See attachment 23)

Rep. Shari Weber was welcomed to the committee. She addressed the committee in opposition to the bill. She believes the Rails-to-Trails project is a federal initiative as is the entire railroad transportation system. Therefore, the state statute stipulations placed into law two years ago, may be in question anyway. Add to that a mix of land encroachments on the corridors that she has personally viewed, and the current level of frustration over the development is understandable. She offered an amendment to the bill. (See attachment 24)

Dale Crawford, Johnson County Bicycle Club, Olathe, KS, appeared in opposition to the bill. He believes Kansas already has one of the most restrictive, cumbersome pieces of rail-trail legislation in the country. This

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bill, will do for the opponents what the first bill did not, virtually kill any and all future rail-trails. These corridors represent recreational and economic opportunity for rural Kansas. (See attachment 25)

Written only testimony was provided by: Richard Stein, Ashland, Kansas, Short Grass Prairie Trail (See attachment 26); Andrea C. Ferster, General Counsel, Rails-to-Trails Conservancy (See attachment 27); Ronn Peters, McPherson, Kansas, Central Kansas Conservancy, Inc. (See attachment 28); Dale E. Anderson, Executive Director, National Association of Reversionary Property Owners, Garnett, KS (See attachment 29); and Don L. Schroeder, County Commissioner, McPherson County. (See attachment 30)

Discussion and questions followed. The Chairperson closed hearing on **HB2490**.

Chairperson Freeborn reopened discussion on **HB2124**:

HB2124: An act concerning solid waste; relating to certain accumulations of used or discarded materials; prohibiting certain acts and prescribing penalties for violations; amending K.S.A. 1998 Supp. 65-3402, 65-3405 and 65-3409 and repealing the existing sections.

Rep. Laura McClure moved to adopt an amendment to the substitute bill.(See attachment 31) Rep. Tom Sloan seconded the motion. Motion carried.

Rep. Laura McClure moved to pass favorably **Substitute for HB2124** . Rep. Clay Aurand seconded the motion. Motion carried.

The meeting adjourned at 6:30 p.m.

The next meeting is scheduled for February 23, 1999

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 18, 1999

NAME	REPRESENTING
Bill Fuller	Kansas Farm Bureau
Howard H. Woodbury	Landowner
Richard Larson	Landowner
Dale E. Anderson	National Assn. of Reversionary Property Owners Landowner
W.A. MANNERS	LANDOWNER
JOAN M. NESBIT	LANDOWNER
Clyde Boots	landowners along Trail
ORVILLE COLE	LANDOWNER ON TRAIL
Kathleen Soupene	Kansas Farm Bureau
Wendy Williams	KS Aggregate Producers' Assn.
Rich Porter	Land owner
Amelia McInyre	Self
Kim Gully	UCM
David L. Pore	US Dept of Agric -
Loren Cole	Sen. Tyson - Intern
Keslie Kaufman	Ks Farm Bureau
Robert Tyson	Landowner SELF
Linda Tyson	
Ron Applebitt	WATER DIST NO 1 OF JOCO

hunters in Kansas spent approximately \$27 million on retail sales and added \$60 million to the state economy. Regulation of permit numbers and permit types available to hunters ensures that sustained harvests will occur. However, local deer populations may develop that negatively affect some agricultural producers. Deer control permits may be used to address these situations.

Landowners are encouraged to rely on regular harvest season efforts to help control deer populations. Encourage your neighbors to allow deer harvest on their lands. Allow licensed hunters permission to hunt on your property, and encourage hunters to take antlerless deer in areas that are experiencing crop damage. Occasionally, deer move substantial distances (5-15 miles) between croplands they use in the summer and heavy cover they use in the winter. Therefore, it is necessary for landowners to work together in addressing deer damage problems.

CROP DAMAGE CONTROL SUMMARY

In summary, depredation control measures which landowners and operators should attempt before seeking a deer control permit include:

- ☛ Modify cultural practices, such as harvesting crops as early as possible or planting lure crops.
- ☛ Use deer frightening devices such as propane cannons, pyrotechnics, or dogs.
- ☛ Use repellents or deterrents.
- ☛ Allow hunting during regular deer seasons.

If such measures are not feasible, or fail to alleviate damage problems, deer control permits may be issued after the following conditions have been met:

- ☛ A documented complaint has been received from the owner/operator/manager.

- ☛ An on-site inspection by the DWB and owner/operator/manager has confirmed substantial deer-caused damage.
- ☛ The owner/operator/manager has presented evidence that regular hunting and non-lethal control methods have been exhausted.
- ☛ The owner/operator/manager has completed a deer control permit application.
- ☛ Damage is on-going and anticipated to continue.
- ☛ Destruction of deer under authority of the control permit is expected to alleviate immediate additional loss of property value.

For further information about deer control permits contact your local District Wildlife Biologist or the regional office nearest you.

REGION 1 OFFICE

PO Box 338, US 183 Bypass
Hays, KS 67601 (913) 628-8614

REGION 2 OFFICE

3300 SW 29th
Topeka, KS 66614 (913) 273-6740

REGION 3 OFFICE

808 MacArtor Rd
Dodge City, KS 67801 (316) 227-8609

REGION 4 OFFICE

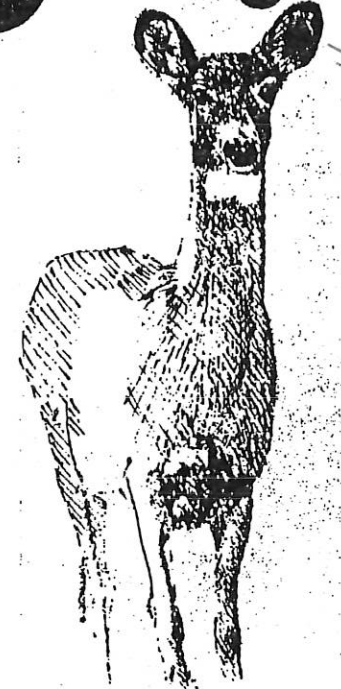
6232 E 29th St. N
Wichita, KS 67220 (316) 683-8069

REGION 5 OFFICE

1500 W 7th, PO Box 777
Chanute, KS 66720 (316) 431-0380

Equal opportunity to participate in and benefit from programs described herein is available to all individuals without regard to their race, color, sex, religion, national origin, age, handicapped or disability status, or political affiliation. Complaints of discrimination should be sent to the Office of the Secretary, Kansas Department of Wildlife and Parks, 900 Jackson Street, Suite 502, Topeka, KS 66612.

Deer Damage



*House Environment
2-18-99
Attachment 1*

Landowners' Options for Addressing the Problem



**Kansas Department of
Wildlife & Parks**
September 1996

The purpose of this brochure is to outline options landowners may use to address damages caused by deer. Nonlethal techniques are described in a brochure produced by the Cooperative Extension Service titled, "Controlling Deer Damage." A site-specific recommendation may be requested from any District Wildlife Biologist (DWB) of the Kansas Department of Wildlife and Parks (KDWP). Permits authorizing lethal control measures and possession of a deer carcass outside normal deer hunting seasons are available from the DWB.

Deer occur in all counties in Kansas. Dramatic changes have occurred in their populations since 1850, going from abundant to nearly absent and then returning to their present levels. Kansas is one of the last states in the nation to have its deer herd recover from extremely low levels following an era of over exploitation, lack of protection, and habitat changes. Our deer herd has adapted to human presence and prospered on the habitats created by agriculture. One of the consequences of a deer population living in close proximity to man is damage to property, especially crops.

DEER MANAGEMENT GOALS

Deer are protected by both state law and regulations enacted by the Kansas Wildlife and Parks Commission. Provisions are authorized to allow for wise use and management of this resource. Deer management in Kansas is directed by long-range planning that includes input from citizens of the state as well as wildlife professionals. The goal of this process is:

"...to manage the deer population at levels consistent with existing habitat and landowner tolerance, and to provide for recreation use".

LEGAL OBLIGATION

The Bill of Rights of the Kansas Constitution provides landowners with a qualified right to protect their property. That

right may be applied to deer damaging crops. However, both court decisions and Attorney General opinions have shown that there are limitations and obligations for landowners before they may kill deer that are causing damage. The landowner must demonstrate that deer caused substantial damage to property and that nonlethal remedies provided by law to alleviate the problem have been exhausted.

DEER CONTROL PERMITS

The Kansas Wildlife and Parks Commission enacted regulation K.A.R. 115-16-4, which authorizes the secretary to issue deer control permits. This regulation provides landowners with a legal means of controlling deer and using the remains of deer that are killed during this operation. The permits are intended to address localized problems of a temporary nature. District Wildlife Biologists of the KDWP are responsible for working with landowners in implementing deer damage control permits.

A biologist will contact landowners within five working days of notification of a deer damage situation. The DWB will inspect the area with the landowner and provide advice on procedures to alleviate the situation. The DWB will provide an application for a damage control permit and assist the landowner in completing the application if the permit is determined appropriate for the situation. Department guidelines are available to assist the DWB and the landowner in the decision to issue a damage control permit.

Each deer damage control permit is written for a specific case. If authorized, the permit will allow the landowner to kill a prescribed number of deer on his or her property. Harvest of antlerless deer will be emphasized during control operations. Deer population growth is influenced by the number of does in the population and the quality of the habitat available to them. Since the first modern-day deer hunt in Kansas in 1965, the KDWP has stressed the im-

portance of harvesting antlerless deer in order to regulate the growth of the population. This continues to be stressed with deer damage control permits. Possession tags will be assigned to the landowner. The landowner will be responsible for the control operation and affix a tag to each deer killed. Landowners will be required to follow prescribed procedures and to provide information on the results of their control efforts. Damage control permits will only be issued to address ongoing damage.

DAMAGE CONTROL PERMITS WILL NOT SOLVE ALL PROBLEMS

A deer damage control permit is not the answer to all situations in which landowners are suffering losses caused by deer. Some situations will continue to attract deer even when numerous deer have been removed. Certain high value crops, such as orchards and nurseries, cannot be effectively protected using firearms and damage control permits. These highly vulnerable crops are subject to sporadic but intense damage. Fencing to exclude deer from these areas will be more effective than attempting to shoot deer as they enter the area.

DEVELOPING A MANAGEMENT PLAN

The most effective means of controlling the growth of deer populations and the resulting damage they cause is through regulated hunting during established hunting seasons. This approach places sufficient hunters in the field to harvest deer over a wide area, and it provides benefits to these people in the form of meat and recreation. It also provides benefits to society in the form of economic returns to rural communities. It is estimated that in 1991 deer

public safety hazard. The application shall be on forms provided by the department and each applicant shall provide the following information:

- (1) the name of the applicant;
- (2) the address of the applicant;
- (3) the telephone number of the applicant;
- (4) the name, address and telephone number of the applicant's agent if such agent will perform the lethal method of control;
- (5) the legal description of the land where the problem is occurring;
- (6) a description of the problem including damage estimates and acres involved when property destruction is involved;
- (7) a description of other methods used by applicant to control the problem; and
- (8) other information as required by the secretary.

(d) Issuance of a big game control permit may be denied by the secretary if:

- (1) the permit application is unclear or incomplete; or
- (2) the applicant has not made reasonable effort to alleviate the problem by hunting or by other means or methods; or
- (3) use of the lethal method of control would pose inordinate risk to the public or to the big game resource.

(e) In addition to any big game control provisions specified in the permit, the following general big game control permit provisions shall apply:

(1) The permit shall be valid for a period of time not to exceed 30 days.

(2) The permit shall be valid only for the locations specified in the permit.

(3) The number and type of big game that may be killed shall be as specified on the permit.

(4) The killing of big game under a big game control permit shall be restricted to the permittee or to the permittee's designated agent provided such agent has been approved by the department.

(5) The lethal control method shall be by firearms.

(6) Big game killed under permit authority may be possessed as authorized by K.A.R. 115-4-9 or otherwise disposed of as specified on the permit.

(f) Each permittee shall submit a report to the department within 10 days following expiration of the permit. Each permittee shall provide the following information:

- (1) the name of the permittee;
- (2) the permit number;
- (3) the number and type of big game killed;

(4) the disposition of the big game killed;

(5) other information as required by the secretary.

(g) In addition to other penalties as prescribed by law, a big game control permit may be revoked by the secretary if:

(1) the permit was secured through false representation; or

(2) the permittee fails to meet permit requirements or violates permit conditions. (Authorized by K.S.A. 1988 Supp. 32-807; implementing K.S.A. 1989 Supp. 32-1002 and K.S.A. 1989 Supp. 32-1004; effective Sept. 10, 1990.)

Article 17.—WILDLIFE, COMMERCIAL USES AUTHORIZED

115-17-1. Commercial harvest of fish bait; legal species, harvest seasons, size restrictions, daily limits and possession limits.

(a) The following wildlife may be commercially harvested in Kansas for sale as fishing bait:

- (1) crayfish—all species;
- (2) mussels—all species;
- (3) amphibians:
 - (A) tiger salamander
 - (B) Blanchard's cricket frog;
 - (C) spotted chorus frog;
 - (D) plains leopard frog;
 - (E) plains spadefoot toad;
 - (F) American toad;
 - (G) great plain's toad; and
 - (H) Woodhouse's toad;
- (4) annelids; and
- (5) insects.

(b) The season for commercial harvest of wildlife listed in subsection (a) shall be year round.

(c) There shall be no minimum or maximum size restrictions for wildlife listed in subsection (a).

(d) There shall be no maximum daily or possession limits for wildlife listed in subsection (a).

(e) Wildlife listed in K.A.R. 115-51-1 or K.A.R. 115-15-2 shall not be harvested. (Authorized by K.S.A. 1989 Supp. 32-807; implementing K.S.A. 1989 Supp. 32-807 and K.S.A. 1989 Supp. 32-1002; effective Sept. 10, 1990.)

115-17-2. Commercial sale of fish bait.

(a) The following wildlife may be commercially sold in Kansas for fishing bait:

(1) all species of fish, except the sale of live specimens shall be restricted to only those species native to or naturalized in Kansas, but excluding:

and rules and regulations. (Authorized by K.S.A. 1989 Supp. 32-807 and K.S.A. 1989 Supp. 32-955; implementing K.S.A. 1989 Supp. 32-955, K.S.A. 1989 Supp. 32-1002 and K.S.A. 1989 Supp. 32-1003; effective Sept. 10, 1990.)

115-16-3. Nuisance bird control permit; application, provisions and requirements. (a) Nuisance birds shall include the following species:

- (1) yellow-headed blackbird;
- (2) red-winged blackbird;
- (3) bi-colored red-winged blackbird;
- (4) rusty blackbird;
- (5) brewer's blackbird;
- (6) cowbird;
- (7) grackle;
- (8) crow;
- (9) magpie;
- (10) feral pigeon;
- (11) english sparrow; and
- (12) starling.

(b) Nuisance birds may be controlled when found depredated or about to depredate upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.

(c) A nuisance bird control permit shall be required to use any lethal method of control which involves poisons or chemicals for controlling nuisance birds other than feral pigeon, english sparrow or starling.

(d) Any person may apply to the secretary for a nuisance bird control permit. The application shall be on forms provided by the department and each applicant shall provide the following information:

- (1) the name of the applicant;
- (2) the address of the applicant;
- (3) the telephone number of the applicant;
- (4) the location of the nuisance bird problem;
- (5) a description of the problem;
- (6) the species of birds involved;
- (7) the proposed method of control;
- (8) the length of time for which the permit is requested; and
- (9) other information as required by the secretary.

(e) Issuance of the permit may be denied by the secretary if:

- (1) the permit application is unclear or incomplete;

(2) the need for nuisance bird control has not been established; or

(3) use of the poison or chemical would pose inordinate risk to the public, non-target wildlife or the environment.

(f) The permit shall be valid only for the time period specified on the permit, but shall not exceed one year.

(g) A permit may be extended by the secretary upon request and justification by the permittee. However, the combined total of the original and extended time period shall not exceed one year.

(h) The permit shall be valid only for the locations specified in the permit.

(i) In addition to other penalties as prescribed by law, a nuisance bird control permit may be revoked by the secretary if:

(1) the permit was secured through false representation; or

(2) the permittee fails to meet permit requirements or violates permit conditions.

(j) A nuisance bird control permit shall not be required to control nuisance bird problems as described in subsection (b) when the control method is non-lethal or when the control method involves use of firearms, bow and arrow or falconry.

(k) Nuisance birds killed and the plumage of nuisance birds killed during nuisance bird control may be possessed, transported and otherwise disposed of or utilized, except that nuisance birds killed and the plumage of nuisance birds killed during the nuisance bird control shall not be sold or offered for sale.

(l) All nuisance bird control activities shall be subject to all federal and state laws and rules and regulations. (Authorized by K.S.A. 1991 Supp. 32-807 and K.S.A. 1991 Supp. 32-955; implementing K.S.A. 1991 Supp. 32-955, K.S.A. 1991 Supp. 32-1002 and K.S.A. 1991 Supp. 32-1003; effective Sept. 10, 1990; amended Aug. 31, 1992.)

115-16-4. Big game control permit; application, requirements and provisions. (a) Big game animals may be controlled when found destroying property or when creating a public safety hazard.

(b) A big game control permit shall be required to use any lethal method in controlling big game.

(c) Any owner or operator of land may apply to the secretary for a big game control permit when such big game is found destroying property. Any person may apply to the secretary for a big game control permit when such big game is creating a

STRIKE current New Sec. 3, and replace with the following:

New Sec. 3. (a) It shall be a goal of the department to manage big game populations in the state at levels consistent with existing habitat and landowner and community tolerance. For this purpose, the secretary shall be authorized to issue big game control permits, in addition to hunting permits and game tags issued during regularly designated hunting seasons.

(b) For each big game control permit issued, the secretary may designate the period of time, the location, and the number and type of big game that may be harvested. Use of any big game control permit shall require the permission of the landowner or tenant of the property where it is to be used.

(c) The secretary shall consult with representatives of farming and ranching organizations, county and city government associations, and hunting organizations in the development, modification, and implementation of a big game control permit program.

(d) The secretary, in accordance with K.S.A. 32-805 and amendments thereto, may adopt such rules and regulations as necessary to implement the provisions of this section.

Language from W L of Parks
for
HB 2480

House Environment
2-18-99
Attachment 2

HOUSE BILL No. 2404

By Committee on Environment

2-10

House Environment
2-18-99
Attachment 3

9 AN ACT concerning water appropriation rights; relating to abandon-
10 ment; amending K.S.A. 82a-718 and repealing the existing section.
11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 82a-718 is hereby amended to read as follows: 82a-
14 718. (a) All appropriations of water must be for some beneficial purpose.
15 Every water right of every kind shall be deemed abandoned and shall
16 terminate when without due and sufficient cause no lawful, beneficial use
17 is henceforth made of water under such right for three successive years.
18 Before any water right shall be declared abandoned and terminated the
19 chief engineer shall conduct a hearing thereon in accordance with the
20 provisions of the Kansas administrative procedure act. Notice shall be
21 served on the user at least 30 days before the date of the hearing.

five

22 The verified report of the chief engineer or such engineer's authorized
23 representative shall be prima facie evidence of the abandonment and
24 termination of any water right.

, by certified mail, return receipt requested,

25 (b) *When no lawful, beneficial use has been made of water under a*
26 *water right for two successive years, the chief engineer shall notify the*
27 *user that: (1) No lawful, beneficial use has been made of the water for*
28 two *successive years; (2) if no lawful, beneficial use is made of the water*
29 *for three successive years, the right may be terminated; and (3) the right*
30 *will not be terminated if the user shows that for one or more of the three*
31 *consecutive years the beneficial use of the water was prevented or made*
32 *unnecessary by circumstances that are due and sufficient cause for non-*
33 *use, which circumstances shall be included in the notice.*

three

34 Sec. 2. K.S.A. 82a-718 is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after its
36 publication in the statute book.

The secretary may require a person who accumulates used or discarded drums, railroad ties or pallets that are not recyclables to dispose of such drums, ties or pallets as prescribed by the secretary. The secretary shall give notice to the person that the accumulated materials are solid waste and that they must be disposed of as directed by the secretary. If the person refuses or is unable to dispose of the materials in a timely manner in accordance with the direction of the secretary, the secretary or an authorized representative of the secretary, at reasonable times and upon written notice, may enter upon the premises where the materials are stored to dispose of the materials. The secretary may recover, in a civil action in district court, all costs incurred by the department in carrying out the disposal of the materials. The secretary shall remit to the state treasurer any moneys recovered for costs incurred by the department in carrying out disposal of the materials. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the solid waste management fund.

*House Environment
2-18-99
Attachment 4*



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

Testimony presented to

House Environment Committee

February 18, 1999

by

William L. Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment

House Bill 2264

The Department of Health and Environment appreciates this opportunity to provide testimony in support of HB 2264, a bill which addresses the handling of hazardous waste while in transport. This bill proposes two changes to the hazardous waste statutes. Although the department is supportive of the goals of the bill, we are offering amendments with our testimony which clarify the applicability of the new provisions.

The bill proposes changes in the definitions of the terms "hazardous waste" and "acutely hazardous waste" to clarify that updates to the federal regulations which have been promulgated since July 1, 1983 and which have been adopted by the secretary of health and environment are to be included under Kansas statutes as well. KDHE supports these changes as proposed.

The bill also proposes to add a new definition for the term "Transfer station" and to make it unlawful for any person to operate a transfer station at which hazardous wastes are transferred from one vehicle to another. However, it would not be unlawful to transfer closed containers of hazardous waste from one vehicle to another. KDHE has several comments and suggestions related to this proposal.

Although the proposed definition of "transfer station" is restricted to use in this statute related to hazardous waste, the term "transfer station" is defined differently in solid waste statute K.S.A. 65-3402(bb) and these differences could potentially lead to confusion. Also, the federal hazardous waste regulations use the term "transfer facility," therefore, KDHE proposes that the term "hazardous waste transfer facility" be used in place of "transfer station".

DIVISION OF ENVIRONMENT
Bureau of Waste Management

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Attachment 5*

Under the proposed language in section two of the bill, it would be unlawful to transfer hazardous waste from one vehicle to another, even if performed at a permitted or interim status hazardous waste disposal facility. These facilities are properly equipped to safely handle the transfer of hazardous waste from one vehicle to another. However, KDHE is concern with the transfer of hazardous waste from the one shipping container to another shipping container at unsuitable locations.

KDHE has needed to address hazardous waste transfer operations twice in recent years. In one situation, dry hazardous waste was removed from rail gondola cars by backhoe at the end of a rail line and transferred to dump trucks. During this transfer some of the hazardous waste became entrained in the air and contaminated adjacent crop land. In a transfer operation proposed several years ago, liquid hazardous waste was to be transported by rail tank car. The rail line did not have access to the designated disposal facility so the operator of the rail line proposed to transport the waste to a point closest to the disposal facility where the waste would be transferred into over the road tankers which in turn would transport the waste to the disposal facility. This transfer was to take place on a rail siding unequipped to contain the spillage of hazardous waste.

KDHE proposes the following new definition for "Hazardous waste transfer facility" to clarify the broader types of activities which may occur while hazardous waste is in transit from one point to another:

"Hazardous waste transfer facility" means any hazardous waste transportation-related facility, other than the location of generation or of final treatment or disposal, that, during the course of transportation, serves as an area for the accumulation, consolidation, distribution, or transfer of hazardous waste shipments, including loading docks, parking areas, rail spurs and other similar areas where shipments of hazardous waste are held during the normal course of transportation. This term shall not include hazardous waste disposal facilities or permitted household hazardous waste facilities.

KDHE is also concerned that wording proposed in Section 2 (a)(12) would not prohibit the transfer of hazardous waste from container to container at transfer facilities. Therefore, we propose the following new wording for Section 2 (a)(12):

(12) Operate a hazardous waste transfer facility at which hazardous wastes are transferred from one or more containers to one or more different containers. This shall not apply to overpacking of hazardous waste containers when the overpack containers are marked with labels that contain all the information on the original labels.

This bill along with our suggested amendments will help ensure that hazardous waste is properly managed in Kansas. We have four combustion facilities in southeast Kansas which receive waste from all over the country. Given this high level of activity and transportation, we believe it is necessary to prohibit waste transfers as defined by this bill unless performed at a facility which is designed, operated, and monitored to minimize any potential releases to the environment. Our amendments will allow certain other necessary activities to be performed to facilitate the efficient transportation of waste including the transfer of closed containers from one vehicle to another.

Thank you for this opportunity to present testimony on HB 2264.

HOUSE BILL No. 2264

By Joint Committee on Administrative Rules and Regulations

2-4

9 AN ACT concerning hazardous waste; amending K.S.A. 65-3430 and
10 K.S.A. 1998 Supp. 65-3441 and repealing the existing sections.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 65-3430 is hereby amended to read as follows: 65-
14 3430. As used in K.S.A. 65-3430 to 65-3447, and amendments thereto:

15 (a) "Department" means the Kansas department of health and
16 environment.

17 (b) "Disposal" means the discharge, deposit, injection, dumping,
18 spilling, leaking or placing of any hazardous waste into or on any land or
19 water so that such hazardous waste or any constituent thereof may enter
20 the environment or be emitted into the air or discharged into any waters,
21 including groundwater.

22 (c) "Facility" means all contiguous land, structures and other appur-
23 tenances and improvements on the land utilized for the purpose of treat-
24 ing, storing, or disposing of hazardous waste. A facility may consist of
25 several treatment, storage, or disposal operational units.

26 (d) "Generator" means any person, by site, whose act or process pro-
27 duces hazardous waste or whose act first causes a hazardous waste to
28 become subject to regulation.

29 (e) "Hazardous waste" means waste or combination of wastes which
30 because of its quantity, concentration or physical, chemical, biological or
31 infectious characteristics or as otherwise determined by the secretary to
32 cause, or significantly contribute to an increase in mortality or an increase
33 in serious irreversible or incapacitating reversible illness; or pose a sub-
34 stantial present or potential hazard to human health or the environment
35 when improperly treated, stored, transported or disposed of or otherwise
36 managed. Hazardous waste shall not include: (1) Household waste; (2)
37 agricultural waste returned to the soil as fertilizer; (3) mining waste and
38 overburden from the extraction, beneficiation and processing of ores and
39 minerals, if returned to the mine site; (4) drilling fluids, produced waters
40 and other wastes associated with the exploration, development and pro-
41 duction of crude oil, natural gas or geothermal energy; (5) fly ash, bottom
42 ash, slag and flue gas emission control wastes generated primarily from
43 the combustion of coal or other fossil fuels; (6) cement kiln dust; or (7)

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6-2

1 materials listed in 40 CFR 261.4, as in effect on July 1, 1983, or any later
2 version as established in rules and regulations adopted by the secretary.

3 (f) "Hazardous waste disposal facility" means a facility or part of a
4 facility at which hazardous waste is treated, stored or disposed and at
5 which waste will remain after closure. Such term also shall mean a haz-
6 arduous waste injection well.

7 (g) "Hazardous waste management" means the systematic control of
8 the collection, source separation, storage, transportation, processing,
9 treatment, recovery and disposal of hazardous waste.

10 (h) "Manifest" means the form prescribed by the secretary to be used
11 for identifying the quantity, composition, origin, routing and destination
12 of hazardous waste during its transportation from the point of generation
13 to the point of disposal, treatment or storage.

14 (i) "Modification" means the expansion or enlargement of a facility
15 beyond the boundaries established by an existing permit or any material
16 or substantial alteration or addition to an existing permitted facility which
17 would justify the application of permit conditions that would be materially
18 or substantially different from the conditions of the existing permit or are
19 absent from the existing permit.

20 (j) "Monitoring" means all procedures used to (1) systematically in-
21 spect and collect samples or require information and copy records or data
22 on the operational parameters of a facility, generator or a transporter; or
23 (2) to systematically collect and analyze data on the quality of the air,
24 groundwater, surface water or soil on or in the vicinity of a hazardous
25 waste generator, transporter or facility.

26 (k) "Off-site facility" means a facility where treatment, storage or dis-
27 posal activities are conducted by a person other than the hazardous waste
28 generator.

29 (l) "On-site facility" means a facility which is solely owned and op-
30 erated by the generator exclusively for the treatment, storage or disposal
31 of wastes which have been generated on the contiguous property and
32 includes the same or geographically contiguous property which may be
33 divided by public or private right-of-way, provided the entrance and exit
34 between the properties is at a crossroads intersection and access is by
35 crossing and not going along the right-of-way or noncontiguous properties
36 owned by the same person but connected by a right-of-way which the
37 person controls and to which the public does not have access.

38 (m) "Permit" means the document issued to a person by the secretary
39 which allows such person to construct and operate a hazardous waste
40 treatment, storage or disposal facility in the state.

41 (n) "Person" means an individual, trust, firm, joint stock company,
42 federal agency, corporation, including a government corporation, part-
43 nership, state, municipality, commission, political subdivision of a state or

(h) "Hazardous waste transfer facility" means any hazardous waste transportation-related facility, other than the location of generation or of final treatment or disposal, that, during the course of transportation, serves as an area for the accumulation, consolidation, distribution, or transfer of hazardous waste shipments, including loading docks, parking areas, rail spurs, and other similar areas where shipments of hazardous waste are held during the normal course of transportation. This term shall not include hazardous waste disposal facilities or permitted household hazardous waste facilities.

(i)

(j)

(k)

(l)

(m)

(n)

(o)

- 1 any interstate body. _____ (p)
 2 | (e) "Secretary" means the secretary of the department of health and
 3 environment. _____ (q)
 4 | (p) "Storage" means the holding of hazardous waste for a temporary
 5 period at the end of which the hazardous waste is treated, disposed of or
 6 stored elsewhere.
 7 ~~(q) "Transfer station" means any facility or location where hazardous~~
 8 ~~wastes are transferred from one vehicle to another or where hazardous~~
 9 ~~wastes are stored and consolidated before being transported elsewhere.~~
 10 (e) (r) "Transporter" means any person who is engaged in the off-
 11 site transportation of hazardous waste by air, rail, land, highway or water.
 12 (r) (s) "Treatment" means any method, technique, or process, in-
 13 cluding neutralization, designed to change the physical, chemical or bi-
 14 ological character or composition of any hazardous waste so as to neu-
 15 tralize such waste or so as to recover energy or material resources from
 16 the waste, to render such waste nonhazardous, or less hazardous, safer to
 17 transport, store or dispose of or amenable for recovery, amenable for
 18 storage or reduced in volume.
 19 (s) (t) "Waste" means any garbage, refuse, sludge or other discarded
 20 material which is abandoned or committed to treatment, storage or dis-
 21 posal, including solid, liquid, semisolid, or contained gaseous materials
 22 resulting from industrial, commercial, mining, community and agricul-
 23 tural activities. Waste does not include solid or dissolved materials in
 24 domestic sewage, in irrigation return flows, or solid or dissolved materials
 25 or industrial discharges which are point sources subject to permits under
 26 K.S.A. 65-165, and amendments thereto.
 27 (t) (u) "Acutely hazardous waste" means a commercial chemical
 28 product or manufacturing chemical intermediate having a generic name
 29 listed in 40 CFR 261.33(e), as in effect on July 1, 1984, *or any later version*
 30 *as established in rules and regulations adopted by the secretary*; or an off-
 31 specification commercial chemical product or manufacturing chemical
 32 intermediate which, if either met specifications, would have a generic
 33 name listed in 40 CFR 261.33(e), as in effect on July 1, 1984, *or any later*
 34 *version as established in rules and regulations adopted by the secretary.*
 35 (u) (v) "Underground injection" means the subsurface emplacement
 36 of fluids through a well for which a permit has been issued by the
 37 secretary.
 38 (v) (w) "Land treatment" means the practice of applying hazardous
 39 waste onto or incorporating hazardous waste into the soil surface so that
 40 it degrades or decomposes and renders the waste nonhazardous.
 41 (w) (x) "Above ground storage" means the placement of container-
 42 ized hazardous waste into an above ground structure for a temporary
 43 period prior to the reuse or ultimate treatment or disposal of such waste.

1 (x) (y) "Closure plan" means a written document which identifies the
2 procedures by which the owner or operator of a hazardous waste man-
3 agement facility will close such facility so as to control, minimize or elim-
4 inate, to the extent necessary to prevent a threat to human health and the
5 environment, post-closure escape of hazardous waste, hazardous waste
6 constituents, leachate, contaminated rainfall or waste decomposition
7 products to the ground, groundwater, surface waters or to the
8 atmosphere.

9 (y) (z) "Post-closure plan" means the written document which identi-
10 fies the procedures by which the owner or operator of a hazardous waste
11 management facility shall provide, for a minimum of 30 years, for ground-
12 water protection, site security and maintenance of cover and leachate
13 collection systems.

14 Sec. 2. K.S.A. 1998 Supp. 65-3441 is hereby amended to read as
15 follows: 65-3441. (a) It shall be unlawful for any person to: (1) Dump or
16 deposit, or permit the dumping or depositing of any hazardous waste
17 regulated by this act into any facility which does not comply with the
18 provisions of this act or rules or regulations, standards or orders of the
19 secretary, but this provision shall not prohibit: (A) The use of hazardous
20 wastes in normal farming operations or in the processing or manufactur-
21 ing of other products in a manner that will not adversely affect the public
22 health or environment, or (B) a generator who periodically produces a
23 quantity of hazardous waste less than the quantity regulated under sub-
24 section (k) of K.S.A. 65-3431, and amendments thereto, from disposing
25 such quantity of hazardous waste into a facility approved by the depart-
26 ment which has a permit issued under K.S.A. 65-3407, and amendments
27 thereto.

28 (2) Construct, modify or operate a hazardous waste storage, treat-
29 ment or disposal facility without a permit or other required written ap-
30 proval from the secretary or to be in violation of the rules and regulations,
31 standards or orders of the secretary.

32 (3) Violate any condition of any permit issued by the secretary.

33 (4) Store, collect, treat or dispose of hazardous waste contrary to the
34 rules and regulations, standards or orders of the secretary.

35 (5) Refuse or hinder entry, inspection, sampling and the examination
36 or copying of records related to the purposes of this act by an agent or
37 employee of the secretary after such agent or employee identifies and
38 gives notice of their purpose at any time.

39 (6) Knowingly make any false material statement or representation
40 in any application, label, manifest, record, report, permit or other docu-
41 ment filed, maintained or used for purposes of compliance with this act.

42 (7) Knowingly destroy, alter or conceal any record required to be
43 maintained under rules and regulations promulgated by the secretary pur-

1 suant to this act.

2 (8) Fail to designate on a manifest a facility which is authorized to
 3 operate under the federal hazardous waste program or under a state haz-
 4 ardous waste program which has received approval to operate in lieu of
 5 the federal hazardous waste program.

6 (9) Transport hazardous waste to a facility which is not authorized to
 7 operate under the federal hazardous waste program or under a state haz-
 8 ardous waste program which has received approval to operate in lieu of
 9 the federal hazardous waste program.

10 (10) Add, mix or blend any hazardous waste with fuel oil or any other
 11 fuel intended for use by residential consumers or sell such blended fuel
 12 to a residential consumer.

13 (11) Transport and dispose of, or cause the transportation and dis-
 14 position of, hazardous waste in a manner contrary to the rules and reg-
 15 ulations, standards or orders of the secretary. It shall not constitute a
 16 defense to the generator that the generator acted through an independent
 17 contractor in the transportation or disposition of the hazardous waste.

18 ~~(12) Operate a transfer station at which hazardous wastes are trans-~~
 19 ~~ferred from one vehicle to another. It shall not be a violation of this pro-~~
 20 ~~vision to transfer sealed containers of hazardous waste, properly prepared~~
 21 ~~in accordance with rules and regulations or orders of the secretary, from~~
 22 ~~one vehicle to another.~~

23 (b) Any person who violates any provision of paragraphs (1) to (10),
 24 inclusive, of subsection (a) shall be guilty of a class A nonperson misde-
 25 meanor and, upon conviction thereof, shall be punished as provided by
 26 law. Any person who violates any provision of paragraph (11) or (12) of
 27 subsection (a) shall be guilty of a severity level 10, nonperson felony and,
 28 upon conviction thereof, shall be punished as provided by law.

29 (c) Any person who knowingly violates any provisions of paragraphs
 30 (1) to ~~(11)~~ (12), inclusive, of subsection (a) shall be guilty of a severity
 31 level 6, nonperson felony and, in the case of a continuing violation, every
 32 day such violation continues shall be deemed a separate violation, and,
 33 upon conviction thereof, shall be punished as provided by law.

34 (d) Any individual who violates any of the provisions of paragraphs
 35 (1) to ~~(11)~~ (12), inclusive, of subsection (a) shall be legally responsible to
 36 the same extent as if such acts were in the individual's own name or on
 37 the individual's own behalf.

38 (e) The county or district attorney of every county shall file appro-
 39 priate actions for enforcement of this section upon request of the secre-
 40 tary or upon the county or district attorney's own motion after consulta-
 41 tion with the secretary.

42 (f) No person shall be held responsible for failure to secure a permit
 43 under the provisions of this section for the dumping or depositing of any

(12) Operate a hazardous waste transfer facility at which hazardous waste is transferred from one or more containers to one or more different containers. This shall not apply to overpacking of hazardous waste containers when the overpack containers are marked with labels that contain all the information on the original labels.

- 1 hazardous waste on land owned or leased by such person without their
- 2 expressed or implied consent, permission or knowledge.
- 3 Sec. 3. K.S.A. 65-3430 and K.S.A. 1998 Supp. 65-3441 are hereby
- 4 repealed.
- 5 Sec. 4. This act shall take effect and be in force from and after its
- 6 publication in the statute book.

6-6

Testimony of
Representative Carl Holmes

HB 2264

Chairman Freeborn and Environment committee members, I appear today in support of HB 2264. The important changes in the current hazardous waste law contained in this bill are found on lines 93 thru 95, and lines 190 thru 194. The change on lines 93 thru 95 establishes a definition for "Transfer station" as it applies to hazardous waste and states "*Transfer station means any facility or location where hazardous wastes are transferred from one vehicle to another or where hazardous wastes are stored and consolidated before being transported elsewhere.*" The change on lines 190 thru 194 provide that it shall be unlawful for any person to "*Operate a transfer station at which hazardous wastes are transferred from one vehicle to another. It shall not be a violation of this provision to transfer sealed containers of hazardous waste, properly prepared in accordance with rules and regulations or orders of the secretary, from one vehicle to another.*" The balance of the changes are "cleanup" to establish administrative rules and regulations authority as needed in the current law.

This change in current law is needed to stop a dangerous practice that has occurred in several areas of the state. At times, companies and individuals have transferred hazardous waste from rail cars to trucks and transported the waste to locations out of state for disposal. The problems have developed when the means of transferring the hazardous material has allowed the material to be spilled on the ground. Since this practice is currently unregulated, it is hard to know where and when this practice has occurred and who was responsible. This proposed change would allow hazardous waste in "sealed containers" to be "transferred from one vehicle to another" subject to "rules and regulations or orders of the secretary". This should prevent the spilling of hazardous material at locations where transfers occur and give the secretary authority to establish the best procedure.

Chairman Freeborn, this concludes my testimony and I will try to answer any of your questions.

House Environment
2-18-99
Attachment 7



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON THE ENVIRONMENT

RE: HB 2490 – Amending the Kansas Recreational Trails Act.

February 18, 1999

Topeka, Kansas

Prepared by:

**Leslie J. Kaufman, Assistant Director
Public Affairs Division
Kansas Farm Bureau**

Chair Freeborn and members of the House Environment Committee, we appreciate the opportunity to appear before you this afternoon and voice Farm Bureau's support for HB 2490. I am Leslie Kaufman and I serve as the Assistant Director of Public Affairs.

Throughout our association's existence, Farm Bureau has rigorously fought to protect private property rights. We continue to work on the national, state and local levels to see that landowner's rights are protected. We worked diligently in 1996 to see the Kansas Recreational Trails Act passed. Although we supported 1996 HB 2711, we were concerned that the bill contained no specific penalty provision within it. These concerns have been verified as we have seen some trail developers ignore provisions of the Act for two and a half years.

Among other things, HB 2490 will clarify portions of the Kansas Recreational Trails Act, establish a recourse provision for fencing disputes, provide notice of proposed trail development through public hearings and enact an enforcement mechanism local governments and landowners can rely on. The 1996 Act is a good piece of legislation. It established a standard for trail conditions and a "code of conduct", if you will, for responsible parties to adhere to. The Act can not be fully

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Attachment 8*

effective, though, until a penalty provision is included within it. Farm Bureau policy supports legislation requiring trail sponsors be responsible for liability, right-of-way fencing, taxes, control of noxious weed, maintenance of the rights-of-way and other costs once required of the railroad.

One problem provision within the 1996 version of the Recreational Trails Act is the requirement that the responsible party (trail sponsor) and the County Commission agree upon the amount of the bond. The bond is necessary to provide a source of funding in the event a non-governmental trail sponsor does not comply with the provisions of the Act. Local government must be reimbursed for expenditures that are, by law, the duty of the responsible party.

The Kansas Recreational Trails Act does not prescribe a course of action in case the Commission and trail sponsor can not agree on the bond or liability insurance amount. The practical effect, then, is no bond is set or liability insurance maintained. HB 2490 would remedy this situation by placing the determination of the bond amount solely with the County Commission.

A large portion of HB 2490 is devoted to fencing issues. Among landowners we talk to, fencing is a primary concern. Adjoining landowners must be able to receive timely response to fencing requests. Appropriate fencing discourages trail users from wandering off the trail and trespassing on adjoining land, protecting both the trespasser and the property trespassed upon.

HB 2490 seeks to clarify the fencing provisions within the Kansas Recreational Trails Act and incorporate a provision for addressing fencing disputes within the law. The new language proposed in HB 2490 establishes a time frame in which the responsible party must address fencing requests – 90 days. It also makes it clear that a responsible party can not escape the obligation to maintain fencing because a prior holder of the corridor neglected to make needed repairs. This has been a particular concern since the release of Attorney's General Opinion 98-6 in February 1998.

In this opinion, the Attorney General concluded that if a "fence must be replaced rather than repaired, this it is our opinion that the fence no longer qualifies as existing fencing . . ." Under the 1996 version the Kansas Recreational Trails Act, whether

fencing is “new” or “existing” impacts the apportionment of costs between the responsible party and the adjoining landowner.

Under current law, existing fencing between the trail and adjoining land is to be maintained by the responsible party. The cost of installing new fencing between the trail and adjoining property shared equally between the two. As we read it, if a court adopted the A.G.’s theory, a responsible party could neglect a fence for so long that the appropriate repair was complete replacement. Then, instead of being obligated for the entire cost, the trail sponsor could shift half the expense on the landowner. In essence, the responsible party is rewarded for neglecting their statutory obligation.

We do not believe this was the intent of the legislature when they passed the Act in 1996. HB 2490 would explicitly indicate that replacement of existing fence with new fence does not alter the responsible party’s obligation to finance the repair.

HB 2490 provides that fencing disputes should be settled by the county fence viewers under existing Kansas fence law. The County Commission serves as the fence viewers in each county. This provides a needed mechanism for settling difference regarding the appropriateness of the type and cost of requested fencing.

A common complaint we hear regarding the rail banking process is lack of information regarding rail banking and trail proposals. HB 2490 would require responsible parties to hold public hearings in each county that the trail would go through. The hearings would be held prior to trail development so that communities, landowners and government officials could have in-put in the development process. Farm Bureau policy supports public comment periods or hearings where landowners and citizens have the opportunity for input in the rail banking process.

HB 2490 as introduced would delete a provision establishing a specific time frame for development of the trail. ***This paragraph may be found at page 5 of the bill, lines 32-38. We would respectfully request the Committee amend HB 2490 by reinstating, or not deleting, that language.***

The provisions of the Kansas Recreational Trails Act as amended by HB 2490 are good policy for the state of Kansas. But, as we said earlier, it does little good to have the requirements in statue if they can not be enforced. New section 4 of HB 2490 provides a much need enforcement mechanism in the Act.

Under HB 2490, violations of the Kansas Recreational Trails Act are actionable as misdemeanors. By placing them under the criminal code, local governments can enforce the Acts provisions through city and county courts. Recreational trails are maintained for a public purpose. When they are not maintained adequately they can pose a threat to public health and safety. Thus, it is appropriate to access the public justice system to enforce the Kansas Recreational Trails Act.

Enforcement of trail conditions is a matter for state and local governments. Farm Bureau policy supports the ability of state and local authorities to supervise, monitor and enforce safety, health, land use and other condition on rail banked land. The Surface Transportation Board and its predecessor the Interstate Commerce Commission have long-standing policy regarding this. Recently, the STB reiterated this position in a decision regarding an abandonment exemption in Marion and McPherson Counties, KS. The STB stated,

“[B]ecause trails must be maintained according to state and local land use plans, zoning ordinances and public health and safety legislation, abutting property owners allegedly harmed by improperly maintained trails can present their complaints to the appropriate state, regional, and local entities.” [STB Decision, Dec. 18, 1998, Docket No. AB-406 (Sub-No. 6X)].

Ideally, we would prefer that rail banking be permitted without interim trail use. Landowners along the corridor should be able to retain the right-of-ways for non-trail uses that will preserve the opportunity for restored rail use in the future. Until then, we will aggressively support measures that support the rights of adjoining landowners to the fullest possible intent under the law. One such way is insuring the provisions of the Kansas Recreational Trails Act are workable, understandable and enforceable. We respectfully ask for you support in our endeavors by adopting the amendment we proposed earlier, then approving the measure as amended.

As part of our on-going work in the area of landowner rights. Farm Bureau and the Kansas Livestock Association have worked together, at the request of our farmer and rancher members, to coordinate a survey of landowners along the Flint Hills and Landon Trails in Morris, Lyon, Osage and Franklin Counties. Landowners contacted

their friends and neighbors and received information regarding trail conditions and interactions with trail sponsors. More than 150 landowners responded.

This is not a "scientific" poll, but we hope it gives some indication as to the challenges some landowners face when adjoining a trail.

The results were tabulated yesterday. We have not had the opportunity to fully evaluate them yet, but we did want to share them with the Committee. They are attached to my statement.

Thank you for the opportunity to appear before you today. I will be glad to answer questions at the appropriate time.

**Survey of Landowners
Along the Flint Hills and Landon Trails
in Morris, Lyon, Osage and Franklin Counties**

December 1998 - January 1999

Landowner's name _____

Address _____

Phone _____

Approximate distance of railroad corridor adjoined by landowner: _____ miles

(Both sides of track on one mile equals 2 miles adjoined)

Does your land adjoin the corridor:

Only on the north side of the tracks?

Only on the south side of the tracks?

Only on the east side of the tracks?

Only on the west side of the tracks?

On both sides of the tracks?

Legal description of land adjoining corridor: _____

Background

In about 1984, a federal agency granted authority to a private organization to operate the abandoned Missouri Pacific rail corridor between Herrington and Osawatomie as a recreational trail. Several private organizations have been listed as sponsors of the trail, called the Flint Hills Trail. A north and south line from Topeka to Lomax, named the Landon Trail, ties into the Flint Hills Trail. To date, the Kansas Horsemen's Foundation is designated as the operator of these trails.

1. Were you aware this railroad right-of-way is designated a recreational trail?

Yes ____ No ____

2. How were you made aware the right-of-way was converted to a recreational trail?

____ Personal notice from trail sponsor (*letter, phone call, personal visit, etc.*)

____ Newspaper

____ Word of mouth

____ Other - Explain: _____

3. Have you/your tenant initiated direct personal contact with the trail operator in the past two years?

____ I/we tried, but were unable to make contact with the trail operator.

____ I/we tried, and did make contact with the trail operator.

____ I/we have not attempted to make contact with the trail operator.

4. Are you aware of whom, regarding the trail sponsor, to contact if questions arise regarding the trail group's responsibilities?

Yes ____ No ____

5. In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property:

Controlled brush and overgrowth along trail? Yes ____ No ____ Unsure ____

Controlled trash and litter along trail? Yes ____ No ____ Unsure ____

Controlled noxious weeds? Yes ____ No ____ Unsure ____

Provided law enforcement along trail? Yes ____ No ____ Unsure ____

Taken steps to discourage trespassing on to your adjoining private property? Yes ____ No ____ Unsure ____

Maintained bridges, culverts and crossings? Yes ____ No ____ Unsure ____

6. Does a fence exist between the rail corridor right-of-way and your property?
 Yes ____ No ____
7. Have you initiated contact with the trail sponsor regarding any portion of the fence between your property and the trail?
 Yes ____ No ____
8. Have you requested the repair or installation of any fencing?
 Yes ____ No ____
9. Has the trail sponsor responded in a timely manner?
 Yes ____ No ____
10. Were the needed repairs or installation accomplished by the trail sponsor?
 Yes ____ No ____
 If yes, how long from the time the request was made was work accomplished? _____.
11. Have you incurred fence repair cost that are the responsibility of the trail sponsor?
 Yes ____ No ____
 If yes, what was the cost of the repair \$ _____ .
12. About how many times, in the last year, have you observed law abiding recreational trail users on the trail? _____.
13. Have you witnessed misuse of the trail segment you adjoin in any of the following manners ?
- | | | | |
|---|----------|---------|-----------------------------|
| Littering | Yes ____ | No ____ | If yes, how many times ____ |
| Dumping trash | Yes ____ | No ____ | If yes, how many times ____ |
| Hunting/trapping | Yes ____ | No ____ | If yes, how many times ____ |
| Motorized vehicle use
(other than wheelchairs or maintenance/emergency vehicles) | Yes ____ | No ____ | If yes, how many times ____ |

Trespassing off trail on to your private property Yes ____ No ____ If yes,
how many times ____

Other? Please explain:

14. State law requires trail developers and operators in Kansas to meet certain guidelines.
Please categorize the importance of these provisions to you:

	<u>Very important</u>	<u>Important</u>	<u>Not important</u>
Fencing			
Noxious weed control			
Trespassing/vandalism			
Litter control			
Law enforcement			
Prohibit vehicle/ATV use			
Prohibit hunting/trapping			

15. Please list any maintenance that needs to be done to the portion of the trail adjacent to your
property. (ie. bridge repair, fencing, litter or weed control, etc.) _____

(additional space on next page)

Additional comments:

Landowner/Operator Signature _____

Thank you for completing this survey!

County Survey Overview

	Osage	Lyon	Franklin	Morris	Total
Approx. Distance of RR corridor adjoined by landowner in miles...	1.2	0.57	0.84	1.03	3.64
Does your land adjoin the corridor ...					
North	8	4	6	7	25
South	4	4	8	17	33
East	1	0	0	0	1
West	3	0	0	0	3
Both Sides	36	14	25	22	97
Aware this RR right-of-way is designated a recreational trail:					
Yes	44	20	21	46	131
No	6	1	13	1	21
How were you aware the right-of-way is designated recreational trail..					
Notice from Trail Sponsor	0		2	0	2
Newspaper	24	6	17	12	59
Word of mouth	39	14	18	33	104
Other	1	5	3	4	13
Have you/your tenant initiated direct personal contact with trail operator in last two years?					
We tried, but were unable	15	8	2	6	31
We tried and did make contact	7	3	1	7	18
We have not attempted to make contact	32	9	27	29	97
Aware of whom, regarding the trail sponsor, to contact if questions arise regarding the trail group's responsibility?					
Yes	6	4	2	8	20
No	44	17	33	38	132
In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property...					
Controlled brush & overgrowth along trail					
Yes	1	0	0	0	1
No	47	20	34	46	147
Unsure	2	1	1	0	4
Controlled trash & litter along trail					
Yes	1	0	0	0	1
No	44	20	33	43	140
Unsure	5	1	2	1	9
Controlled noxious weeds					
Yes	1	0	0	0	1
No	47	20	33	44	144
Unsure	2	1	2	1	6
Controlled Law Enforcement					
Yes	1	0	0	0	1
No	47	20	32	44	143
Unsure	2	1	3	1	7
Discourage trespassing on your private property					
Yes	1	0	1	0	2
No	46	20	33	43	142
Unsure	3	1	1	2	7
Controlled culverts & crossings					
Yes	1	0	0	0	1
No	43	19	33	41	136
Unsure	6	1	2	2	11
Does fence exist between rail corridor right-of-way and your property?					
Yes	41	19	23	36	119
No	7	2	10	7	26

County Survey Overview

	Osage	Lyon	Franklin	Morris	Total
Have you contacted trail sponsor regarding any of the fence between your property and trail					
Yes	9	4	1	7	21
No	41	17	34	34	126
Have you requested the repair or installation of any fencing?					
Yes	6	3	1	6	16
No	42	17	32	37	128
Has the trail sponsor responded in a timely manner?					
Yes	0	2	0	1	3
No	20	10	12	29	71
Were the needed repairs accomplished by trail sponsor?					
Yes	0	0	14	0	14
No	22	14	0	29	65
If yes, how long from the time request was made?	3 months	3 months	1 month	1 month	8 months
Have you incurred fence repair costs that are the responsibility of trail sponsor?					
Yes	23	12	5	17	57
No	16	6	25	22	69
If yes, what was the cost?	\$ 4,847.00	\$ 765.00	\$ 1,060.00	\$ 4,475.00	\$ 11,147.00
How many times a year have you observed law abiding recreational trail	18	0	17	40	75
Have you witnessed misuse of trail segment you adjoin in any of the following manners...					
Littering?					
Yes	23	4	20	19	66
No	17	15	13	21	66
Dumping trash?					
Yes	17	3	17	21	58
No	21	15	16	19	71
Hunting/trapping					
Yes	35	12	22	25	94
No	12	9	11	14	46
Motorized vehicle use					
Yes	38	15	25	27	105
No	10	5	8	13	36
Trespassing off trail onto your private property?					
Yes	22	5	17	6	50
No	21	15	17	35	88
If yes, how many times?	191	20			
Please categorize the importance of these provisions to you:					
Fencing					
Very Important	38	21	24	41	124
Important	8	0	5	1	14
Not Important	2	0	3	1	6
Noxious Weed Control					
Very Important	44	21	31	43	139
Important	3	0	4	0	7
Not Important	0	0	0	0	0
Trespassing/vandalism					
Very Important	39	17	30	41	127
Important	7	2	2	1	12
Not Important	0	2	1	0	3
Litter control					
Very Important	29	15	29	41	114
Important	15	4	4	1	24

County Survey Overview

	Osage	Lyon	Franklin	Morris	Total
Not Important	0	2	1	0	3
Law enforcement					
Very Important	27	15	26	36	104
Important	15	4	6	5	30
Not Important	2	2	1	0	5
ATV use					
Very Important	26	14	25	33	98
Important	14	3	6	8	31
Not Important	5	4	2	1	12
Hunting/trapping					
Very Important	30	15	27	33	105
Important	13	2	5	3	23
Not Important	2	4	1	4	11
Please list any maintenance that needs to be done to the portion of the trail adjacent to your property....					
Bridge repair	9	2	3	3	17
Fencing	32	19	12	34	97
Litter control	15	7	15	22	59
Brush control	22	4	14	2	42
Weed control	29	5	18	29	81
Additional comments	24	8	11	10	53

Osage County

	Approx. distance of railroad corridor adjoined by landowner	Does your land adjoin the corridor: North side of tracks	Does your land adjoin the corridor: South side of tracks	Does your land adjoin the corridor: East side of tracks	Does your land adjoin the corridor: West side of tracks	Does your land adjoin the corridor: both sides of tracks	Aware this railroad right-of-way is designated a recreational trail?	How were you aware the right-away is designated recreational trail ... Personal Notice from Trail Sponsor	How were you aware the right-away is designated recreational trail ... Newspaper
112	0.50	X	X				YES	X	
113	0.75		X				YES		
114	0.50	X					YES	X	
115						X	YES		
116	1.00					X	YES		
117	1.00					X	YES		
118	0.25	X					YES		
119	4.00					X	YES	X	
120	0.25	X					YES		
121	1.00					X	YES	X	
122	2.00					X	NO	X	
123	1.75					X	NO		
124						X	YES		
125	0.50					X	NO		
126	1.00					X	YES	X	
127	1.00					X	YES		
128	0.10	X					YES	X	
129	1.00					X	YES	X	
130	0.75	X					YES	X	
131	0.30					X	YES		
132	0.50			X			YES		
133	0.10		X				YES		
134	0.60					X	YES	X	
135	0.50					X	YES	X	
136	2.00					X	YES	X	
137	1.00		X				NO		
138	1.00					X	YES		
139	0.50					X	YES	X	
140	1.00								
141	1.50					X	YES		
142	0.50					X	YES	X	
143	1.00					X	YES		
144	0.75				X		YES	X	
145	1.00					X	YES		
146	2.00					X	YES		
147	0.75					X	YES	X	
148	1.00					X	YES	X	
154	0.50	X					YES		
155	1.00					X	NO		
156	0.50					X	YES	X	
157	0.25	X					YES	X	
158	1.00					X	YES	X	
159	1.00					X	YES	X	
160	0.50				X		NO		
161	1.00					X	YES	X	
162	1.25					X	YES	X	
163	0.75					X	YES	X	
164	1.25				X	X	YES		
165	1.00					X	YES		
166	1.50					X	YES		
167	1.00					X	YES		
TOTAL	45.85	8	4	1	3	36	50	0	24
YES							44		
NO							6		

Osage County

	How were you aware the right-away is designated recreational trail ... Word of mouth	How were you aware the right-away is designated recreational trail ... Other	I/we tried, unable to make contact with trail operator	I/we tried, and did make contact with trail operator	I have not attempted to make contact with trail operator
112	X				X
113	X		X		
114					X
115	X				X
116	X		X		
117	X		X		
118	X				X
119	X			X	
120	X		X		
121					X
122					X
123	X				X
124	X				X
125	X				X
126					X
127	X		X		
128	X				X
129					X
130	X				X
131	X		X		
132	X				X
133	X				X
134	X				X
135					X
136	X			X	
137	X				X
138	X		X		
139	X		X	X	X
140					
141	X				X
142	X		X		
143	X				X
144	X		X		
145	X				X
146	X		X	X	
147	X				X
148					X
154	X				X
155	X				X
156	X				X
157					X
158					X
159	X				X
160		X			X
161	X		X	X	
162	X		X	X	
163	X				X
164	X		X		
165	X				X
166	X		X		
167	X			X	
TOTAL	39	1	15	7	32

Osage County

	Aware of whom, regarding the trail sponsor, to contact if questions arise regarding the trail group's responsibilities?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled brush and overgrowth along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled trash & litter along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled noxious weeds?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled law enforcement along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Taken steps to discourage trespassing on to your adjoining private property?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled culverts & crossings:
112	NO	UNSURE	UNSURE	UNSURE	UNSURE	UNSURE	UNSURE
113	YES	NO	NO	NO	NO	NO	UNSURE
114	YES	UNSURE	UNSURE	UNSURE	UNSURE	UNSURE	UNSURE
115	NO	NO	NO	NO	NO	NO	UNSURE
116	YES	NO	NO	NO	NO	NO	UNSURE
117	NO	NO	NO	NO	NO	NO	NO
118	NO	NO	NO	NO	NO	NO	NO
119	NO	NO	NO	NO	NO	NO	NO
120	NO	NO	NO	NO	NO	NO	NO
121	NO	NO	NO	NO	NO	NO	NO
122	NO	NO	NO	NO	NO	NO	NO
123	NO	NO	NO	NO	NO	NO	NO
124	NO	NO	NO	NO	NO	NO	NO
125	NO	NO	NO	NO	NO	NO	NO
126	NO	NO	NO	NO	NO	NO	NO
127	NO	NO	NO	NO	NO	NO	NO
128	NO	NO	UNSURE	NO	NO	NO	NO
129	NO	NO	NO	NO	NO	NO	NO
130	NO	NO	NO	NO	NO	NO	UNSURE
131	NO	NO	NO	NO	NO	NO	NO
132	NO	NO	NO	NO	NO	NO	NO
133	NO	YES	YES	YES	YES	YES	YES
134	NO	NO	UNSURE	NO	NO	NO	NO
135	NO	NO	NO	NO	NO	NO	NO
136	YES	NO	NO	NO	NO	NO	NO
137	NO	NO	UNSURE	NO	NO	UNSURE	NO
138	NO	NO	NO	NO	NO	NO	NO
139	NO	NO	NO	NO	NO	NO	NO
140							
141	NO	NO	NO	NO	NO	NO	NO
142	YES	NO	NO	NO	NO	NO	NO
143	NO	NO	NO	NO	NO	NO	NO
144	NO	NO	NO	NO	NO	NO	NO
145	NO	NO	NO	NO	NO	NO	NO
146	NO	NO	NO	NO	NO	NO	NO
147	NO	NO	NO	NO	NO	NO	NO
148	NO	NO	NO	NO	NO	NO	NO
154	NO	NO	NO	NO	NO	NO	NO
155	NO	NO	NO	NO	NO	NO	NO
156	NO	NO	NO	NO	NO	NO	NO
157	NO	NO	NO	NO	NO	NO	NO
158	NO	NO	NO	NO	NO	NO	NO
159	NO	NO	NO	NO	NO	NO	NO
160	NO	NO	NO	NO	NO	NO	NO
161	NO	NO	NO	NO	NO	NO	NO
162	NO	NO	NO	NO	NO	NO	NO
163	NO	NO	NO	NO	NO	NO	NO
164	NO	NO	NO	NO	NO	NO	NO
165	NO	NO	NO	NO	NO	NO	NO
166	NO	NO	NO	NO	NO	NO	NO
167	YES	NO	NO	NO	NO	NO	NO
TOTAL	50	50	50	50	50	50	50
YES	6	1	1	1	1	1	1
NO	44	47	44	47	47	46	43
UNSURE	0	2	5	2	2	3	6

Osage County

	Does a fence exist between the rail corridor right-of-way and your property?	Have you initiated contact with the trail sponsor regarding any portion of the fence between your property and the trail?	Have you requested the repair or installation of any fencing?	Has the trail sponsor responded in a timely manner?	Were the needed repairs or installation accomplished by the trail sponsor	If yes, how long from the time the request was made, was work accomplished?	Have you incurred fence repair cost that are the responsibility of the trail sponsor?
112	YES	NO	NO				
113	YES	NO	NO				YES
114	YES	NO	NO				NO
115	YES	NO	NO				
116	YES	YES	YES	NO	NO		YES
117	YES	NO	NO				NO
118	YES	NO	NO		NO		YES
119	YES	NO	NO				NO
120	NO	NO	NO				NO
121	YES	NO	NO				YES
122	YES	NO	NO				YES
123	YES	NO	NO	NO	NO		YES
124	YES	NO	NO	NO	NO	NO	NO
125	YES	NO	NO				NO
126	NO	NO	NO		NO		NO
127	NO	YES	YES	NO	NO		
128	UNSURE	YES	NO	NO			
129	YES	NO	NO				YES
130	YES	NO	NO		NO		YES
131	NO	NO	NO				
132	YES	NO	NO	NO	NO		NO
133	YES	NO					NO
134	YES	NO	NO	NO			NO
135	YES	NO	NO				
136	YES	YES	YES	NO	NO		YES
137	YES	NO	NO	NO			NO
138	NO	NO	NO	NO	NO		YES
139	YES	NO	NO	NO	NO		YES
140							
141	YES	NO	NO	NO	NO		YES
142	YES	NO	NO	NO	NO		NO
143	YES	NO	NO				YES
144		YES	NO	NO	NO		YES
145	YES	NO	NO				YES
146	YES	NO					
147	NO	NO	NO				NO
148	YES	NO	NO	NO			
154	YES	NO	NO		NO		YES
155	NO	NO	NO				NO
156	YES	NO	NO				YES
157	YES	NO	NO				
158	YES	NO	NO				NO
159	YES	NO	NO			NO	
160	YES	NO	NO	NO	NO	NO	NO
161	YES	YES	YES	NO	NO		YES
162	YES	YES	YES	NO	NO		YES
163	YES	NO	NO				
164	YES	YES	NO		NO		YES
165	YES	NO	NO		NO		YES
166	YES	NO	NO	NO	NO		YES
167	YES	YES	YES	NO	NO		YES
TOTAL	48	50	48	20	22	3	39
YES	41	9	6	0	0	0	23
NO	7	41	42	20	22	3	16
UNSURE							

Osage County

	If yes, what was the cost of the repair?	How many times in the last year, have you observed law abiding recreational trail users on the trail?	Have you witnessed misuse of the trail segment you adjoin in any of the following manners Littering	Have you witnessed misuse of the trail segment you adjoin in any of the following manners dumping trash	Have you witnessed misuse of the trail segment you adjoin in any of the following manners hunting/trapping	Have you witnessed misuse of the trail segment you adjoin in any of the following manners motorized vehicle use	Trespassing off trail onto your private property?	If yes, how many times
112			NO	NO	NO	NO	NO	
113		0	YES	YES	YES	YES	YES	
114		0	NO	NO	NO	NO	NO	
115		0			YES	YES		
116	\$50.00	0	YES	YES	YES	YES		
117		0	YES	NO	YES	YES	YES	
118	\$150.00	0	YES	YES	YES	YES	YES	
119		0	YES	YES	YES	YES	NO	
120		0	YES	YES	YES	YES	YES	
121	\$500.00	10	NO	NO	YES	YES	YES	
122	\$400.00	0			YES	YES	NO	
123		0	YES	YES	YES	YES		
124					YES	YES	YES	
125		0	NO	NO	NO	NO	NO	
126		0	NO	NO	NO	YES	YES	
127		0	NO	NO	NO	YES	NO	5
128		0	NO	NO	NO	NO	NO	
129	\$80.00	8	NO	NO	YES	YES	YES	4
130	\$600.00	0	YES	YES	YES	YES	YES	20
131		0	NO	NO	NO	YES	NO	
132		0	NO	NO	NO	YES	NO	
133			NO	NO	NO	NO	NO	
134		0						
135		0	NO	NO	YES	YES		
136		0	NO	NO	NO	NO	NO	
137		0	NO	NO	YES	YES	NO	
138	\$300.00	0	NO	YES	YES	YES	YES	5
139	\$200.00		YES	NO	YES	YES		
140								
141		0	YES	YES	YES	YES	YES	
142		0		YES	YES	YES	YES	
143	\$100.00	0	YES	YES	YES	YES	YES	
144	\$100.00	0	YES	YES	YES	YES	YES	
145	\$25.00	0	YES	YES	YES	YES	NO	
146		0			YES	YES		
147		0	NO	NO	NO	NO	NO	
148		0				YES	YES	
154	\$20.00	0	YES		YES	YES	NO	30
155		0	NO	NO	NO	NO	NO	
156	\$1,000.00	0	YES		YES		NO	
157		0	YES	YES	YES	YES	YES	2
158		0	YES	YES	YES	YES	YES	
159					YES	YES	YES	
160		0			YES	YES	NO	10
161	\$375.00	0	YES	NO	YES	NO	NO	5
162	\$175.00	0	YES	NO	YES	NO	YES	20
163		0		YES	YES	YES	NO	
164	\$100.00	0	YES	NO	YES	YES	YES	50
165		0	YES	YES	YES	YES	NO	10
166	\$500.00	0	YES		YES	YES	YES	25
167	\$172.00	0	YES			YES	YES	5
TOTAL	4847.00	18	40	38	37	48	41	191
YES			23	17	35	38	22	
NO			17	21	12	10	21	

Osage County

	Please categorize the importance of these provisions to you: Fencing	Please categorize the importance of these provisions to you: Noxious weed control	Please categorize the importance of these provisions to you: Trespassing /Vandalism	Please categorize the importance of these provisions to you: litter control	Please categorize the importance of these provisions to you: Law enforcement	Please categorize the importance of these provisions to you: ATV use	Please categorize the importance of these provisions to you: Hunting/trapping
112	VI						
113	VI	VI	VI	I	VI	VI	VI
114	I	VI	I	I	I	NI	I
115	VI	VI	I	I	I	I	I
116	VI	VI	VI			VI	
117	VI	VI	VI	I	VI	VI	VI
118	VI	VI	VI	VI	VI	VI	VI
119	I	VI	VI	VI	VI	VI	VI
120	NI	VI	VI	VI	VI	VI	VI
121	VI	VI	I	I	NI	NI	I
122	VI	VI	VI	VI	I	I	I
123							
124	VI	VI	VI			VI	
125	VI	VI	VI	VI	VI	VI	VI
126	VI	VI	VI	VI	VI	VI	VI
127	VI	VI	VI	VI	VI	VI	VI
128	VI	VI	VI	VI	VI	VI	VI
129	VI	VI	VI	VI	I	I	I
130	VI	VI	VI	VI	VI	VI	VI
131	VI	VI	VI	I	I	I	NI
132	I	VI	VI	VI	I	I	I
133	VI	VI	VI	VI	VI	NI	VI
134	I	VI	I	VI	VI	I	NI
135	NI	VI	VI	VI	NI	I	I
136	VI	VI	VI	VI	VI	VI	VI
137	VI	VI	VI	VI	VI	NI	VI
138	VI	VI	VI	VI	VI	VI	VI
139							
140							
141	VI	VI	VI	VI	VI	VI	VI
142	VI	VI	VI	VI	VI	VI	VI
143	VI	VI	I	I	VI	VI	VI
144	I	VI	VI	VI	VI	VI	VI
145	I	VI	VI	I	I	VI	VI
146	VI	VI	VI	VI	VI	VI	VI
147	VI	VI	VI	VI	I	I	VI
148	VI	VI	VI	VI	I	VI	VI
154	I	VI	VI	I	I	NI	I
155	VI	I	I	VI	VI	I	I
156	VI	VI					VI
157	I	I	I	I	I	I	I
158	VI	VI	VI	VI	VI	VI	VI
159	VI	VI	VI	I	VI		VI
160	VI	I	VI	I	I	I	I
161	VI	VI	VI	VI	VI	VI	VI
162	VI	VI	VI	VI	VI	VI	VI
163	VI	VI	VI	I	I	I	I
164	VI	VI	VI	I	I	I	I
165	VI	VI	VI	I	I	I	VI
166	VI	VI	VI	VI	VI	VI	VI
167	VI	VI	VI	VI	VI	VI	VI
TOTAL	48	47	46	44	44	45	45
YES							
NO							
VERY IMPORTANT	38	44	39	29	27	26	30
IMPORTANT	8	3	7	15	15	14	13
NOT IMPORTANT	2	0	0	0	2	5	2

8-19

Osage County

	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Bridge repair	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Fencing	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Litter control	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Brush control	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Weed control	Additional comments
112		X				
113		X			X	
114						X
115		X		X	X	X
116		X			X	X
117		X		X	X	X
118		X	X		X	
119			X	X	X	X
120			X		X	
121		X		X	X	X
122		X	X	X	X	X
123						X
124						
125				X	X	
126		X		X	X	X
127		X		X	X	X
128				X	X	X
129	X	X	X	X	X	
130		X	X	X	X	X
131	X					
132						
133						
134						X
135		X				
136		X				
137					X	X
138	X	X			X	
139						X
140						
141		X	X		X	X
142				X	X	X
143		X				
144		X	X	X		X
145		X		X	X	
146	X	X	X	X	X	X
147		X	X			
148						
154					X	
155						
156		X		X		
157		X	X			
158	X	X	X	X	X	X
159	X	X		X	X	
160					X	
161	X	X	X	X	X	X
162	X	X	X	X	X	X
163		X				
164		X	X	X	X	X
165		X				
166		X		X	X	X
167	X	X				
TOTAL	9	32	15	22	29	24

Lyon County

	Approx. distance of railroad corridor adjoined by landowner	Does your land adjoin the corridor: North side of tracks	Does your land adjoin the corridor: South side of tracks	Does your land adjoin the corridor: east side of tracks	Does your land adjoin the corridor: west side of tracks	Does your land adjoin the corridor: both sides of tracks	Aware this railroad right-of-way is designated a recreational trail?	How were you aware the right-away is designated recreational trail ... Personal Notice from Trail Sponsor
95	2.00					X	YES	
96	5.75					X	YES	
97	0.50					X	YES	
98	2.00			X			YES	
99	1.50					X	YES	
100	1.00					X	YES	
101	1.00					X	YES	
102	1.25					X	YES	
103	1.00					X	YES	
104	1.00					X	YES	
105	1.00					X	YES	
106	0.25	X					YES	
107	2.50			X			YES	
108	1.00	X		X			YES	
109	4.00					X	YES	
110	2.00					X	YES	
149	2.00					X	NO	
150	0.50	X					YES	
151	1.00			X			YES	
152	0.50	X					YES	
153	5.00					X	YES	
TOTAL	36.75	4	4	0	0	14	21	
YES							20	
NO							1	

Lyon County

	How were you aware the right-away is designated recreational trail ... Newspaper	How were you aware the right-away is designated recreational trail ... Word of mouth	How were you aware the right-away is designated recreational trail...Other	I/we tried, unable to make contact with trail operator	I/we tried, and did make contact with trail operator	I have not attempted to make contact with trail operator
95		X		X		
96		X			X	
97		X		X		
98		X				X
99		X		X		
100		X		X		
101			X			X
102		X		X		
103		X				X
104	X					
105		X				X
106			X			X
107	X		X			X
108	X	X	X		X	
109	X		X			X
110		X		X		
149				X		
150		X				X
151	X	X				X
152		X			X	
153	X			X		
TOTAL	6	14	5	8	3	9

Lyon County

	Aware of whom, regarding the trail sponsor, to contact if questions arise regarding the trail group's responsibilities?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled brush and overgrowth along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled trash & litter along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled noxious weeds?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled law enforcement along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Taken steps to discourage trespassing on to your adjoining private property?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled culverts & crossings:
95	NO	NO	NO	NO	NO	NO	NO
96	NO	NO	NO	NO	NO	NO	NO
97	NO	NO	NO	NO	NO	NO	NO
98	NO	NO	NO	NO	NO	NO	NO
99	NO	NO	NO	NO	NO	NO	NO
100	NO	NO	NO	NO	NO	NO	NO
101	NO	NO	NO	NO	NO	NO	NO
102	NO	NO	NO	NO	NO	NO	NO
103	NO	NO	NO	NO	NO	NO	NO
104	NO	NO	NO	NO	NO	NO	
105	NO	NO	NO	NO	NO	NO	NO
106	NO	NO	NO	NO	NO	NO	NO
107	NO	NO	NO	NO	NO	NO	NO
108	YES	NO	NO	NO	NO	NO	NO
109	NO	NO	NO	NO	NO	NO	NO
110	YES	NO	NO	NO	NO	NO	NO
149	NO	NO	NO	NO	NO	NO	NO
150	NO	NO	NO	NO	NO	NO	NO
151	NO	NO	NO	NO	NO	NO	NO
152	YES	UNSURE	UNSURE	UNSURE	UNSURE	UNSURE	UNSURE
153	YES	NO	NO	NO	NO	NO	NO
TOTAL	21	21	21	21	21	21	20
YES	4	0	0	0	0	0	0
NO	17	20	20	20	20	20	19
UNSURE	0	1	1	1	1	1	1

Lyon County

	Does a fence exist between the rail corridor right-of-way and your property?	Have you initiated contact with the trail sponsor regarding any portion of the fence between your property and the trail?	Have you requested the repair or installation of any fencing?	Has the trail sponsor responded in a timely manner?	Were the needed repairs or installation accomplished by the trail sponsor	If yes, how long from the time the request was made, was work accomplished?	Have you incurred fence repair cost that are the responsibility of the trail sponsor?	If yes, what was the cost of the repair?	How many times in the last year, have you observed law abiding recreational trail users on the trail?
95	YES	YES	NO		NO		YES	\$500.00	0
96	YES	YES	YES	NO	NO		YES	\$3,500.00	0
97	YES	NO	NO		NO		YES	\$300.00	0
98	YES	NO	NO	NO	NO		NO		0
99	YES	NO	NO				YES		0
100	YES	NO	NO				YES		0
101	YES	NO	NO	NO	NO		NO		0
102	YES	NO	NO	NO	NO		NO		0
103	YES	NO	NO	NO			YES	\$50.00	0
104	YES	NO	NO	NO	NO		YES	\$50.00	0
105	YES	NO	NO		NO		YES	\$50.00	0
106	YES	NO	NO	NO	NO		NO		0
107	YES	NO	NO	NO	NO	NO			0
108	YES	NO					YES		0
109	YES	NO	NO	NO	NO		NO		0
110	NO	YES	YES	YES	NO		YES	\$150.00	0
149	NO	NO	NO						0
150	YES	NO	NO						0
151	YES	NO	NO				YES	\$180.00	0
152	YES	YES	YES	YES	NO	3 MONTHS	YES	\$585.00	0
153	YES	NO	NO	NO	NO		NO		0
TOTAL	21	21	20	12	14	3 months	18	\$765.00	0
YES	19	4	3	2	0		12		
NO	2	17	17	10	14		6		
UNSURE	0	0	0	0	0	0	0		

Lyon County

	Have you witnessed misuse of the trail segment you adjoin in any of the following manners Littering	Have you witnessed misuse of the trail segment you adjoin in any of the following manners dumping trash	Have you witnessed misuse of the trail segment you adjoin in any of the following manners hunting/trapping	Have you witnessed misuse of the trail segment you adjoin in any of the following manners motorized vehicle use	Trespassing off trail onto your private property?	If yes, how many times	Please categorize the importance of these provisions to you: Fencing	Please categorize the importance of these provisions to you: Noxious weed control	Please categorize the importance of these provisions to you: Trespassing/Vandalism	Please categorize the importance of these provisions to you: litter control	Please categorize the importance of these provisions to you: Law enforcement	Please categorize the importance of these provisions to you: ATV use	Please categorize the importance of these provisions to you: Hunting/trapping
95	NO	NO	YES	YES	NO		VI	VI	VI	I	I	VI	VI
96			YES	YES	YES		VI	VI	I	I	I	NI	NI
97	NO	NO	YES	YES	NO		VI	VI	VI	I	I	VI	VI
98	NO	NO	NO	NO	NO		VI	VI	VI	VI	VI	I	I
99	NO	NO	YES	YES	NO		VI	VI	NI	NI	NI	NI	NI
100	NO	NO	YES	NO	NO		VI	VI	NI	NI	NI	NI	NI
101	NO	NO	YES	YES	NO		VI	VI	VI	VI	VI	VI	VI
102	NO	NO	NO	YES	NO		VI	VI	VI	VI	VI	VI	VI
103	YES	YES	YES	YES	YES		VI	VI	VI	VI	VI	I	I
104	YES	YES	YES	YES	YES		VI	VI	VI	VI	VI	VI	VI
105	YES	YES	YES		YES		VI	VI	VI	VI	VI	VI	VI
106	NO	NO	NO	YES	NO		VI	VI	VI	VI	VI	VI	VI
107	NO	NO	NO	YES	NO		VI	VI	VI	VI	VI	VI	VI
108	NO	NO	NO	NO	NO		VI	VI	VI	VI	VI	VI	VI
109	NO	NO	YES	YES	NO		VI	VI	VI	VI	VI	VI	VI
110	NO	NO	NO	NO	NO		VI	VI	I	I	I	NI	NI
149	YES		YES	YES	YES		VI	VI	VI	VI	VI	VI	VI
150	NO	NO	NO	YES	NO		VI	VI	VI	VI	VI	I	VI
151			YES	YES			VI	VI	VI	VI	VI	VI	VI
152	NO	NO	NO	NO	NO		VI	VI	VI	VI	VI	VI	VI
153	NO	NO	NO	YES	NO	20	VI	VI	VI	VI	VI	VI	VI
TOTAL	19	18	21	20	20	20	21	21	21	21	21	21	21
YES	4	3	12	15	5								
NO	15	15	9	5	15								
VERY IMPORTANT							21	21	17	15	15	14	15
IMPORTANT							0	0	2	4	4	3	2
NOT IMPORTANT							0	0	2	2	2	4	4

8-25

Lyon County

	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Bridge repair	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Fencing	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Litter control	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Brush control	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Weed control	Additional comments
95		X				X
96		X	X	X	X	
97		X				X
98						
99		X				
100		X				
101		X				
102		X				
103		X	X		X	X
104		X	X		X	X
105		X				
106		X				
107		X				
108		X		X		X
109		X				
110		X				X
149		X	X		X	X
150		X	X	X		
151		X	X	X		
152	X	X	X		X	X
153	X					
TOTAL	2	19	7	4	5	8

Franklin County

	Approx. distance of railroad corridor adjoined by landowner	Does your land adjoin the corridor: North side of tracks	Does your land adjoin the corridor: South side of tracks	Does your land adjoin the corridor: east side of tracks	Does your land adjoin the corridor: west side of tracks	Does your land adjoin the corridor: both sides of tracks	Aware this railroad right-of-way is designated a recreational trail?	How were you aware the right-away is designated recreational trail...Personal Notice from Trail Sponsor
11	1.25					X	NO	
12	0.50					X	YES	
13	1.00					X	YES	
14	1.00					X	NO	
15	0.50	X	X			X	YES	
16	1.00					X	YES	
17	0.50	X					YES	
18	1.50					X	YES	
19	3.00					X	YES	
20	1.50					X	YES	
21	0.25			X			YES	
22	0.25			X			YES	
23	1.25	X				X	YES	
24	1.00					X	YES	
25	2.50					X	YES	X
26	2.00					x	NO	
27	2.00					X		
28	2.00					X	YES	
29	2.00					X	NO	
30	0.50	X					NO	
31	0.50	X					NO	
32	0.75			X			YES	X
33	0.50	X	X				NO	
34	0.75					X	YES	
35	0.25			X			YES	
36	0.25			X			YES	
37	3.00					X	YES	
38	2.00					X	NO	
39	1.50					X	NO	
40	0.50					X	YES	
41	2.25					X	YES	
42	3.00					X	NO	
43	0.50					X	NO	
44	0.50					X	NO	
45	0.15			X			NO	
TOTAL	41.90	6	8	0	0	25	34	2
YES							21	
NO							13	

Franklin County

	How were you aware the right-away is designated recreational trail ... Newspaper	How were you aware the right-away is designated recreational trail ... Word of mouth	How were you aware the right-away is designated recreational trail ... Other	I/we tried, unable to make contact with trail operator	I/we tried, and did make contact with trail operator	I have not attempted to make contact with trail operator	Aware of whom, regarding the trail sponsor, to contact if questions arise regarding the trail group's responsibilities?	In your judgment or observation, has the trail sponsor on the rail trail corridor adjacent to your property: Controlled brush and overgrowth along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled trash & litter along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled noxious weeds?
11		X				X	NO	NO	NO	NO
12	X	X				X	NO	NO	NO	NO
13	X					X	NO	NO	NO	NO
14	X			X			NO	NO	NO	NO
15		X				X	NO	NO	NO	NO
16		X				X	NO	NO	UNSURE	UNSURE
17		X					NO	NO	NO	NO
18	X					X	NO	NO	NO	NO
19	X	X				X	NO	NO	NO	NO
20		X				X	NO	NO	NO	NO
21		X				X	NO	UNSURE	UNSURE	UNSURE
22	X					X	NO	NO	NO	NO
23		X				X	NO	NO	NO	NO
24	X					X	NO	NO	NO	NO
25	X	X				X	NO	NO	NO	NO
26			X				NO	NO	NO	NO
27						X	YES	NO	NO	NO
28	X					X	YES	NO	NO	NO
29	X					X	NO	NO	NO	NO
30		X				X	NO	NO	NO	NO
31		X				X	NO	NO	NO	NO
32					X		NO	NO	NO	NO
33	X	X					NO	NO	NO	NO
34	X					X	NO	NO	NO	NO
35	X					X	NO	NO	NO	NO
36	X					X	NO	NO	NO	NO
37		X				X	NO	NO	NO	NO
38		X				X	NO	NO	NO	NO
39	X	X		X			NO	NO	NO	NO
40			X			X	NO	NO	NO	NO
41	X	X				X	NO	NO	NO	NO
42							NO	NO	NO	NO
43			X			X	NO	NO	NO	NO
44	X					X	NO	NO	NO	NO
45		X				X	NO	NO	NO	NO
TOTAL	17	18	3	2	1	27	35	35	35	
YES							2	0	0	0
NO							33	34	33	33
UNSURE							0	1	2	2

Franklin County

	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled law enforcement along trail?	judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Taken steps to discourage trespassing on to your adjoining private property?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled culverts & crossings:	Does a fence exist between the rail corridor right-of-way and your property?	Have you initiated contact with the trail sponsor regarding any portion of the fence between your property and the trail?	Have you requested the repair or installation of any fencing?	Has the trail sponsor responded in a timely manner?	Were the needed repairs or installation accomplished by the trail sponsor	If yes, how long from the time the request was made, was work accomplished?	Have you incurred fence repair cost that are the responsibility of the trail sponsor?
11	NO	NO	NO	YES	NO	NO	NO	NO		NO
12	NO	NO	NO	YES	NO	NO				NO
13	NO	NO	NO	YES	NO	NO				
14	NO	NO	NO	YES	NO	NO	NO	NO		NO
15	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
16	UNSURE	NO	UNSURE	YES	NO	NO	NO	NO		NO
17	NO	NO	NO	YES	NO	NO	NO	NO		NO
18	NO	NO	NO	YES	NO	NO	NO	NO		NO
19	NO	NO	NO	YES	NO	NO				YES
20	NO	NO	NO	NO	NO	NO				NO
21	UNSURE	UNSURE	UNSURE	YES	NO	NO				NO
22	NO	NO	NO	YES	NO	NO				NO
23	NO	NO	NO	YES	NO	NO	NO	NO	NOT YET	NO
24	NO	NO	NO	NO	NO	NO				NO
25	NO	NO	NO	YES	NO	NO				NO
26	NO	NO	NO	NO	NO	NO	NO	NO		NO
27	NO	NO	NO	NO	NO	NO		NO		NO
28	NO	NO	NO	YES	NO	NO				YES
29	NO	NO	NO	NO	NO	NO		NO		NO
30	NO	NO	NO	YES	NO	NO				NO
31	NO	NO	NO	YES	NO	NO				
32	NO	NO	NO	YES	YES	YES	NO	NO		YES
33	UNSURE	YES	NO	NO	NO	NO				NO
34	NO	NO	NO	NO	NO					
35	NO	NO	NO	YES	NO	NO				NO
36	NO	NO	NO	YES	NO	NO				NO
37	NO	NO	NO	SOME	NO	NO				YES
38	NO	NO	NO	NO	NO	NO				NO
39	NO	NO	NO		NO		NO	NO		YES
40	NO	NO	NO	YES	NO	NO				
41	NO	NO	NO	YES	NO	NO				
42	NO	NO	NO	NO	NO	NO	NO	NO		NO
43	NO	NO	NO	YES	NO	NO	NO	NO		NO
44	NO	NO	NO	YES	NO	NO				NO
45	NO	NO	NO	NO	NO	NO				NO
TOTAL	35	35	35	33	35	33	12	14	1	30
YES	0	1	0	23	1	1	0	0	0	5
NO	32	33	33	10	34	32	12	14	1	25
UNSUR	3	1	2							

8-29

Franklin County

	If yes, what was the cost of the repair?	How many times in the last year, have you observed law abiding recreational trail users on the trail?	Have you witnessed misuse of the trail segment you adjoin in any of the following manners Littering	Have you witnessed misuse of the trail segment you adjoin in any of the following manners dumping trash	Have you witnessed misuse of the trail segment you adjoin in any of the following manners hunting/trapping	Have you witnessed misuse of the trail segment you adjoin in any of the following manners motorized vehicle use	Trespassing off trail onto your private property?	If yes, how many times
11		0	NO	NO	YES	NO	NO	
12		0	YES	YES	YES	YES	YES	
13		0	YES	YES	YES	YES	YES	
14		0	YES	YES	YES	YES	YES	
15		0					NO	
16		0	NO	NO	NO	NO	NO	
17		2	NO	NO	NO	NO	NO	
18		0	YES	YES	YES	YES	YES	
19		0	YES	YES	YES	YES	YES	
20		0	YES	YES	YES	YES	YES	
21		0	NO	NO	NO	YES	NO	
22		0	YES	YES	YES	YES	NO	
23			NO	NO	NO	NO	NO	
24		0	YES	YES	YES	YES	YES	
25		0	YES	YES	YES	YES	YES	
26		15	YES	NO	YES	YES	YES	
27		0	NO	NO	YES	YES		
28	\$60.00	0	NO	NO	YES	YES	YES	
29		0	YES	YES	YES	YES	NO	
30		0	YES	YES	YES	YES	YES	
31		0	YES	NO	NO	YES	NO	
32	\$1,000.00	0	NO	NO	NO	NO	NO	
33			NO	NO	NO	YES	NO	
34		0	YES	YES	YES	YES	YES	
35		0	YES	YES	NO	YES	NO	
36		0	NO	NO	NO	NO	NO	
37		0	YES	YES	YES	YES	NO	
38		0	NO	NO	NO	NO	NO	
39		0	YES	YES	YES	YES	YES	
40		0	NO	NO		YES	NO	
41		0	YES	YES	YES	YES	YES	
42		0	NO	NO	YES	YES	YES	
43		0	YES	YES	YES	YES	YES	
44		0	YES	YES	YES	YES	YES	
45			NO	NO	NO	NO	NO	
TOTAL	\$1,060	17	33	33	33	33	34	
YES			20	17	22	25	17	
NO			13	16	11	8	17	

Franklin County

	Please categorize the importance of these provisions to you: Fencing	Please categorize the importance of these provisions to you: Noxious weed controll	Please categorize the importance of these provisions to you: Trespassing/Vandalism	Please categorize the importance of these provisions to you: litter controll	Please categorize the importance of these provisions to you: Law enforcement	Please categorize the importance of these provisions to you: ATV use	Please categorize the importance of these provisions to you: Hunting/trapping
11	VI	VI	VI	VI	VI	VI	VI
12	VI	VI	VI	VI	VI	VI	VI
13	VI	VI	VI	VI	VI	VI	VI
14	VI	VI	VI	VI	VI	VI	VI
15		VI		VI			VI
16	I	VI	VI	VI	VI	I	VI
17	VI	VI	VI	VI	VI	VI	VI
18	VI	VI	VI	VI	VI	VI	VI
19	VI	VI	VI	VI	VI	VI	VI
20	NI	I	VI	VI	I	NI	I
21	VI	I	VI	I	VI	VI	VI
22	VI	VI	VI	VI	VI	VI	VI
23	I	I	NI	NI	NI	NI	NI
24	VI	VI	VI	VI	VI	VI	VI
25	NI	VI	VI	VI	VI	VI	VI
26	VI	VI	VI	VI	VI	VI	VI
27		VI	I	VI	VI	I	I
28	VI	VI	VI	I	I	I	
29	VI	VI	VI	I	I	I	I
30	I	VI	VI	VI	VI	VI	VI
31	I	VI	VI	VI	VI	VI	I
32	VI	I	I	I	I	I	I
33	NI	VI	VI	VI	VI	VI	VI
34	VI	VI	VI	VI	VI	VI	VI
35	VI	VI	VI	VI	I	I	VI
36	I	VI	VI	VI	I	VI	VI
37	VI	VI	VI	VI	VI	VI	VI
38	VI	VI	VI	VI	VI	VI	VI
39	VI	VI	VI	VI	VI	VI	VI
40	VI	VI	VI	VI	VI	VI	VI
41	VI	VI	VI	VI	VI	VI	VI
42	VI	VI	VI	VI	VI	VI	VI
43	VI	VI	VI	VI	VI	VI	VI
44	VI	VI	VI	VI	VI	VI	VI
45		VI	VI	VI			
TOTAL	32	35	33	34	33	33	33
YES							
NO							
VERY IMPORTANT	24	31	30	29	26	25	27
IMPORTANT	5	4	2	4	6	6	5
NOT IMPORTANT	3	0	1	1	1	2	1

Franklin County

	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Bridge repair	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Fencing	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Litter control	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Brush control	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Weed control	Additional comments
11						
12		X	X	X	X	
13						
14	X		X			
15			X	X	X	X
16						
17		X	X		X	X
18		X	X	X	X	
19		X	X	X	X	X
20			X			X
21						
22		X		X	X	
23						
24					X	
25						
26		X	X	X	X	
27						
28						X
29		X	X	X	X	
30						
31						
32						
33				X	X	
34				X	X	X
35		X	X		X	
36						X
37		X	X	X	X	X
38						
39	X	X	X	X	X	X
40			X	X	X	X
41	X	X	X	X	X	X
42						
43		X		X	X	
44						
45			X		X	
TOTAL	3	12	15	14	18	11

Morris County

	Approx. distance of railroad corridor adjoined by landowner	Does your land adjoin the corridor: North side of tracks	Does your land adjoin the corridor: South side of tracks	Does your land adjoin the corridor: east side of tracks	Does your land adjoin the corridor: west side of tracks	Does your land adjoin the corridor: both sides of tracks	Aware this railroad right-of-way is designated a recreational trail?	How were you aware the right-way is designated recreational trail ... Personal Notice from Trail Sponsor	How were you aware the right-way is designated recreational trail ... Newspaper	How were you aware the right-way is designated recreational trail ... Word of mouth	How were you aware the right-way is designated recreational trail ... Other	I've tried, unable to make contact with trail operator	I've tried, and did make contact with trail operator	I have not attempted to make contact with trail operator	Aware of whom, regarding the trail sponsor, to contact if questions arise regarding the trail group's responsibilities?
47	2.00					X	YES				X			X	NO
48	0.00						YES			X		X			YES
49	2.00					X	NO			X				X	NO
50	0.50	X					YES			X				X	NO
51	0.50	X					YES			X				X	NO
52	0.75					X	YES		X					X	NO
53	1.50					X	YES				X		X		NO
54	1.75					X	YES		X			X			NO
55	2.00					X	YES		X						NO
56	0.50	X					YES			X					NO
57	1.00					X	YES			X		X			NO
58	1.00					X	YES		X						NO
59	1.00					X	YES		X						NO
60	0.50		X				YES		X						NO
61	1.00					X	YES			X				X	NO
62	0.50		X				YES			X				X	NO
63	1.00					X	YES				X			X	NO
64	1.50					X	YES			X				X	NO
65	1.50	X					YES			X			X		NO
66			X				YES		X	X				X	NO
67	0.08		X				YES		X					X	NO
68	6.00					X	YES		X		X	X			YES
69	1.00		X				YES			X				X	NO
70	0.50		X				YES		X	X				X	NO
71	0.50		X				YES			X				X	NO
72	0.50		X				YES			X				X	NO
73	1.75					X	YES			X				X	NO
74	1.00		X				YES			X			X		YES
75	0.50		X				YES								
76	2.00					X	YES		X	X		X	X		YES
77	1.50					X	YES			X			X		YES
78	0.50					X	YES			X				X	YES
79	0.50					X	YES			X				X	YES
80	0.50		X				YES			X				X	NO
81	0.50					X	YES			X				X	NO
82	0.50		X				YES			X				X	NO
83	1.00	X					YES			X			X		NO
84	0.50		X				YES			X				X	NO
85	0.50	X					YES			X				X	NO
86	1.00					X	YES			X				X	NO
87	0.50		X				YES			X				X	NO
88	0.50		X				YES			X				X	NO
89	0.25		X				YES			X				X	NO
90	0.25		X				YES			X				X	NO
91	1.00					X	YES			X				X	NO
92	0.25	X					YES		X			X			NO
93	0.75					X	YES			X			X		YES
TOTAL	44.83	7	17	0	0	22	47	0	12	33	4	6	7	29	46
YES							46								8
NO							1								38

Morris County

	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled brush and overgrowth along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled trash & litter along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled noxious weeds?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled law enforcement along trail?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Taken steps to discourage trespassing on to your adjoining private property?	In your judgment or observation, has the trail sponsor, on the rail trail corridor adjacent to your property: Controlled culverts & crossings?	Does a fence exist between the rail corridor right-of-way and your property?	Have you initiated contact with the trail sponsor regarding any portion of the fence between your property and the trail?	Have you requested the repair or installation of any fencing?
47	NO		NO						
48	NO	NO	NO	NO	NO	NO	NO	NO	NO
49	NO	NO	NO	NO	NO	NO	YES	NO	NO
50	NO	NO	NO	NO	NO	NO	YES	NO	NO
51	NO	NO	NO	NO	NO	UNSURE	YES	NO	NO
52	NO	NO	NO	NO	NO	NO	YES	NO	NO
53	NO	NO	NO	NO	NO	NO	YES		YES
54	NO	NO	NO	NO	NO	NO	YES		NO
55	NO	NO	NO	NO	NO	NO	YES	YES	NO
56	NO	NO	NO	NO	NO	NO	NO	NO	NO
57	NO	NO	NO	NO	NO	NO	YES	NO	NO
58	NO			NO	NO	NO	YES	NO	NO
59	NO	NO	NO	NO	NO	NO	YES	NO	NO
60	NO	NO	NO	NO	NO	NO	YES	NO	NO
61	NO	NO	NO	NO	NO	NO			
62	NO	NO	NO	NO	NO	NO	NO	NO	NO
63	NO	NO	NO	NO	NO	NO	YES	YES	NO
64	NO	NO	NO	NO	NO	NO	YES	NO	NO
65	NO	NO	NO	NO	NO	UNSURE	YES	YES	YES
66	NO	NO	NO	NO	NO	NO	NO	YES	NO
67	NO	UNSURE	UNSURE	UNSURE	UNSURE	NO	YES	NO	NO
68	NO	NO	NO	NO	NO	NO	NO	YES	YES
69	NO	NO	NO	NO	NO	NO			
70	NO	NO	NO	NO	NO	NO	YES	NO	NO
71	NO	NO	NO	NO	NO	NO	YES	NO	NO
72	NO	NO	NO	NO	NO	NO	YES	NO	NO
73	NO	NO	NO	NO	NO	NO	YES	NO	NO
74	NO	NO	NO	NO	NO	NO	YES	NO	NO
75									
76	NO	NO	NO	NO	NO	NO	YES	YES	YES
77	NO	NO	NO	NO	NO	NO	YES	YES	YES
78	NO	NO	NO	NO	NO	NO	YES	NO	NO
79	NO	NO	NO	NO	NO	NO	YES	NO	NO
80	NO	NO	NO	NO	NO	NO	YES	NO	NO
81	NO	NO	NO	NO	NO	NO	YES	NO	NO
82	NO	NO	NO	NO	NO	NO	YES	NO	NO
83	NO	NO	NO	NO	NO	NO	YES	NO	NO
84	NO	NO	NO	NO	NO	NO	YES	NO	NO
85	NO	NO	NO	NO	NO	NO	YES	NO	NO
86	NO	NO	NO	NO	NO	NO	NO	NO	NO
87	NO	NO	NO	NO	NO	NO	YES	NO	NO
88	NO	NO	NO	NO	NO	NO	YES	NO	NO
89	NO	NO	NO	NO	NO	NO	NO	NO	NO
90	NO	NO	NO	NO	NO	NO	YES	NO	NO
91	NO	NO	NO	NO	NO	NO	YES	NO	NO
92	NO	NO	NO	NO	UNSURE	NO	NO	NO	NO
93	NO	NO	NO	NO	NO	NO	YES	YES	YES
TOTAL	46	44	45	45	45	43	43	41	43
YES	0	0	0	0	0	0	36	7	6
NO	46	43	44	44	43	41	7	34	37
UNSURE	0	1	1	1	2	2			

Morris County

	Has the trail sponsor responded in a timely manner?	Were the needed repairs or installation accomplished by the trail sponsor	If yes, how long from the time the request was made, was work accomplished?	Have you incurred fence repair cost that are the responsibility of the trail sponsor?	If yes, what was the cost of the repair?	How many times in the last year, have you observed law abiding recreational trail users on the trail?
47						
48						0
49	NO	NO		YES	\$200.00	0
50	NO	NO		NO		0
51				NO		0
52				NO		0
53	NO			NO		0
54				NO		0
55	NO			YES		0
56	NO					0
57				NO		0
58				NO		0
59	NO	NO		NO		0
60	NO	NO		YES		0
61						
62		NO		NO		0
63	NO	NO		NO		0
64		NO		YES		40
65	NO	NO		YES	\$75.00	0
66				NO		0
67				NO		0
68	NO	NO		YES	\$500.00	0
69						
70						
71	NO			NO		0
72	NO	NO		YES	\$100.00	0
73	NO	NO		NO		0
74	NO	NO		NO		0
75						
76	NO	NO		YES	\$350.00	0
77	NO	NO		YES	\$300.00	0
78	NO	NO		YES	\$300.00	0
79	NO	NO		YES	\$400.00	0
80	NO	NO		YES	\$500.00	0
81	NO	NO		YES	\$1,000.00	0
82	NO	NO		NO		0
83	NO	NO		YES	\$50.00	0
84	NO	NO		YES	\$200.00	0
85	NO	NO		YES	\$200.00	0
86	NO	NO		NO		0
87	NO	NO		NO		0
88	NO	NO	NO			0
89	NO	NO		NO		0
90	NO	NO		NO		0
91		NO		YES	\$300.00	0
92				NO		0
93	YES	NO		NO		0
TOTAL	30	29	1	39	\$4,475	40
YES	1	0	0	17		
NO	29	29	1	22		
UNSURE						

Morris County

	Have you witnessed misuse of the trail segment you adjoin in any of the following manners: Littering	Have you witnessed misuse of the trail segment you adjoin in any of the following manners: Dumping trash	Have you witnessed misuse of the trail segment you adjoin in any of the following manners: Hunting/ trapping	Have you witnessed misuse of the trail segment you adjoin in any of the following manners: Motorized vehicle use	Trespassing off trail on to your private property?	If yes, how many times?
47						
48	NO	NO	YES	NO	NO	
49	NO	YES		NO	NO	
50	NO	NO	NO	YES	NO	
51	NO	NO	NO	NO	NO	
52	NO	NO	YES	NO	NO	
53	YES	YES	YES	YES	YES	
54	YES	YES	YES	YES		
55	YES	NO	YES	YES	YES	
56	NO	NO	NO	NO	NO	
57	YES	YES	YES	NO	YES	
58	NO	NO	NO	NO	NO	
59					YES	3
60			YES	YES	YES	3
61						
62	YES	YES	YES	YES	NO	
63	NO	NO	YES	YES	NO	
64	YES	YES	YES	YES	YES	
65	NO	NO	YES	YES	NO	
66	NO	NO	YES	YES		
67	NO	NO	NO	NO	NO	
68	YES	YES	NO	NO	NO	
69						
70	NO	NO	NO	NO	NO	
71	NO	YES	NO	YES	NO	
72	YES	YES	YES	YES	NO	
73	YES	YES	NO	YES	NO	
74	NO	YES	NO	YES	NO	
75						
76	YES	YES	YES	YES	NO	
77	YES	YES	YES	YES	NO	
78	YES	YES	YES	YES	NO	
79	YES	YES	YES	YES	NO	
80	YES	YES	YES	YES	NO	
81	YES	YES	YES	YES	NO	
82	NO	NO	YES	YES	NO	
83	NO	NO	YES	YES	NO	
84	YES	YES	YES	YES	NO	
85	NO	NO	NO	YES	NO	
86	YES	YES	YES	YES	NO	
87	NO	NO	YES	NO	NO	
88	NO	NO	NO	YES	NO	
89	NO	NO	NO	NO	NO	
90	YES	YES	YES	YES	NO	
91	YES	YES	YES	YES	NO	
92					NO	
93	NO	NO	NO	NO	NO	
TOTAL	40	40	39	40	41	
YES	19	21	25	27	6	
NO	21	19	14	13	35	
VERY IMPORTANT						
IMPORTANT						
NOT IMPORTANT						

Morris County

	Please categorize the importance of these provisions to you: Fencing	Please categorize the importance of these provisions to you: Noxious weed control	Please categorize the importance of these provisions to you: Trespassing/Vandalism	Please categorize the importance of these provisions to you: litter control	Please categorize the importance of these provisions to you: Law enforcement	Please categorize the importance of these provisions to you: ATV use	Please categorize the importance of these provisions to you: Hunting/trapping
47	VI	VI	VI				
48	VI	VI	VI	VI	VI	NI	NI
49	VI	VI	VI	VI	VI	VI	VI
50	VI	VI	VI	VI	VI	VI	VI
51	VI	VI	VI	VI	I	I	NI
52	VI	VI	VI	VI	VI	I	NI
53	VI	VI	VI	VI	VI	I	NI
54							
55	VI	VI	VI	VI	VI	VI	VI
56	VI	VI	VI	VI	VI	VI	VI
57	VI	VI	VI	VI	VI	VI	VI
58	VI	VI	VI	VI	VI	I	VI
59	VI	VI	VI	VI	VI	VI	VI
60	VI	VI	VI	VI	VI	VI	VI
61	VI	VI	VI	VI	VI	VI	VI
62	VI	VI	VI	VI	VI	VI	VI
63	VI	VI	VI	VI	VI	VI	VI
64	VI	VI	VI	VI	VI	VI	VI
65	VI	VI	VI	VI	VI	I	I
66							
67	VI	VI	VI	I	I	I	I
68	I	VI	I	VI	VI	I	VI
69	VI	VI	VI	VI	VI	VI	VI
70	VI	VI	VI	VI	IV	VI	
71	VI	VI	VI	VI	VI	VI	VI
72	VI	VI	VI	VI	VI	VI	VI
73	VI	VI	VI	VI	VI	VI	VI
74	VI	VI	VI	VI	VI	VI	VI
75							
76	VI	VI	VI	VI	VI	VI	VI
77	VI	VI	VI	VI	VI	VI	VI
78	VI	VI	VI	VI	I	VI	VI
79	VI	VI	VI	VI	VI	VI	VI
80	VI	VI	VI	VI	I	VI	VI
81	VI	VI	VI	VI	I	VI	VI
82	VI	VI	VI	VI	VI	VI	VI
83	VI	VI	VI	VI	VI	VI	VI
84	VI	VI	VI	VI	VI	VI	VI
85							
86	VI	VI	VI	VI	VI	VI	VI
87	VI	VI	VI	VI	VI	VI	VI
88	VI	VI	VI	VI	VI	VI	VI
89	NI	VI	VI	VI	VI	VI	V
90	VI	VI	VI	VI	VI	VI	VI
91	VI	VI	VI	VI	VI	VI	VI
92	VI	VI	VI	VI	VI	VI	VI
93	VI	VI	VI	VI	VI	I	I
TOTAL	44	43	42	42	41	42	40
YES							
NO							
VERY IMPORTANT	41	43	41	41	36	33	33
IMPORTANT	1	0	1	1	5	8	3
NOT IMPORTANT	1	0	0	0			

8-37

Morris County

	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Bridge repair	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Fencing	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Litter control	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Brush control	Please list any maintenance that needs to be done to the portion of the trail adjacent to your property. Weed control	Additional comments
47						X
48						X
49		X	X		X	X
50		X	X		X	
51						
52		X			X	X
53		X				
54						
55		X		X	X	
56				X	X	X
57		X			X	
58		X				
59		X				
60		X				
61		X			X	
62	X	X	X		X	X
63		X	X		X	
64		X				
65	X	X				
66						
67		X				
68	X	X				
69						
70						
71		X	X		X	X
72		X	X		X	
73		X	X		X	
74		X	X		X	
75						
76		X	X		X	
77		X	X		X	
78		X	X		X	
79		X	X		X	
80		X	X		X	
81		X	X		X	
82		X	X		X	X
83		X	X		X	
84		X	X		X	
85						X
86			X		X	
87		X	X		X	
88		X	X		X	
89						X
90		X	X		X	
91		X	X		X	
92		X			X	
93					X	
TOTAL	3	34	22	2	29	10



Since 1894

To: The House Environment Committee
Representative Joann Freeborn, Chairman

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

Subject: **Support of House Bill No. 2490**

Date: February 18, 1999

On behalf of the Kansas Livestock Association I am pleased to appear before this committee in support of HB 2490. This legislation amends the recreational trail statutes created by the state legislature in 1996. Several of you participated in a lengthy and methodical process that year to craft a bill that established reasonable guidelines for groups or public entities who obtain permission from the Federal Surface Transportation Board for interim trail use on a railroad corridor in Kansas.

We believe this law is sound and has addressed most issues that have surfaced since it was passed three years ago. This bill, supported by KLA, is an attempt to clarify and enforce the concepts adopted in 1996.

First, let me say it is important the state establish policies for operating rail trails in Kansas. Attached is a map and summary of rail line segments in Kansas that no longer provide rail service but are preserved for future use. (This information was assembled by Roth Gatewood, a retired railroad attorney, who resides in Topeka.) Fifty miles have been railbanked by the State of Kansas and used to establish the Prairie Spirit Trail from Ottawa to Iola. **Nearly 300 miles of railroad corridor, however, are targeted for recreational use by private entities.** Very little has been done on these corridors to establish trails or meet the requirements of the existing state recreational trail act.

Local officials and landowners are frustrated the Kansas law includes no mechanism to enforce the policies established for Kansas rail trails. The primary purpose of HB 2490 is to give landowners and local governing bodies a tool to enforce the act. New Section 4, starting at the bottom of page 5, establishes criminal penalties for a violation of or noncompliance with the state law.

To date, rail trail sponsors are ignoring the law. Very few have posted bonds. At least one group is behind on their property taxes. Little has been done by these groups on fence repair and maintenance. In most cases, landowners' calls or letters to trail sponsors have been completely ignored. I've heard from county commissioners who say the trail sponsors refuse to meet with them.

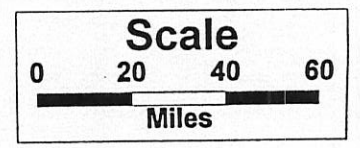
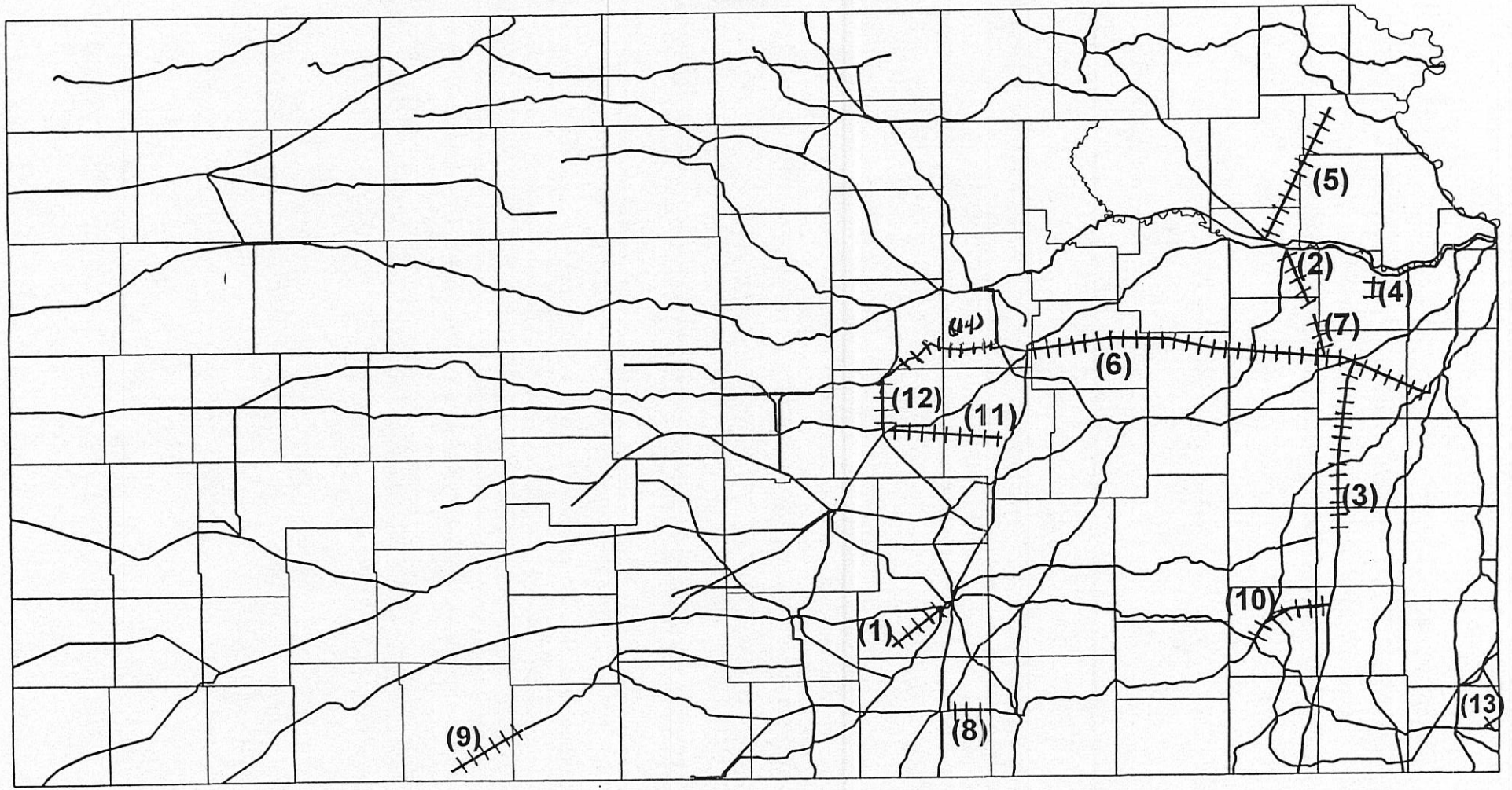
Unfortunately these trail sponsors are small, under-funded nonprofit groups that hide behind a federal railbanking order to tie up hundreds of miles of railroad corridor with no respect for the state recreational trail laws. The federal law does not force trail sponsors to develop the trail or act as a responsible neighbor. We believe it is the state's role to establish and enforce parameters for these public trails. HB 2490 merely puts some teeth in existing law.

I don't see how any rail trail advocate can defend what is happening all across this state. Reports from our members claim many portions of these corridors are impassable by foot, bicycle, or horseback. The public is not using these corridors for their intended purpose. Groups, several from out-of-state, are abusing the purpose of the rail trail law and tying up property that could be returned to adjoining landowners. At that time private landowners would be responsible for controlling littering, trespassing, noxious weeds, and brush. The land would generate property taxes and be put to productive use.

If a trail sponsor steps up to take ownership of the right-of-way someone must hold them accountable. We believe HB 2490 adds this accountability by giving local officials the tools to enforce the law.

Thank you for considering this legislation. We sincerely hope you will advance the bill. I'd be happy to respond to any questions or comments.

Figure 28 Kansas Railbanked Miles



Presented below are the requests & approximate miles preserved for future use.

Table 13 - KANSAS LINE SEGMENTS AND MILES PRESERVED

RAIL LINE SEGMENT	MILES PRESERVED
1) Wichita to Clommel (Kansas Department of Transportation)	11.0
2) Topeka to Overbrook (Kansas Horse Council)	40.0
3) Ottawa to Iola (Wildlife and Parks)	50.0
4) Lawrence (City of Lawrence)	.5
5) Topeka to Parnell (overturned to appeal)	40.0
6) Herrington to Osawatomie (Kansas Horse Council)	120.0
7) Lomax to Overbrook (Kansas Horse Council)	13.5
8) Oxford to Wellington (pending) (American Trails?)	9.2
9) Protection to Englewood (Iowa Rails to Trails?)	30.3
10) Chanute to Fredonia (pending) (American Trails & Kansas Horse Council)	23.6
11) McPherson to Marion (pending) (Jennings/Iowa Trail)	37.1
12) McPherson to Lindsborg (Central Kansas Conservancy)	12.6
13) Crestline to Waco (Mo.) (Ozark?)	16.0
14) Bridgeport to Hope (withdrawn)	35.0
Total	438.8



February 16, 1999

Representative Joann L. Freeborn
Chair, House Environment Committee
300 S.W. 10th Avenue
Topeka, KS 66612

RE: HB 2490 Rails to Trails

Dear Chairperson Freeborn:

I am happy that the legislature has begun the task of debating the Rails-to-Trails issue. There is great confusion across the state as to ownership, control, and responsibility of the "railbanked" rail corridors in the state.

The adjoining landowners have never had due process. This land was taken 120 years ago for the public good. Today it is being taken again, and not for the same reasons. I live in one of the most rural counties in Kansas. Clark County has 2,600 people in an area the size of Rhode Island. If every person in this county would use the trail every day, it still would not justify the cost of construction and maintenance.

Today, all of rural Kansas is in decay. Our small towns are dying, and dying quickly. With agriculture in such dismal shape, there is little that can be done. What we do not need is outsiders (ie Iowa Trails Council) coming to our county and telling us we need to spend more money on a trail that very, very few people will know that exists, let alone use. The local Trails group is trying to get a local entity of government to take control of this project. My understanding is that they would ultimately pay the cost of running and maintaining the trail.

Having been Mayor of Ashland, my deepest concern is not the trail itself, but the cost of it. This money could be used in our communities in a far better way. Our roads are crumbling, water lines need replaced, our schools face declining enrollment, therefore less money from the state. Everyone in Clark County is paying more in property taxes as a result. My point is that this money needs to be spent on the communities themselves and not a trail.

At the very least the trails groups should be held accountable at the local level. The proposed changes in HB 2490 would clarify the existing statute and allow more control of these matters on a local level.

Thank you for your consideration in this matter.

Sincerely,

William K. Shaw

**Testimony of Howard Woodbury
Farmer and Rancher from Quenemo, Kansas**

**Before the House Committee on the Environment
Supporting HB 2490 concerning recreational trails**

February 18, 1998

Chair Freeborn and members of the Committee, thank you for the opportunity to appear before you today in support of HB 2490. I am Howard Woodbury. I operate a 4,000 acre diversified farming and ranching operation with my father and brother in Osage and Franklin Counties. Our land is intersected by the Landon Trail that runs from Topeka, south through Overbrook and Michigan Valley the former railroad switching station at Lomax. The Landon Trail intersects with the east-west Flint Hills Trail that extends from Herrington to Osawatomie approximately two miles south of our property.

Rail service on the corridor that runs through my land was discontinued in 1993. The tracks and ties were removed in 1996. Subsequently, the right-of-way was rail banked supposedly for the development of a recreational trail. No recreational trail has been developed on the portion of corridor we adjoin. What's worse, no maintenance or up-keep of the trail or fencing along the corridor is taking place either. The requirements of the Kansas Recreational Trails Act are completely ignored. And since there is no direct enforcement provision in the Act, landowners like myself have virtually no recourse.

Issues of fencing, maintenance, littering, trash dumping and unsafe trail conditions are not unique to the trail portion I adjoin. I cross the Landon Trail in various places several times a week. I visit my neighbors and see the problems they are facing.

*House Environment
2-18-99
Attachment 10*

Recently, I walked along various portions of the Landon Trail, specifically to view the trail and fence conditions. I have attached pictures to my testimony that show many of the unsightly, and sometimes dangerous, conditions along the trail. During my times on the trail, I am confronted with overgrown weeds and brush, fallen trees, empty shotgun shell casings, litter and neglected fences. A portion of the fence between my land and the corridor was pushed over when the ballast, or rock that formed the rail bed, was washed against the fence. I had to add a new post and wire to prevent my cattle from walking up what is now a rock ramp and stepping over the fence.

I have also included a photo from the Flint Hills Trail, near the intersection with Fairlawn Road, a few miles east of Osage City, KS. Tires, beer cans, plastic container and a couch have been dumped on the north side of the right-of-way.

One might wonder at this point, why don't I just call the trail sponsor and ask that these maintenance concerns be addressed. I wish it were that easy. I am fortunate to know who controls the corridor. But, repeated attempts to contact them have proved unsuccessful. Essentially, no one is taking responsibility for the corridor.

Although current law requires specific maintenance, up-keep and safety efforts by the responsible party, there is no specific enforcement mechanism in the law. As such, the law is being ignored. The provisions in the Kansas Recreational Trails Act are good provisions. They protect trail users and landowners alike. But, it does little good to have the requirements in the statute book if we can't enforce them.

The proposed amendment to the Kansas Recreational Trails Act contained in HB 2490 clarify existing language, place authority for bond and liability insurance amounts within the jurisdiction of the county commission and provide a specific enforcement

mechanism landowners and local government can turn to when a trail sponsor is not fulfilling the requirements of the Kansas Recreational Trails Act. Please consider the bill favorably when you take action on it.

Thank you for the opportunity to appear before you today. If any member of the Committee would like to view the portions of the trail I have described, I am more than willing to serve as a guide. I would be glad to answer any questions.

Howard Woodbury
23200 S. Stubbs Rd.
Quenemo, KS
785/453-2492







10-6

Additional Comments by Howard Woodbury

I would have two suggestions to improve HB 2490:

- 1) Shorten the time frame in which fencing repairs/installation must be made.

I realize local governments will require more to time to accomplish fence work since many bodies only meet once a month. Private trail groups are not bound by the same time constraints as local government. This should be reflected in HB 2490. Non-governmental entities should have 7 days to make repairs particularly when livestock are being enclosed. If it takes 90 days to make a repair, I could miss grazing season altogether.

AND

- 2) Clarify that landowners that have to make emergency repairs will be reimbursed for their expenses.

Thank you.

Howard Woodbury
23200 S. Stubbs Rd.
Quenemo, KS
785/453-2492

*House Environment
2-18-99
Attachment 11*

We are here today to acknowledge HB 2490

We are part of a landowners group known as C.A.M.M., Citizens Association of Marion & McPherson Counties. This group was formed after learning through coffee shop talk, *not by being advised as state law requires*, that a trail group was trying to negotiate with a local organization who had purchased a section of Right of Way in Hillsboro to build a trail.

THIS IS WHERE THE TRAIL HAS LEAD US...

- 1) Adjacent landowners were never served a NITU (Notice of Interim Trail Use), until C.A.M.M. had been established and a recognized group. Then only the board members of C.A.M.M. received NITUs.
- 2) The Cities and Counties along the proposed trail have never been contacted with a proposed plan (which we they are trying to enforce the trail group to do now), or bonding, fencing or any other requirement.
- 3) The trail group has not paid for noxious weed spraying done by the counties, because the trail group would not take responsibility of spraying. One county has gone as far as putting the bill on a tax lien.
- 4) Since local governments have given public notice, and have gone as far as writing resolutions against a local trail, there cannot be ISTEPA funds used without local government approval. Also Kansas Wildlife and Parks state they are not interested in funding anymore trails, until some of the problems with landowners are solved.
- 5) We have a lot of traffic on the abandoned right of way (which is our back yard), dirt bikers (who get off the line and tear out fences), 4-wheelers; hunters; and people driving cars and trucks taking shortcuts to town. There is no fencing, signs, or anything to stop them from driving wherever they want. This leaves us wide-open for liability problems, we have good reasons to worry about trespassing. Right now our exposure to liability is wide open.
- 6) We are responsible landowners, and put up appropriate fencing for our needs. Our concern is not keeping our animal in as much as keeping trespassers and their pets out. The fence represents the "boundary", and the users will need to know their boundaries and respect our property.

On November 5, 1997, we filed a petition to reopen with the STB. In this petition we proved that the railroad had consummated abandonment, filed false and fraudulent deeds, and that the trail group had a lack of funding and refused to abide federal and state laws. The STB denied the petition to reopen, but did state that any recourse should be handled at State and Local levels. And also that land disputes should be handled at State court. And as far as lack of funding that was the railroad's problem, according to the STB.

Our group, like other landowner groups has spent countless hours on research and actively pursuing enforcement and thousands of dollars in legal fees. We need some help on enforcing state laws, this is not a private issue, it is a state issue. It seems like this is a political *hot potato*, which no one wants to hang on to or enforce. Local governments (counties and cities) that *want* to actively enforce state laws regarding non-compliance feel that there is not enough enforcement written into the state laws as it now stands. . This trail group, as all other groups in the State of Kansas to date, has a proven history of non-compliance.

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Attachment 12

Are you aware that "one" railroad (Central Kansas Railroad/Omitrax, a Denver based corporation) owns 1300 miles of right of way in the State of Kansas? Did you also know that recently they had their Corporate License revoked? Did you know that they are buying; salvaging and rail banking at a rate of more than 100 miles per year in the State of Kansas? They had promised our Lt. Governor that they would "not" abandon the lines, well they have done it and state that they will "look at" all of their lines in the next three years. Obviously this is a rapidly growing problem, and is already having a negative effect on at least 70 counties in Kansas. This is why it is imperative that noncompliance to state rail banking laws be a punishable offense. Doing so will make it less attractive for *irresponsible* parties to obtain railroad r.o.w., and threaten the livelihood of rural property owners.

WE NEED a clear description of "Responsible Party". There is no definition in 58-3211-c that defines responsible party. Responsible should mean a law-abiding group (person) that can and will abide by state and local laws. Proof of responsibility is essential, trails groups continue to publicly ignore 58-3212, we need to be able to force them to obey laws.

ENFORCEMENT is vital to our future, as landowners effected by rails to trails, and the number of those landowners are growing rapidly. Kansas has enough other problems threatening rural life, as we know it; with out being able to protect themselves with state laws; this is an unnecessary burden. Railroads and trail sponsors stand to make a fortune on abandoning lines; salvaging them and holding the state and landowners hostage. It is our property they are using to do so, and is a burden too great for us to bear anymore.

Fighting this battle, personally, has taken a tremendous toll on us. The work time lost expenses incurred and loss of family time not to mention all of the sleepless nights. Having enforceable laws would and could make a major difference in our daily lives. Please consider this in making your decision on HB 2490.

Thank you for your consideration,

Kevin & Angy Jost
CAMM members
P.O. Box 203
Hillsboro, KS 67063



LEAGUE OF KANSAS MUNICIPALITIES

LEGAL DEPARTMENT □ 300 S.W. EIGHTH □ TOPEKA, KANSAS 66603

PHONE: (785) 354-9565 □ FAX: (785) 354-4186

To: House Environment Committee
From: Kim Gulley, Assistant General Counsel
Date: February 18, 1999
Re: Support for HB 2490

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our 529 member cities. Although we did not support the original enactment of the current law which imposes state regulation of recreational trails even when those trails are operated by local governments, we believe that the changes proposed by House Bill 2490 help to clarify the current law and make it more workable for all parties involved in the development of these trails.

Several cities have been quite successful in the development of recreational trails pursuant to the federal Railbanking Act and the League strongly supports the development of public recreational areas. While we may disagree with the Kansas Farm Bureau concerning the basic philosophy concerning rail trails, we were pleased to work with them to achieve state guidelines which are workable and fair.

Many of these changes in House Bill 2490 are language modifications which we believe will help to clarify the existing law. In addition, there are three areas of primary interest for Kansas cities:

- **Fencing Requirements.** Current law allows landowners to request any type of fencing but does not establish a mechanism for resolving disputes between trail operators and landowners with regard to fencing. Section 2(c) of House Bill 2490 invokes the traditional fence viewing statutes in order to provide such a procedure. We believe this is a change which is beneficial to both landowners and trail operators.
- **Time Limitations.** Throughout the bill, a 90-day time limit for action is established. While we do not oppose such time limitations, we believe that this time limitation must not be reduced. A 90-day time limitation is a particularly short period of time to request action from a governing body which meets only once a month, as is the case in many cities.
- **Public Hearings.** We support the notice and public hearing requirements set out in the bill.

For these reasons, we believe that House Bill 2490 should be recommended favorably for passage. Thank you for allowing me to appear today to offer our comments in support of House Bill 2490.

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Attachment 13

HB 2490 KANSAS RECREATIONAL TRAILS ACT

Thank you for allowing me to address you. I will keep my comments brief.

I am Richard Porter. I farm and raise cattle in Lyon County. The Ottawa to Herrington trail cuts through our farm for over three miles.

When the trail started we were in contact with some of the trail people. They seemed like fine well-intended people. The problem is their activity level has dropped from low to almost none. For the last year the trail has no staff that anyone has been able to contact. My father Walter Porter made about 20 calls to their office for each time he got to talk with Bud Newell. I sent the Trail a certified letter and no one would sign for the letter. For the last year they have done less than 2% of the fence and weed control that is necessary. The trail has made no effort to block hunters from driving down the trail.

Our Kansas Recreational Trails Act needs teeth to force the trail operators to make a good faith effort toward being a good neighbor. We need to turn their good intentions into good actions.

The Surface Transportation Board has clearly stated that regulation of recreation trails is the responsibility of state, county, and municipal government because the federal government does not regulate them. The only thing you can't do in state law is to prevent their being a trail.

*House Environment
2-18-99
Attachment 14*



TOPEKA

KANSAS SENATE

Testimony
House Committee on Environment
February 18, 1999

ROBERT TYSON
SENATOR, TWELFTH DISTRICT
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COUNTIES
ANDERSON, BOURBON,
FRANKLIN, LINN & MIAMI
COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
ENERGY AND NATURAL RESOURCES
TRANSPORTATION AND TOURISM
JOINT COMMITTEE ON PENSIONS,
INVESTMENTS & BENEFITS

Chairperson Freeborn and members of the Committee on Environment. Thank you for the opportunity to testify in support of HB 2490. I come here, as a rancher and landowner who has two major rail-trails in my district. The Prairie Spirit Rail-Trail in Franklin and Anderson counties, and a horse trail in Miami and Franklin counties which runs for 150 miles out through Herington. I have studied the rail-trail development and Kansas rail law. I have long been a property rights person. Those who study history understand that private property rights are the very foundation of a democracy.

Some of you remember the two bills I sponsored with Wildlife and Parks on the Prairie Spirit Trail which I also testified on in this committee. I believe HB 2490 is the first rail-trail bill to come along since then. After giving this bill much thought I have four changes that I hope you will consider.

The enclosed amendment has these four needed changes:

1. On page 2 after line 35 insert a paragraph (6) which contains the contents of paragraph (8) on lines 36 and 37 on page 1.

On page 1, the trail group is responsible for security along the trail. Adding the change to page 2 will allow the county commissioners to consider the annual cost of security in the bond.

2. Change the fencing requirement from 90 days to 60 days on page 3, line 40 and on page 4, lines 6 and 15. This would give the responsible party 60 days to comply with fencing requirements.
3. Add back in paragraph (c) starting on line 32 on page 5. If this section is deleted, a trail group can hang onto the land forever and do nothing.
4. Place a period after "noncompliance" on page 6, line 3. Delete line 4. \$1,500 is not enough to get a lawyer interested.

Thank you for considering these changes.

*House Environment
2-18-99
Attachment 15*

HOUSE BILL No. 2490

By Committee on Environment

2-12

9 AN ACT relating to recreational trails; concerning certain duties of re-
10 sponsible parties; providing penalties for certain violations; amending
11 K.S.A. 1998 Supp. 58-3212 and 58-3213 and repealing the existing
12 sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 1998 Supp. 58-3212 is hereby amended to read as
16 follows: 58-3212. (a) The responsible party, at all times after ~~transfer of~~
17 ~~the deed to the responsible party entering into the interim trail use and~~
18 ~~rail banking agreement~~, shall:

- 19 (1) ~~Perform the duties imposed by~~ *Control noxious weeds in accord-*
20 *ance with* K.S.A. 2-1314 and amendments thereto along the recreational
21 trail;
- 22 (2) provide for the safety, use and accessibility of existing easements,
23 utility facilities and access licenses along the recreational trail;
- 24 (3) provide for trail-user education and signs regarding trespassing
25 laws and safety along the recreational trail;
- 26 (4) provide for litter control and the enforcement of laws prohibiting
27 littering along the recreational trail, including but not limited to trail-user
28 education and signs about laws prohibiting littering and the provision of
29 trash receptacles and the cleanup of trash and litter;
- 30 (5) develop and maintain the recreational trail in a condition that does
31 not create a fire hazard;
- 32 (6) designate the recreational trail for nonmotorized vehicle use with
33 exceptions only for motorized wheelchairs and maintenance, law enforce-
34 ment and emergency vehicles;
- 35 (7) prohibit hunting or trapping on or from the recreational trail;
- 36 (8) provide for law enforcement *or professional security personnel*
37 *and security equipment* along the recreational trail;
- 38 (9) grant easements to adjacent property owners to permit such own-
39 ers to cross the recreational trail in a reasonable manner consistent with
40 the use of the adjacent property and with K.S.A. 66-301 through 66-303,
41 and amendments thereto;
- 42 (10) (A) ~~maintain any existing fencing between the trail and adjacent~~
43 ~~property;~~ (B) ~~maintain any future fencing installed between the trail and~~

1 adjacent property; (C) install between the trail and adjacent property
 2 fencing corresponding in class to that maintained on the remaining sides
 3 of such adjacent property; and (D) on request of an adjacent property
 4 owner, pay one-half the cost of installing fencing between the trail and
 5 such property owner's adjacent property with a fence of the class re-
 6 quested by such property owner, if not all remaining sides of such prop-
 7 erty are fenced install and maintain fencing consistent with section 2 and
 8 amendments thereto; and

9 (11) (A) maintain the trail; (B) maintain all bridges, culverts, roadway
 10 intersections and crossings on the trail, essential to the reasonable and
 11 prudent operation of the trail or needed for drainage, flood control or
 12 the use of easements for crossing the trail between adjacent properties,
 13 or cause maintenance thereof by other parties that have assumed con-
 14 tractual responsibility therefor; and (C) install and maintain any warranted
 15 traffic signs on the trail.

16 (b) If the responsible party is not a governmental entity, the respon-
 17 sible party shall file with the county clerk of each county where a portion
 18 of the recreational trail is or will be located a bond or proof of an escrow
 19 account in a Kansas financial institution, as defined by K.S.A. 16-117 and
 20 amendments thereto, payable to the county. The bond or proof of an
 21 escrow account shall be filed at the time of transfer of the deed to by the
 22 responsible party immediately upon entering into the interim trail use and
 23 rail banking agreement and annually thereafter. The bond or escrow ac-
 24 count shall be conditioned on the responsible party's performance, and
 25 shall be in an amount agreed upon between the responsible party and
 26 the county commission as that the county commission determines reason-
 27 able and sufficient to fully cover the annual costs, of:

- 28 (1) Weed control along the trail, as required by subsection (a)(1);
- 29 (2) litter control along the trail, as required by subsection (a)(4);
- 30 (3) maintenance of the trail in a condition that does not create a fire
 31 hazard, as required by subsection (a)(5);
- 32 (4) installation and maintenance of fencing between the trail and ad-
 33 jacent property within the county, as required by subsection (a)(10); ~~and~~
- 34 (5) installation and maintenance of signs along the trail, as required
 35 by subsections (a)(3), (a)(4) and (a)(11)(C)

; and
 (6) provision of security personnel and
 security equipment

36 If separate bonds are submitted to or escrow accounts established for
 37 the various counties through which the trail transverses, the annual costs
 38 listed above shall be only for that portion of the trail located within the
 39 particular county that is the holder of the bond or beneficiary of the
 40 escrow. A responsible party may submit a single bond or escrow account
 41 with multiple counties respectively as coobligees or cobeneficiaries, but
 42 in that event the annual costs used in computation of the bond amount
 43 shall be for the entire trail length.

1 (c) If the responsible party is not a governmental entity, the respon-
 2 sible party shall file with the county clerk of each county where a portion
 3 of the recreational trail is or will be located, proof of liability insurance
 4 in an amount agreed upon between the responsible party and the county
 5 commission as that the county commission determines reasonable and
 6 sufficient. Such proof shall be filed at the time of transfer of the deed to
 7 by the responsible party immediately upon entering into the interim trail
 8 use and rail banking agreement and annually thereafter.

9 (d) The provisions of this section shall apply to all recreational trails,
 10 regardless of when approval to enter into negotiations for interim trail
 11 use is or was received from the appropriate federal agency.

12 (e) The provisions of this section may be modified or supplemented
 13 by any city governing body for recreational trails within the corporate
 14 limits of such city in the manner provided by K.S.A. 12-137 *et seq.* and
 15 amendments thereto. If a city governing body adopts requirements in
 16 addition to those provided by this section, the city shall pay all costs of
 17 compliance with such additional requirements.

18 New Sec. 2. (a) At all times after receiving the notice of approval of
 19 interim trail use from the appropriate federal agency:

20 (1) The responsible party shall maintain any existing fencing between
 21 the trail and the adjacent property. Such fencing shall be maintained in
 22 a condition consistent with the use of the adjacent property. Failure of
 23 the responsible party, previous responsible party or a railroad that pre-
 24 viously occupied the corridor to maintain existing fencing in an appro-
 25 priate condition consistent with the use of the adjacent property shall not
 26 relieve the current responsible party of the obligation to make repairs or
 27 improvements. Such repairs and improvements shall include replacement
 28 of existing fencing if necessary to bring the fencing into conformity with
 29 the use of the adjacent property.

30 (2) The responsible party shall maintain any future fencing installed
 31 between the trail and adjacent property in a condition consistent with the
 32 use of the property.

33 (3) If no fencing exists between the trail and the adjacent property,
 34 and all the remaining sides of the adjacent property are fenced, the re-
 35 sponsible party, at the request of the adjacent property owner, shall install
 36 fencing equivalent in function and similar in cost to that maintained on
 37 the remaining sides of the adjacent property. The adjacent property
 38 owner shall make the request for fencing in writing and shall clearly spec-
 39 ify the type of fencing being requested and the approximate location for
 40 the fencing. The responsible party shall install the fencing within 90 days
 41 after receiving the written request from the adjacent property owner.

42 (4) If no fencing exists between the trail and the adjacent property,
 43 and not all remaining sides of the property are fenced, the responsible

1 party, at the request of the adjacent property owner, shall install fencing
2 consistent with the use of the land. The adjacent property owner shall
3 make the request for fencing in writing and shall clearly specify the type
4 of fencing being requested, the approximate location for the fencing and
5 the general use of the property to be enclosed. The responsible party
6 shall install the fencing within ~~90~~ 90 days after receiving the written request
7 from the adjacent property owner. The adjacent property owner shall pay
8 1/2 the cost of installing such fencing.

60

9 (b) Nothing in this act shall preclude an adjacent property owner
10 from taking reasonable measures immediately necessary to temporarily
11 repair broken or damaged fencing enclosing livestock or property. The
12 adjacent property owner shall notify the responsible party, in writing, that
13 a temporary repair was necessary and specify the approximate location
14 where the temporary repair was made. The responsible party shall make
15 a permanent repair within ~~90~~ 90 days after receiving notice of the broken or
16 damaged fencing.

60

17 (c) The county fence viewers, in accordance with K.S.A. 29-201
18 through K.S.A. 29-203 and amendments thereto, shall settle disputes re-
19 garding the cost or the appropriateness of the type of fence requested.

20 Sec. 3. K.S.A. 1998 Supp. 58-3213 is hereby amended to read as
21 follows: 58-3213. (a) Upon receipt of permission from the appropriate
22 federal agency to enter into negotiations for interim trail use, the respon-
23 sible party shall give written notice to each adjacent property owner that
24 the responsible party intends to ~~build~~ use the rail corridor for a recrea-
25 tional trail adjacent to the property owner's property. The responsible
26 party may utilize the addresses to which real estate tax statements are
27 sent, as maintained by county officials, for such notices. Such notice shall
28 be given by first-class mail unless the notice is returned undelivered, in
29 which case a further notice shall be given by certified mail. ~~Further Ad-~~
30 ~~ditional~~ notice shall be published once each week for three consecutive
31 weeks in the official newspaper of the county in which such each county
32 where the trail or a portion of the trail is proposed to be located.

33 (b) *Within 90 days after entering into the interim trail use and rail*
34 *banking agreement, the responsible party shall hold a public hearing and*
35 *receive public comment regarding corridor use or trail development, or*
36 *both. At least one public hearing shall be held in each county where the*
37 *trail or a portion of the trail is to be located. Notice of such public hearing*
38 *shall be published once a week for three consecutive weeks in the official*
39 *newspaper of each county where a hearing is required to be held.*

40 ~~(b)~~ (c) Before commencing development or operation of a recrea-
41 tional trail, the responsible party shall:

42 (1) *The responsible party shall prepare a project plan that includes:*
43 (A) The name and address of the responsible party. (B) *the registered*

1 agent for the responsible party, (C) an itemized estimate of the costs of
2 the project and (D) sources of funding for the project, and (E) a map
3 or maps of the recreational trail;

4 (2) The responsible party shall submit by certified mail, not later than
5 180 90 days after receiving approval of interim trail use from the appro-
6 priate federal agency, the initial the last public hearing, a project plan to
7 the county commission of each county where a portion of the trail is to
8 be located outside of city limits and to the governing body of each city
9 where a portion of the trail is to be located inside the city limits;

10 (3) submit the final project plan to the county commission of each
11 county where a portion of the trail is to be located outside of city limits
12 and The responsible party shall make subsequent reports to such the
13 county commission of each county where the trail or a portion of the trail
14 is to be located as to the status of trail development or operation, or both,
15 at intervals determined by the commission and The responsible party
16 shall consider all recommendations the that each county commission has
17 regarding the trail; and and shall inform each county commission of any
18 change in the proposed plan. Notification of any change shall be made in
19 writing to the county commission or commissions within 10 days after the
20 date the change is determined necessary.

21 (4) submit the final project plan to the governing body of each city
22 where a portion of the trail is to be located inside the city limits and The
23 responsible party shall make subsequent reports to such city the govern-
24 ing body of each city where a portion of the trail is to be located inside
25 the city limits as to the status of trail development or operation, or both,
26 at intervals determined by the governing body and The responsible party
27 shall consider all recommendations the that each city governing body has
28 regarding the trail and shall inform each such city governing body of any
29 change in the proposed plan. Notification of any change shall be made in
30 writing to the city governing body within 10 days after the date the change
31 is determined necessary.

32 (e) The responsible party shall complete development of a recrea-
33 tional trail within a period of time equal to two years times the number
34 of counties in which the recreational trail is located. Such period of time
35 shall begin only when the appeal period pursuant to subsection (d) of 16
36 U.S.C. 1247 (1983) has expired. Any time during which there is pending
37 any court action challenging the development or use of the trail shall not
38 be computed as part of the time limitation imposed by this subsection.

39 ~~(d)~~ The provisions of this section shall apply to only recreational trails
40 for which approval to enter into negotiations for interim trail use is re-
41 ceived from the appropriate federal agency on or after the effective date
42 of this act.

43 New Sec. 4. (a) Any responsible party other than a governmental

(d) The responsible party shall complete development of a recreational trail within a period of time equal to two years times the number of counties in which the recreational trail is located. Such period of time shall begin only when the appeal period pursuant to subsection (d) of 16 U.S.C. 1247 (1983) has expired. Any time during which there is pending any court action challenging the development or use of the trail shall not be computed as part of the time limitation imposed by this subsection.

(e)

15-7

1 entity, who violates or fails to comply with any of the provisions of this
2 act shall be guilty of a misdemeanor and, upon conviction, shall be pun-
3 ished by a fine of \$100 per day for each day of violation or noncompliance
4 ~~up to a maximum of \$1,500 for each count.~~

5 (b) Nothing in this subsection shall invalidate any other remedy avail-
6 able under law.

7 Sec. 5. K.S.A. 1998 Supp. 58-3212 and 58-3213 are hereby repealed.

8 Sec. 6. This act shall take effect and be in force from and after its
9 publication in the statute book.

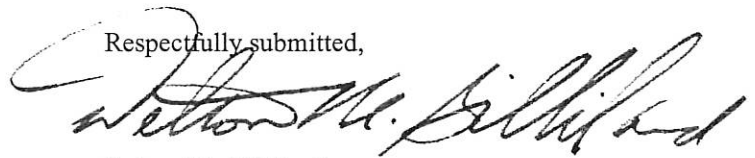
TESTIMONY OF DELTON M. GILLILAND RELATIVE TO HB 2490

- I. I appear as a representative of Osage County.
- II. Status of rail trail "responsible party" compliance
 - A. Not controlling weeds.
 - B. Not paying taxes.
 - C. Not responding to demands to provide bond and liability insurance.
 - D. Not replying to letters.
 - E. Not providing security.
 - F. I am sure landowners will verify "responsible party" is not performing much, if any, of the other duties required by K.S.A. 58-3212, including fencing.
- III. Effect of Rail Trail legislation on local government.
 - A. The existence of a rail trail in a county creates economic and public safety burdens on someone or some entity relative to compliance and enforcement.
 - B. A very large amount of money which will be required to build many miles of fence (at \$3.00 per foot), clear brush, and spray many acres for noxious weeds.
 - C. The problem has been created by higher levels of government and imposed from above upon lower levels of government.
 - D. The statute, as it now exists really does not provide effective means to enforce obligations on "responsible party."
 - E. H.B. 2490 is a step in the right direction in that it provides limited criminal enforcement penalties; and
 - F. Strengthens the fencing and weed control requirements.
- IV. Suggestions for improvement in enforcement power:
 - A. In the event of failure to provide bond, liability insurance, provide security the law should provide for loss of all rights to the rail trail.
 - B. Failure to pay taxes: County can probably file tax foreclosure as it can with any other delinquent taxes, however the county has to wait until the taxes are delinquent for three years. It would be helpful with respect to rail trails to be able to foreclose for tax delinquencies after one year of delinquency.
 - C. Provide that adjacent landowners can enforce fence obligations as provided in the general fence laws K.S.A. 29-101 *et seq.*, including judgment for cost of fencing done by adjacent landowners and liens on the property of the offending party.

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- D. Provide that the interest of the "responsible party" can be sold on foreclosure of tax or other lien, or on levy of execution, free of further rail trail rights.
 - E. Provide that an aggrieved party, county included, can make a claim directly against the bond, and that the bond be maintained as a fund against which judgment creditors can make claim.
 - F. Provide that any obligation of "responsible party" which local government performs, such as weed control, brush control, security, can be made a lien on the real property, subject to prompt foreclosure.
- V. Problems with HB 2490:
- A. It does not go far enough in enabling local government to deal with the problems arising from rail trails located in the county.
 - B. The elimination of K.S.A. 58-3213(c) is very objectionable and I would not support the bill at all with that provision in it.
- VI. Summary:
- A. In addition to the significant problems which rail trail legislation has created for adjacent landowners, it has also created substantial and potentially costly enforcement problems for local government.
 - B. Considering the large amount of acreage and many miles of fence involved, it is obvious that a great amount of money will be constantly required to provide responsible ownership and management of the land.
 - C. The present "responsible parties" are not, and probably have no intention of, fulfilling any of their obligations.
 - D. Please consider providing local government the means to manage these difficult matters if it is to have the duty to do so.

Respectfully submitted,



Delton M. Gilliland
Osage County Counselor
18 February 1999



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612-1233
785/296-2281 FAX 785/296-6953



HOUSE BILL NO. 2490

**Testimony Provided to
House Committee on Environment
February 18, 1999**

House Bill No. 2490 amends current law concerning responsibilities for operators of certain recreational trails in Kansas. The Department of Wildlife and Parks owns and operates the Prairie Spirit Trail, a recreational trail along a rail-banked corridor in Franklin, Anderson, and Allen Counties. Consequently, the department has an interest in legislation that may affect the state's responsibilities in the operation of that trail.

We understand that HB 2490 is not intended to impact the operation of the Prairie Spirit Trail, but rather to address responsibilities of privately run trails. Consequently, we feel it is appropriate for the department to testify only as a neutral party regarding this legislation. However, we are concerned that certain provisions of the bill, as drafted, may have a negative impact on the state's ability to operate the Prairie Spirit Trail. Therefore we would offer some concerns that we recommend be addressed before the bill is recommended favorably by this Committee.

The department is primarily concerned with provisions in New Section 2, regarding fencing obligations. Under current law, a trail operator is responsible for maintaining any existing fence along the trail. A recent Attorney General's Opinion stated that a fence is no longer an existing fence if it is not repairable, and therefore fence constructed in such a location should be considered new fence. The department recognizes that an operator should not be permitted to avoid the requirement of maintaining existing fence simply by allowing a fence to become irreparable. However, New Sec. 2(a)(1) (page 3, line 23) would burden the current operator with the duty to "repair" even irreparable fences if a previous party or the railroad had neglected to maintain the fence. This interpretation of an existing fence would include fence that may have been nonexistent for decades, regardless of whether the adjacent landowner took available steps to require the railroad or any other previous party to maintain the fence. Because the operator would have means of anticipating how many miles of "fenceless" fence the operator may be required to construct, this provision seems to be an overly burdensome broadening of the current law.

Second, New Sec. 2(a)(3) and (4) (page 3, line 40; page 4, line 6) require that the trail operator install new fencing within 90 days of an adjacent landowner's request. The department's budgetary cycle would not allow such a reaction time if a number of landowners were to simultaneously request a great amount of fencing. Perhaps more important, the requirement would not allow the department to prioritize funding and staff for fencing that may be needed to enclose livestock, for example, rather than fencing that is simply desired by the landowner for personal reasons. The provision in New Sec. 2(b) (page 4, line 15) would apply the 90-day time period to fence maintenance, as well. If the proposal to include historically existing fence within

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the definition of existing fence is taken into consideration, this could require the department to dedicate inordinate amounts of resources to construct fences that may not have existed for years, instead of more immediately focusing resources in spots where current fence has been damaged. If these provisions are adopted, the department would have to request that the legislature also appropriate sufficient resources to meet these requirements.

The department does not believe the bill's other provisions would affect the Prairie Spirit Trail, and therefore we make no comment on those sections of HB 2490. We also recognize the intent of this bill, as we understand it, to ensure that parties responsible for the operation and maintenance of a recreational trail fulfill those obligations. However, we would request that the provisions noted be considered before HB 2490 is adopted.

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Testimony Presented to House Committee on Environment
February 18, 1999
House Bill No. 2490

I offer testimony today from multiple perspectives. I was a participant in the drafting negotiations upon the original legislation that resulted in K.S.A. 58-3212 and 58-3213, that are now being sought to be amended. My testimony is also being offered as a Kansas citizen committed to the underlying concepts of the federal statutes that rail line abandonments should be postponed and interim trail use encouraged to foster potential revitalization of the railway system of the United States and the State of Kansas. I also have the further perspective as an interest holder in a 980 acre family farm in close proximity to the Wabash Trace Nature Trail that consists of 60 miles of railroad right-of way running through the Southwest Iowa countryside. The Wabash Trace Nature Trail has been in operation since 1988, and not unlike Kansas, early opponents to the trail fueled much strife that was disruptive to the genuine efforts in the communities along the trail to support their trail. However, that opposition has largely been overcome by the actual use of the trail dispelling many of the fears of opponents.

Section 801 et seq. of Title 45 of the United States Code, upon which subsection (d) of Section 1247 of Title 16 is predicated, creates a legal presumption, based upon declared legislative intent to promote the maintenance and revitalization of the railway system of the United States, that rail line abandonments should be postponed and interim trail use encouraged to foster revitalization. The principal beneficiaries of Section 801 were intended to be the shipping public, who could have renewed access to rail service should their future needs so dictate. Such shipping public may well be the Kansas elevators, and the Kansas farmers dependent upon them to sell and move their grain. I urge careful consideration by this Committee of the practical effect of the amendments now being sought. These amendments will increase the cost of obtaining and maintaining an interim trail use creating a practical impediment to interim trail use. Such impediments will discourage the interim trail use and frustrate the federal legislative intent for interim trail use as a means of access for communities to future revitalized rail service. The primary interest in preserving the potential for revitalized rail service should be a basis for communities allying themselves with the "trail users".

Specifically, my concerns about the amendments are as follows:

1. **Immediate delivery of the bond is impractical and unduly burdensome, without corresponding benefits.** With respect to the amendments of subsection (b) of K.S.A. 58-3212, that would require the bond to be filed "*immediately upon entering into the interim trail use and railbanking agreement*" does not practically consider that the issuance by the Surface Transportation Board of a notice of interim trail use or abandonment (NITU) does not preclude the railroad from negotiating with any party to sell the line, or portions of it, or otherwise dispose of the line. Negotiations with the proposed interim trail user may be only one facet of the negotiations that occur within the 180 days (plus whatever extensions are authorized) provided for in the NITU to complete an agreement. There is no assurance that the proposed interim trail user will end up with all or any portion of the railroad right-of-way until the interim trail use agreement is signed. The proposed amendments by requiring the **immediate delivery of the bond** fails to recognize the uncertainty that the proposed trail user faces until the agreement is actually signed. Some lead time between the agreement is signed and the bond amount is reasonably determined by the Board (or Boards) of County Commissioners should be included in the bill. Some safeguards should be put in place to require County Commissioners to reasonably determine the bond amount within an appropriate time frame and not penalize the responsible

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party if the Board fails to act or otherwise determine the bond amount. As presently written, the amendment puts the burden on the responsible party to provide the bond, but does not impose a corresponding obligation on the Board of County Commissioners to act in a timely fashion; Board action is the prerequisite to any action by the responsible party. I would urge the Committee to consider the safeguards that are in place by virtue of the Interim Trail Use Agreement for the short term between when that agreement is signed and when an appropriate and reasonable bond amount can be determined. Under federal law, the prospective trail sponsor must commit to being financially responsible for managing the right-of-way and for the legal liability and for payment of taxes for the period of the interim trail use. As expressed in a recent Surface Transportation Board Decision (Docket No. AB-4333 (Sub-No.2X), served April 1, 1998), a copy of which has been provided to committee staff, the rail carrier is the most appropriate party to determine if a prospective trail sponsor can fulfill these federal statutory requirements. In essence, there are some safeguards that rail carriers will not negotiate with those entities that they do not think can ultimately fulfill the statutory and regulatory requirements of railbanking. At least for the short term gap between the execution of the agreement and the whatever time frame this Committee provides for the Board of County Commissioners to determine a reasonable bond amount, there could be reliance upon the federal provisions requiring the responsible party to assume financial and legal liability for management of the interim trail use. **My recommendation would be that the amendment be revised to allow some specified time after the interim trail use agreement is signed for the respective County Commissions to reasonably determine the bond amount and thereafter the bond to be obtained and delivered.** A similar concern about the timing of the providing of proof of liability insurance as amended in subsection c of K.S.A. 58-3212 (page 4, lines 4 through 7) could be addressed in the same fashion. Some type of appeal process should be inserted if the responsible party reasonably believes the amount is excessive. A decision of the County Commissioners could be challenged in the District Court, but that process is time consuming and costly.

2. Clarify that volunteer patrols, linked with radios or other devices to law enforcement personnel, may be adequate in certain circumstances. With respect to the amendments of K.S.A. 58-3212 (a) (8), page 2, lines 36 and 37, it should be made clear that volunteer patrols may be effective, and cost efficient, alternatives, provided they are linked to law personnel via radio or other means such as cellular phones.

3. Clarify that the Board of County Commissioners' determination must be reasonable. The present language of the proposed amendments (page 3, lines 26 and 27) could be clarified by restating it as follows: "*that the county commission reasonably determines sufficient to fully...*", which change is intended to clarify that the commission must act reasonably in making the determination of the appropriate amount. Similar changes should be made in line 5, page 4 (inserting "reasonably" before determines and striking "reasonable and") with respect to liability coverage.

4. Fencing requirements imposed by new section 2 (pages 4 and 5, beginning with lines 18 on page 4) exceed the requirements that are imposed on railroads in K.S.A. 66-301 through 311 by specifically allowing that the type of fence can be other than a lawful fence that is ordinarily the standard. For governmental entities, that are subjected to a budgetary process, they may not be able to respond to substantial requests within ninety days. The cost sharing between property owner and responsible party of expenses for new (even replacement) fences in the original statute was based on the assumptions that if a property owner were to pay one-half of the expense that they would be more reasonable in their requests and if the property owner had not deemed a fence necessary when the railroad used the right-of

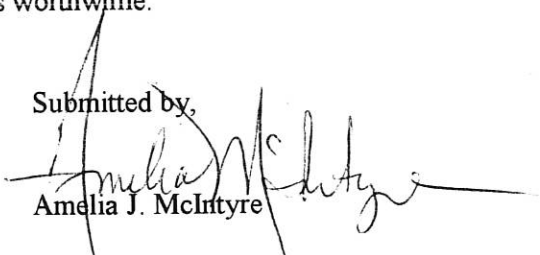
way then the trail use does not impose a higher risk than the railroad to the use of the land. That fundamental concept of cost sharing is essential the foundation of the state's other fencing requirement laws (K.S.A. 29-101 et. seq.). Based on K.S.A. 66-308, a railroad must construct, if requested, a lawful fence, but not necessarily a higher grade fence. The original negotiations on the statute recognized this, but as long as there was cost sharing, the construction of a higher grade fence was an acceptable burden to accept, over and above what would be required of a railroad. A separate concern is the budget process for at least governmental entity responsible parties contemplates some prioritizing of fence maintenance. Without the cost sharing component, there could be excessive demands, not consistent with priorities (e.g. highest priority would be given to a fence needed to keep in livestock, over a fence that is still functional for that purpose, but the property owner desires to graze horses and wants to have a better grade fence to reduce injury to horses).

5. Clarify that the County Commissioners or cities recommendations to the project plan are advisory, and that if the cumulative effect of those recommendations are so excessive in cost to preclude development of the trail then such recommendations do not have to be implemented. The distinction should be drawn that the responsible party can be legitimately held to nuisance criteria, zoning restrictions or other generally applicable local requirements, however, if requirements are made that are specifically targeted toward railroad right-of-way trails, then arguably they are preempted by federal law if their cumulative effect would be to thwart development of the trail.

6. Reconcile the penalty cap with existing statutes applicable to other property owners. Carefully consider whether the penalty provisions of new section four are discriminating between other property owners and responsible parties of recreational trails on railbanked right-of-way. Pursuant to K.S.A. 2-1323 there is a maximum fine of \$1,500, which would be generally applicable to any property owners, including specifically railroads, that failed to control weeds. In contrast, the language of the amendment has been changed so the fine is \$1,500 per count. The "per count" addition could have a significant discriminatory impact on a recreational trail, solely because it is on railroad right-of-way. Further there are safeguards, including notice of noncompliance, within the general weed control statutes that should be expressly applied no differently to a responsible party of a recreational trail, than any other property owner.

Thank your for this opportunity to raise these concerns. I am prepared to devote the time to work with legislative research staff in an effort to address these concerns, if the members of this Committee deem any of these suggestions worthwhile.

Submitted by,


Amelia J. McIntyre

6401 Reeds Drive
Mission, KS 66202
913/677-5991

February 18, 1999
**TESTIMONY OF ORVILLE J. COLE, ATTORNEY AND LANDOWNER
ALONG THE PRAIRIE SPIRIT RAIL-TRAIL CONCERNING CERTAIN
PROVISIONS OF HOUSE BILL NO. 2490**

Chairperson Freeborn and other members of the Committee on Environment:

As a landowner along the Prairie Spirit Rail-Trail I have experienced first hand the problems suffered by the landowners whose land has been taken, against their will without any legal process or protection of private property rights. The process is so expensive that landowners cannot afford to contest this violation of their constitutional rights.

These rail-trails are on private property owned by the present owner of the land they were originally carved out of. The railroads never owned the right-of-way strips and had only an easement that expired when they abandoned the right-of-ways for train travel. Because of acts of the U. S. Congress, these right-of-ways extending across Kansas for hundreds of miles, instead of reverting to the landowner, have been turned over to trail groups, many of whom have no assets or means to finance and operate a trail.

The Kansas legislature tried to give some protection to the landowners in KSA 58-3212 and 58-3213, which HB 2490 seeks to amend and add to. I agree with some of the new proposals in HB 2490 but believe the following changes should be made:

1. On page 5, I oppose deleting section c, lines 31 to 39. I believe the time for completion of the trail should be shortened. If this section is deleted, a trail group can hang onto the land for years and do nothing.
2. On page 2, following paragraph (5), insert between lines 35 and 36, a paragraph (6), which reads, "security personnel and security equipment".
3. Several paragraphs of HB 2490 give the responsible party 90 days to comply with fencing requirements. This time should be reduced to 30 days.
4. One page 6, line 4, the words "up to a maximum of \$1,500 for each count." should be eliminated.

Respectfully submitted,

Orville J. Cole
1006 East 4th St.
Garnett, Ks. 66032
785-448-3477

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Attachment 19*

Tracy Presnell
1980 Palomino Trail
McPherson, Kansas 67460
316-241-1515

Testimony on HB 2490

Before the House Environmental Committee

by

Tracy Presnell

McPherson County Rural Resident

February 18, 1999

Committee Members:

As a McPherson County resident that happens to live adjacent to a rail-trail that is currently "under construction", I have some comments on HB 2490. This bill intends to modify the Kansas Rail Trail Statute. Since I and about 35 of my close neighbors have been dealing with this "proposed" rail-trail for nearly four years, I believe we have first hand knowledge of the statute up for modification. Since we were the first to test the rail-trail law, we have much to share concerning its assistance and its shortcomings in performing its intended task.

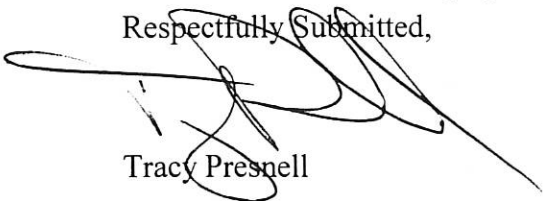
The law in its current form has been very helpful to us and the McPherson County Commission in dealing with an irresponsible-responsible party. However, as we learned of proposed changes to the law, we grew concerned that some of the modifications might make the law less effective for adjacent landowners and counties of future abandonment's.

We view some of the proposed changes as positive modifications to the law, however, there are also some changes which seem to lessen the law's effectiveness in dealing with a responsible party that is less than lawful.

Through discussions with county commissioners and land owners, and the culmination of our nearly four years of experience with the rail-trail issue, we believe our proposal culminates solutions to the vast majority of shortcomings in the current statute and the proposed House Bill.

I have outlined this proposal on the attached pages.

Respectfully Submitted,



Tracy Presnell

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Attachment 20*

HOUSE BILL No. 2490

Proposed Revisions

By Committee on Environment

2-12

9 AN ACT relating to recreational trails; concerning certain duties of re-
10 sponsible parties; providing penalties for certain violations; amending
11 K.S.A. 1998 Supp. 58-3212 and 58-3213 and repealing the existing
12 sections.

13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 1998 Supp. 58-3212 is hereby amended to read as
16 follows: 58-3212. (a) The responsible party, at all times after ~~transfer of~~
17 ~~the deed to the responsible party entering into the interim trail use and~~
18 ~~rail banking agreement~~, shall:

19 (1) ~~Perform the duties imposed by Control noxious weeds in accord-~~
20 ~~ance with K.S.A. 2-1314 and amendments thereto along the recreational~~
21 ~~trail;~~

22 (2) provide for the safety, use and accessibility of existing easements,
23 utility facilities and access licenses along the recreational trail;

24 (3) provide for trail-user education and signs regarding trespassing
25 laws and safety along the recreational trail;

26 (4) provide for litter control and the enforcement of laws prohibiting
27 littering along the recreational trail, including but not limited to trail-user
28 education and signs about laws prohibiting littering and the provision of
29 trash receptacles and the cleanup of trash and litter;

30 (5) develop and maintain the recreational trail in a condition that does
31 not create a fire hazard;

32 (6) designate the recreational trail for nonmotorized vehicle use with
33 exceptions only for motorized wheelchairs and maintenance, law enforce-
34 ment and emergency vehicles;

35 (7) prohibit hunting or trapping on or from the recreational trail;

36 (8) provide for law enforcement *or professional security personnel*
37 *and security equipment* along the recreational trail;

38 (9) grant easements to adjacent property owners to permit such own-
39 ers to cross the recreational trail in a reasonable manner consistent with
40 the use of the adjacent property and with K.S.A. 66-301 through 66-303,
41 and amendments thereto;

42 (10) \ fs\ (A) maintain any existing fencing between the trail and adjacent
property; (B) maintain any future fencing installed between the trail and

19 (1) ~~Perform the duties imposed by Control noxious weeds in accord-~~
20 ~~ance with K.S.A. 2-1314 and amendments thereto along the recreational~~
21 ~~trail; railway corridor;~~

22 (2) provide for the safety, use and accessibility of existing easements,
23 utility facilities and access licenses along the ~~recreational trail; railway~~
~~corridor;~~

24 (3) provide for trail-user education and signs regarding trespassing
25 laws and safety along the ~~recreational trail; railway corridor;~~

26 (4) provide for litter control and the enforcement of laws prohibiting
27 littering along the ~~recreational trail, railway corridor~~ including but not
limited to trail-user

28 education and signs about laws prohibiting littering and the provision of
29 trash receptacles and the cleanup of trash and litter;

30 (5) develop and maintain the ~~recreational trail railway corridor~~ in a
condition that does

31 not create a fire hazard;

32 (6) designate the ~~recreational trail railway corridor~~ for nonmotorized
vehicle use with

33 exceptions only for motorized wheelchairs and maintenance, law enforce-
34 ment and emergency vehicles;

35 (7) prohibit hunting or trapping on or from the ~~recreational trail; railway~~
~~corridor;~~

36 (8) provide for law enforcement *or professional security personnel*
37 *and security equipment* along the ~~recreational trail; railway corridor;~~

38 (9) grant easements to adjacent property owners to permit such own-
39 ers to cross the ~~recreational trail railway corridor~~ in a reasonable manner
consistent with

40 the use of the adjacent property and with K.S.A. 66-301 through 66-303,
41 and amendments thereto;

42 (10) \ fs\ (A) maintain any existing fencing between the ~~trail railway~~
~~corridor~~ and adjacent

43 property; (B) maintain any future fencing installed between the ~~trail railway~~
~~corridor~~ and

20-2

1 adjacent property; (C) install between the trail and adjacent property
 2 fencing corresponding in class to that maintained on the remaining sides
 3 of such adjacent property; and (D) on request of an adjacent property
 4 owner, pay one-half the cost of installing fencing between the trail and
 5 such property owner's adjacent property with a fence of the class re-
 6 quested by such property owner, if not all remaining sides of such prop-
 7 erty are fenced *install and maintain fencing consistent with section 2 and*
 8 *amendments thereto;* and
 9 (11) (A) maintain the trail; (B) maintain all bridges, culverts, roadway
 10 intersections and crossings on the trail, essential to the reasonable and
 11 prudent operation of the trail or needed for drainage, flood control or
 12 the use of easements for crossing the trail between adjacent properties,
 13 or cause maintenance thereof by other parties that have assumed con-
 14 tractual responsibility therefor; and (C) install and maintain any warranted
 15 traffic signs on the trail.

16 (b) If the responsible party is not a governmental entity, the respon-
 17 sible party shall file with the county clerk of each county where a portion
 18 of the recreational trail is or will be located a bond or proof of an escrow
 19 account in a Kansas financial institution, as defined by K.S.A. 16-117 and
 20 amendments thereto, payable to the county. The bond or proof of an
 21 escrow account shall be filed ~~at the time of transfer of the deed to~~ by the
 22 responsible party *immediately upon entering into the interim trail use and*

23 *rail banking agreement* and annually thereafter. The bond or escrow ac-
 24 count shall be conditioned on the responsible party's performance, and
 25 shall be in an amount ~~agreed upon between the responsible party and~~
 26 ~~the county commission as that the county commission determines reason-~~
 27 *able and sufficient* to fully cover the annual costs, of:

- 28 (1) Weed control along the trail, as required by subsection (a)(1);
- 29 (2) litter control along the trail, as required by subsection (a)(4);
- 30 (3) maintenance of the trail in a condition that does not create a fire
 31 hazard, as required by subsection (a)(5);
- 32 (4) installation and maintenance of fencing between the trail and ad-
 33 jacent property within the county, as required by subsection (a)(10); and
- 34 (5) installation and maintenance of signs along the trail, as required
 35 by subsections (a)(3), (a)(4) and (a)(11)(C).

36 If separate bonds are submitted to or escrow accounts established for
 37 the various counties through which the trail transverses, the annual costs
 38 listed above shall be only for that portion of the trail located within the
 39 particular county that is the holder of the bond or beneficiary of the
 40 escrow. A responsible party may submit a single bond or escrow account
 with multiple counties respectively as coobligees or cobeneficiaries, but
 in that event the annual costs used in computation of the bond amount

43 shall be for the entire trail length.

1 adjacent property; (C) install between the ~~trail~~ *railway corridor* and
 adjacent property

4 owner, pay one-half the cost of installing fencing between the ~~trail~~ *railway*
corridor and

7 erty are fenced ~~install and maintain or install fencing consistent with~~
 section 2 and
 8 *amendments thereto;*
 9 (11) (A) maintain the ~~trail~~ *corridor*; (B) maintain all bridges, culverts,
 roadway
 10 intersections and crossings on the ~~trail~~, *railway corridor* essential to the
 reasonable and
 11 prudent operation of the trail or needed for drainage, flood control or
 12 the use of easements for crossing the ~~trail~~ *railway corridor*-between
 adjacent properties,
 13 or cause maintenance thereof by other parties that have assumed con-
 14 tractual responsibility therefor; and (C) install and maintain any warranted
 15 traffic signs on the ~~trail~~ *railway corridor*.

23 *rail banking agreement* and annually thereafter. The bond or escrow ac-
 24 count ~~shall be conditioned on the responsible party's performance, and~~
 25 shall be in an amount ~~agreed upon between the responsible party and~~
 26 ~~the county commission as that the county commission determines reason-~~
 27 *able and sufficient* to fully cover the annual costs, of:
 28 (1) Weed control along the ~~trail~~ *railway corridor*, as required by
 subsection (a)(1);
 29 (2) litter control along the ~~trail~~ *railway corridor*, as required by
 subsection (a)(4);
 30 (3) maintenance of the ~~trail~~ *railway corridor* in a condition that does not
 create a fire
 31 hazard, as required by subsection (a)(5);
 32 (4) installation and maintenance of fencing between the ~~trail~~ *railway*
corridor and ad-
 33 jacent property within the county, as required by subsection (a)(10); and
 34 (5) installation and maintenance of signs along the ~~trail~~ *railway corridor*,
 as required
 35 by subsections (a)(3), (a)(4) and (a)(11)(C).
 (6) *law enforcement or professional security personnel security equipment*
 along the *railway corridor*, as required by subsection (a)(8).

43 shall be for the entire ~~trail~~ *railway corridor* length.

(c) If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located, proof of liability insurance in an amount ~~agreed upon between the responsible party and the county commission~~ as that the county commission determines reasonable and sufficient. Such proof shall be filed ~~at the time of transfer of the deed to~~ by the responsible party *immediately upon entering into the interim trail use and rail banking agreement* and annually thereafter.

(d) The provisions of this section shall apply to all recreational trails, regardless of when approval to enter into negotiations for interim trail use is or was received from the appropriate federal agency.

(e) The provisions of this section may be modified or supplemented by any city governing body for recreational trails within the corporate limits of such city in the manner provided by K.S.A. 12-137 et seq. and amendments thereto. If a city governing body adopts requirements in addition to those provided by this section, the city shall pay all costs of compliance with such additional requirements.

New Sec. 2. (a) At all times after receiving the notice of approval of interim trail use from the appropriate federal agency:

(1) The responsible party shall maintain any existing fencing between the trail and the adjacent property. Such fencing shall be maintained in a condition consistent with the use of the adjacent property. Failure of the responsible party, previous responsible party or a railroad that previously occupied the corridor to maintain existing fencing in an appropriate condition consistent with the use of the adjacent property shall not relieve the current responsible party of the obligation to make repairs or improvements. Such repairs and improvements shall include replacement of existing fencing if necessary to bring the fencing into conformity with the use of the adjacent property.

(2) The responsible party shall maintain any future fencing installed between the trail and adjacent property in a condition consistent with the use of the property.

(3) If no fencing exists between the trail and the adjacent property, and all the remaining sides of the adjacent property are fenced, the responsible party, at the request of the adjacent property owner, shall install fencing equivalent in function and similar in cost to that maintained on the remaining sides of the adjacent property. The adjacent property owner shall make the request for fencing in writing and shall clearly specify the type of fencing being requested and the approximate location for the fencing. The responsible party shall install the fencing within 90 days after receiving the written request from the adjacent property owner.

(4) If no fencing exists between the trail and the adjacent property, and not all remaining sides of the property are fenced, the responsible

18 New Sec. 2. (a) At all times after receiving the notice of approval of
19 interim trail use from the appropriate federal agency:

20 (1) The responsible party shall maintain any existing fencing between
21 the ~~trail~~ *railway corridor* and the adjacent property. Such fencing shall be
maintained in

22 a condition consistent with the ~~use of the adjacent property~~ *intended*
purpose of the fence. Failure of

23 the responsible party, previous responsible party or a railroad that pre-
24 viously occupied the corridor to maintain existing fencing in an appro-
25 priate condition consistent with the ~~use of the adjacent property~~ *purpose of*
the fence shall not

26 relieve the current responsible party of the obligation to make repairs or
27 improvements. Such repairs and improvements shall include replacement
28 of existing fencing if necessary to bring the fencing into conformity with
29 the ~~use of the adjacent property~~ *purpose of the fence*.

30 (2) The responsible party shall maintain any future fencing installed
31 between the ~~trail~~ *railway corridor* and adjacent property in a condition
consistent with the

32 ~~use of the property~~ *purpose of the fence*.

33 ~~(3) If no fencing exists between the trail and the adjacent property,~~
34 ~~and all the remaining sides of the adjacent property are fenced, the re-~~
35 ~~sponsible party, at the request of the adjacent property owner, shall install~~
36 ~~fencing equivalent in function and similar in cost to that maintained on~~
37 ~~the remaining sides of the adjacent property. The adjacent property~~
38 ~~owner shall make the request for fencing in writing and shall clearly spec-~~
39 ~~ify the type of fencing being requested and the approximate location for~~
40 ~~the fencing. The responsible party shall install the fencing within 90 days~~
41 ~~after receiving the written request from the adjacent property owner.~~

42 ~~(4) If no fencing exists between the trail and the adjacent property,~~
43 ~~and not all remaining sides of the property are fenced, the responsible~~

1 party, at the request of the adjacent property owner, shall install fencing
 2 consistent with the use of the land. The adjacent property owner shall
 3 make the request for fencing in writing and shall clearly specify the type
 4 of fencing being requested, the approximate location for the fencing and
 5 the general use of the property to be enclosed. The responsible party
 6 shall install the fencing within 90 days after receiving the written request
 7 from the adjacent property owner. The adjacent property owner shall pay
 8 12 the cost of installing such fencing.

9 (b) Nothing in this act shall preclude an adjacent property owner
 10 from taking reasonable measures immediately necessary to temporarily
 11 repair broken or damaged fencing enclosing livestock or property. The
 12 adjacent property owner shall notify the responsible party, in writing, that
 13 a temporary repair was necessary and specify the approximate location
 14 where the temporary repair was made. The responsible party shall make
 15 a permanent repair within 90 days after receiving notice of the broken or
 16 damaged fencing.

17 (c) The county fence viewers, in accordance with K.S.A. 29-201
 18 through K.S.A. 29-203 and amendments thereto, shall settle disputes re-
 19 garding the cost or the appropriateness of the type of fence requested.

20 Sec. 3. K.S.A. 1998 Supp. 58-3213 is hereby amended to read as
 21 follows: 58-3213. (a) Upon receipt of permission from the appropriate
 22 federal agency to enter into negotiations for interim trail use, the respon-
 23 sible party shall give written notice to each adjacent property owner that
 24 the responsible party intends to ~~build~~ *use the rail corridor* for a recrea-
 25 tional trail adjacent to the property owner's property. The responsible
 26 party may utilize the addresses to which real estate tax statements are
 27 sent, as maintained by county officials, for such notices. Such notice shall
 28 be given by first-class mail unless the notice is returned undelivered, in
 29 which case a further notice shall be given by certified mail. ~~Further Ad-~~
 30 ~~ditional~~ notice shall be published once each week for three consecutive
 31 weeks in the official newspaper of ~~the county in which such each county~~
 32 ~~where the trail or a portion of the trail is proposed~~ to be located.

33 (b) *Within 90 days after entering into the interim trail use and rail*
 34 *banking agreement, the responsible party shall hold a public hearing and*
 35 *receive public comment regarding corridor use or trail development, or*
 36 *both. At least one public hearing shall be held in each county where the*
 37 *trail or a portion of the trail is to be located. Notice of such public hearing*
 38 *shall be published once a week for three consecutive weeks in the official*
 39 *newspaper of each county where a hearing is required to be held.*

40 (b) (c) Before commencing development or operation of a recrea-
 tional trail, ~~the responsible party shall:~~

(1) *The responsible party shall prepare a project plan that includes:*

(A) The name and address of the responsible party, (B) *the registered*

1 party, at the request of the adjacent property owner, shall install fencing
 2 consistent with the use of the land. The adjacent property owner shall
 3 make the request for fencing in writing and shall clearly specify the type
 4 of fencing being requested, the approximate location for the fencing and
 5 the general use of the property to be enclosed. The responsible party
 6 shall install the fencing within 90 days after receiving the written request
 7 from the adjacent property owner. The adjacent property owner shall pay
 8 ~~12~~ the cost of installing such fencing.

9 ~~—(b) (3)~~ Nothing in this act shall preclude an adjacent property owner
 10 from taking reasonable measures immediately necessary to temporarily
 11 repair broken or damaged fencing enclosing livestock or property. The
 12 adjacent property owner shall notify the responsible party, in writing, that
 13 a temporary repair was necessary and specify the approximate location
 14 where the temporary repair was made. The responsible party shall make
 15 a permanent repair within 90 days after receiving notice of the broken or
 16 damaged fencing.

17 ~~—(c) The county fence viewers, in accordance with K.S.A. 29-201~~
 18 ~~through K.S.A. 29-203 and amendments thereto, shall settle disputes re-~~
 19 ~~garding the cost or the appropriateness of the type of fence requested.~~

24 the responsible party intends to ~~build~~ *use the rail corridor* for a recrea-
 25 tional trail adjacent to the property owner's property. *The notice shall also*
inform the property owners of their rights pertaining to existing fencing between the
corridor and adjacent property and the owners right to request fencing in
accordance with (a)(10)(D). The responsible

1 entity, who violates or fails to comply with any of the provisions of this
2 act shall be guilty of a misdemeanor and, upon conviction, shall be pun-
3 ished by a fine of \$100 per day for each day of violation or noncompliance
4 up to a maximum of \$1,500 for each count.

5 (b) Nothing in this subsection shall invalidate any other remedy avail-
6 able under law.

7 Sec. 5. K.S.A. 1998 Supp. 58-3212 and 58-3213 are hereby repealed.

8 Sec. 6. This act shall take effect and be in force from and after its
9 publication in the statute book.

Proposed Revisions to K.S.A. 58-3215

10 A city or county ~~may~~ shall institute procedures for recourse
11 against the responsible party pursuant to 16 U.S.C. 1247
12 (1983) and C.F.R. 1152.29 (1986) upon failure of the
13 responsible party to comply with the provisions of this act.
14 *The intention of such recourse shall be for the revocation of*
15 *any interim trail use and/or public use condition issued to the*
16 *responsible party for the corridor on which the failure of compliance*
17 *exists. Upon publication of the Surface Transportation Board's*
18 *decision to revoke the responsible party's interim trail use*
19 *and/or public use condition, all interest previously*
20 *conveyed to the responsible party shall immediately revert*
21 *to the adjacent property owners and the responsible party shall*
22 *surrender any interest in the property to the property owners*
23 *in accordance with K.S.A. 66-525(b)(2). Failure of the respon-*
24 *sible party to comply with provisions of 66-525(b)(2) for all*
25 *adjacent properties within 180 days of the publication date*
26 *of the revocation of the responsible party's interim trail use/public*
27 *use condition shall entitle the property owners to bring action*
28 *against the responsible party in accordance with K.S.A. 66-525(c).*

20-7

2/18/99

**Statement of Ron Klataske
Director, Kansas Audubon Council
to the Kansas House of Representatives,
Committee on Environment
concerning HB 2490**

My name is Ron Klataske and I am testifying on behalf of the Kansas Audubon Council. The Kansas Audubon Council represents approximately 5,000 Audubon members in the state and ten community/regional Audubon chapters throughout Kansas.

I am here to express strong opposition to HB 2490. The bill was obviously designed to make it virtually impossible for private entities to develop rails-to-trails opportunities for Kansas residents, and it would diminish the likelihood that state agencies or local units of government would be able to launch additional trail developments.

HB 2490 violates a sense of fairness. Requirements for fence construction and maintenance, and control of noxious weeds, should not vary according to what side of the fence a person is standing. This bill is totally unreasonable and biased against railtrails.

If it is the purpose of the advocates of this bill to make Kansas a "railtrail free state", this is the instrument you can use. It will certainly advance their agenda. Kansas is a state with very little public land and few trails. If this bill is passed we will increasingly need to direct residents and potential visitors to Kansas--visitors with an interest in hiking, biking or horseback riding and associated trail based outdoor recreation--to travel to Missouri to enjoy the Katy Trail or to northern Nebraska to ride on the Cowboy Trail.

I would prefer to suggest that we live in a progressive state where families can have day or weekend outings of this nature on Kansas trails. Please consider them with a thought to the pleasant pastoral countryside scenes and Kansas landscapes that can be enjoyed.

We believe that the State of Kansas, and Kansas residents, should be grateful to the Kansas Horseman Foundation and other organizations for their recent attempts to provide future development of tremendous outdoor recreational opportunities. That is obviously their goal. We urge you to abandon HB 2490 and seek ways to help the foundation achieve its goal.

Rail banking is an investment in the future of Kansas. Trail development is an investment in the economic vitality of associated rural communities. Eco-tourism can help to reinforce local businesses. Rail banking also enhances the potential that rail service will one day return to some of these communities.

Preservation of abandoned railroad corridors is also important because these areas often have the best remnants of native prairie plant communities. Rare plants that have disappeared from farmed and intensively grazed landscapes are often found in railway corridors. These areas provide valuable habitat for a diversity of wildlife, and trails offer great opportunities for birding, wildlife watching and nature appreciation.

Although my family is blessed to have several hundred acres of grassland in the Flint Hills available for hiking, horseback riding, wildlife watching and other activities, most Kansas families do not have personal land available for outdoor recreation and nature appreciation. Please do not slam the gate shut to railtrails and close the Kansas countryside to them.

The long term gravity of passing this bill may be far greater than the immediate problems associated with the minor instances of neglect that have been outlined by trail opponents.

*House Environment
2-18-99
Attachment 21*

Testimony before the House Committee on the Environment
Re: H.B. 2490
February 18, 1999

Charles Benjamin
Attorney at Law and Legislative Coordinator
Kansas Natural Resource Council and Kansas Chapter of Sierra Club
935 S. Kansas Ave., Topeka, KS 66612
(785) 232-1555

Madam Chair, members of the Committee, thank you for the opportunity to testify against H.B. 2490.

At the outset, I want to give a little of my own history with the rail-trail issue. From 1981 until 1997, a total of 16 years, I served as a County Commissioner in Harvey County. In 1994 a rail line running from Valley Center, north of Wichita, in Sedgwick County, through western Harvey County, including Halstead, and ending in Medora, north of Hutchinson, in Reno County was abandoned. That abandoned line was proposed as a rail-trail and set off months of debate in Sedgwick, Harvey and Reno counties. I remember very well the emotional tones of that debate. It included assertions that crack-cocaine gangs from Wichita would make their way up the trail selling drugs and murdering people in Harvey County. The Harvey County Commission was split as we heard from our constituents who wanted recreational opportunities for their families, merchants in towns along the proposed trail who saw the possibility of tourism income and farm families along the trail who feared trespassers, trash and other problems. We on the Commission were split because the trail's route ran through land owned by one of my colleagues on the commission. We also had genuine substantive concerns about law enforcement, noxious weed eradication, emergency response, and other issues.

When I started representing the Kansas Sierra Club and Kansas Natural Resource Council two years ago, I saw many of these same emotional arguments made whenever rails to trails issues came up in the Kansas legislature. It seems like there is no middle ground between those who want to see more trails in Kansas for business, environmental, recreational and conservation reasons and others who want to kill rails to trails in Kansas completely. As it stands this bill appears to us to be part of that latter effort. That is because the requirements for operating a rail-trail put into this bill are

*House Environment
2-18-99
Attachment 22*

so onerous that no entity would want to seriously consider building any more rails to trails in Kansas.

I respectfully suggest that rather than passing this bill this year consider a proposal made by the Secretary of Wildlife and Parks two years ago. Create a committee of interested parties to find solutions to real or anticipated problems with rail-trails in Kansas. That committee should include representatives of adjacent landowners (some of whom favor and some of whom oppose rail-trails), city officials from cities along rail-trails, county officials (which could include commissioners, sheriffs, or EMS personnel), environmental groups (Audobon, Sierra Club, KNRC, Wildlife Federation), recreational groups (bicyclists, equestrians) etc. Give this committee an opportunity to meet this summer and fall, under the auspices of the Secretary of Wildlife's good offices, and see if a meeting of minds can be had on all the issues surrounding rail-trails.

Congress had good reasons for enacting the federal law to preserve railroad rights of way for national emergencies. There are also good reasons for having rail-trails in Kansas. The fact is that as Kansas residents become more urbanized there is great demand for wholesome, family-oriented recreation. Cities, many of which were founded because they were along rail lines, have a stake in this because they are looking for ways to revitalize themselves with tourism. Those who live along these trails have legitimate issues of concern with regard to respect for their property rights. Counties have legitimate concerns about providing services. Despite these issues, I believe that if given the opportunity, we Kansans can figure out a way to turn what looks like a win-lose situation into a win-win situation for all.

I therefore urge you to suspend any action on this bill this year, let a Kansas Rails-Trails Committee be formed with representatives of all stakeholders, and see what they report back to you at the next legislative session. I suspect that like the stakeholder committee put together by the legislature three years ago to deal with threatened and endangered species legislation, a compromise can be reached that is satisfactory to all.

Thank you for your time and attention.

KENNETH W. McCLINTOCK

Attorney At Law
130 West Main Street
Council Grove, Kansas 66846-1703

February 18, 1999

SUMMARY OF MAJOR POINTS IN OPPOSITION TO HOUSE BILL 2490, AND
TO KANSAS RECREATIONAL TRAILS ACT, IN GENERAL:

This presentation is made by Kenneth W. McClintock as a local citizen interested in encouraging economic development in rural communities in particular, and the State of Kansas in general, and not as a representative of any group.

Congress enacted the Federal railbanking statute as a means of preserving railway corridors for future use, which otherwise would be lost upon abandonment. It is in the best interest of Kansas to encourage interim trail use of railbanked corridors in the event that rail usage in future years necessitates re-opening lines. If railroads are required to assemble new rights-of-way, the cost may be prohibitive, and Kansas would be deprived of the economic benefits of renewed railway use.


The existing Kansas Recreational Trails Act creates such burdens as to discourage, if not outright prohibit, individuals and organizations from developing interim trails on railbanked corridors. House Bill No. 2490, seeks to markedly increase the disincentives to development of recreational trails; the Kansas Legislature should be seeking to do the opposite.

It is my opinion that the Recreational Trails Act is not constitutional because of the burdens it places upon owners of railbanked corridors imposed on no one else in the State of Kansas, denying that group of people or organizations the equal protection of the laws. House Bill No. 2490 proposes now to make non-compliance with the Act a misdemeanor and impose fines of \$100.00 per day for any such non-compliance.

No other landowners face fines of \$100.00 per day for failure to timely maintain fences, control noxious weeds, control litter on their property, provide for their own law enforcement. and so on.

The bond required to be made payable to the County appears to be a penalty. Unlike performance bands when a contractor fails to meet contract obligations, the County would have no authority to use the bond proceeds to carry out the supposed noncompliance.

An analogous situation would be the restoration of historic structures. If organizations had to comply with similar laws in undertaking the rescue of important historic buildings, almost none of them would be saved, to the detriment of future Kansans.


Kenneth W. McClintock
House Environment
2-18-99
Attachment 23

The Kansas House

REPRESENTATIVE, 68TH DISTRICT
CENTRAL & SE DICKINSON, MORRIS &
NORTHERN LYON COUNTIES

OFFICE: STATE CAPITOL—182-W
TOPEKA, KANSAS 66612
(785) 296-7674

HOME ADDRESS: 934 UNION ROAD
HERINGTON, KANSAS 67449
(785) 258-3526



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AND BENEFITS

DURING SESSION
LEGISLATIVE HOTLINE
1-800-432-3924

INTERNET E-MAIL rep_shari_weber@mail.ksleg.state.ks.us

Representative
Shari Weber

February 18, 1999

Thank you Madame Chairman and members of the committee for the opportunity to appear before the Committee today. My name is Shari Weber. I represent the area in the Kansas House that stretches across three counties (Dickinson, Morris and Lyon) from the City of Abilene to the City of Americus which is right outside of Emporia. I am anxious to share with you some grave reservations that I have about the components of HB#2490.

I first became aware of the concept of railbanking about 5 years ago when I was employed as the Director of a downtown development program called Herington Main Street. It is a downtown revitalization program for Kansas implemented by the Kansas Department of Commerce and Housing. It is a government program that takes some taxpayer dollars and matches them with time, money, and expertise in communities. It has a strong historic emphasis. Our Herington community dialogued with the community of Council Grove about the possibility of accessing the vacant railroad corridor from Council Grove to Herington for an excursion train.

In April 1995, I was asked to be part of a discussion with Governor Graves and former Governor Hayden about the railbanked corridor that stretches from Osawatomie to Herington. I contacted Chambers of Commerce, Economic Development Groups, Local Government officials and Adjacent Landowners informing them of a public information meeting held in Council Grove in May 1995. Over 600 pieces of mail were sent as well as a newspaper press release about the railroad corridor vacancy from Osawatomie to Herington instigated by the Missouri Pacific Railroad.

This total line stretches over 100 miles of a historic rail corridor which has been part of the area's history for over 100 years. The town of Herington itself was founded in the 1880's because M.D. Herington negotiated for two railroads to cross in Herington. The area developed because of these railroads. Although I was not around 100 years ago, I know that the vision of those pioneers has had an impact on us today. If we share that same vision that has enhanced our quality of life and prospered us well into the next century, I believe these corridors can serve us well over the next 100 years. It is with that positive attitude that I approach this challenge of transitioning vacant railroad corridor usage.

I believe the Rails-to-Trails project is a federal initiative as is the entire railroad transportation system. Therefore, the state statute stipulations we placed into law two years ago, maybe in question anyway. Add to that a mix of land encroachments on the corridors that I have personally viewed, and the current level of frustration over the development is understandable.

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In HB 2490 (Page 1, Line 36) "(the responsible party) provide for law enforcement or professional security personnel and security equipment along the recreation trail;" This clause infers that the responsible party must provide security patrols through the trails. It also suggests the responsible party must provide security devices such as video cameras and telephones to the trails. Trails across the United States have a relatively low instance of crime. Professional security personnel are normally reserved for high crime or high-risk areas of which trails are neither.

(Page 2, Line 23) "The bond or escrow account shall be conditioned on the responsible party's performance, and shall be in an amount that the county commission determines reasonable." For trails that run from county to county, bonds or escrow accounts maybe determined at different amounts, according to the discretion of the individual county commissions. This can defeat the continuity of a trail from county to county. In my dealings over the past few years with county commissioner personalities, continuity in policy has not been present.

(Page 3, Line 5) Same problem as above - "proof of liability insurance in an amount that the county commission determines reasonable and sufficient".

(Page 3, Line 20) There are problems with fencing. The verbiage in this section indicates to me a huge fiscal note to Kansas Parks and Wildlife over existing trails.

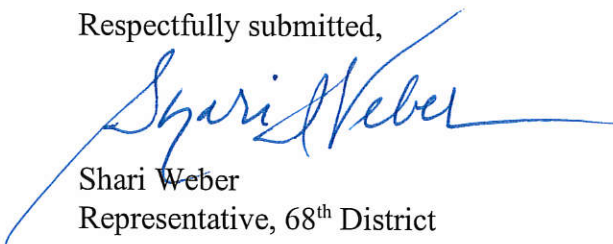
(Page 4, Line 33-39) The whole public hearing "thing", from notices to recommendations, requires so much paperwork and time that it damages the project.

(Page 5, Line 18) "...notification of any change shall be made in writing to the county commission..." The use of "any" is unclear - who determines what a substantial change is? If a period is changed to a comma in the plan, it may cause dissent.

(Page 5, Line 43) The whole "New Sec 4" is too harsh of a penalty for the responsible party. If the party attempts to uphold all the provisions in the act and unintentionally violates a part of the act, the responsible party is charged with a misdemeanor and if convicted, fined \$100/day up to \$1,500 per count! This section may end up in an over abundance of litigation, which is time, energy and dollars spent on negativity. Perhaps a better solution would be to repeal the entire KSA section which refers to rails-trails. It apparently is cumbersome and nonfunctional to all parties involved.

I ask you to reject all provisions of HB #2490.

Respectfully submitted,



Shari Weber
Representative, 68th District

- Examples:
- 1.) Flint Hills Nature Trail
 - 2.) Herington Heritage Trail
 - 3.) Abilene & Smoky Valley Railroad

STATE OF KANSAS

Rep. Shari Weber
934 Union Road
Herington, KS 67449
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Capitol Building
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Topeka, KS 66612
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weber@house.state.ks.us

*HOUSE OF REPRESENTATIVES
68TH DISTRICT
Assistant Majority Leader*

12:30 p.m.
Thursday, February 18, 1999

Dear Colleague:

This afternoon I wish to present this testimony to you at the 3:30 p.m. Environment Committee of which you are a member.

As you read this, I am on my way back from the Atchison Juvenile Correctional Facility where the Appropriations sub-committee on public safety is making a site visit and receiving testimony on their facility budget.

I will see you shortly. Thanks for your time in reviewing these items attached.

Best regards,


Shari Weber

BACKGROUND

In 1989, the Rails-to-Trails Coalition of Kansas (RTCK) negotiated with Union Pacific Railroad to acquire 21 miles of railroad between the cities of Topeka and Overbrook. The corridor begins south of 29th Street in Topeka and travels southward across 37th, 45th, and 53rd Streets. The corridor continues through Berryton, the Clinton Lake West Wildlife Area, and on to Overbrook.

In September 1996, the Kansas Horseman Foundation (KHIF) took over management of the Landon Trail from RTCK. An additional 14 miles of line from Overbrook to Lomax was also acquired at this time. With this piece of property, the KHIF was able to link the Flint Hills Nature Trail as well as the Prairie Spirit Trail to the city of Topeka. This link means that people living in the cities of Osawatometie, Garnett, or Herington could ride or walk to Topeka using the trail or vice versa. This southern extension of the trail expands the total length to 35 miles.

Since the KHIF acquired the Landon Trail, Union Pacific Railroad has revealed plans to discontinue use of the northern portion of the corridor starting at 29th Street and going north a distance of approximately two miles. This extension would allow for a future connection between the Landon Trail and the Shunga Trail in Topeka.

TRAIL ACCESS

Topeka —

33rd and Kansas Avenue: Park along 33rd Street. The trail begins along the east side of Kansas Avenue.

37th Street: The trail can be accessed at 37th Street. If coming from Kansas Avenue, go east on 37th Street approximately one quarter mile. Park on the southeast side of the trail.

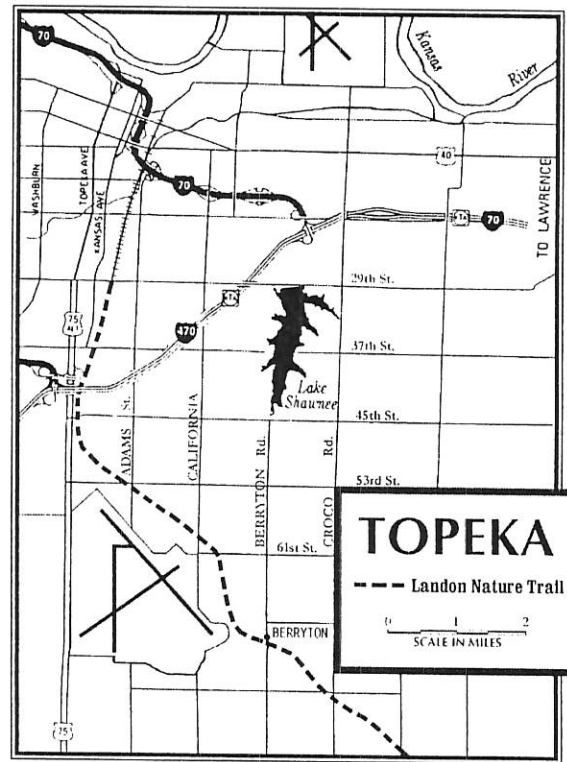
53rd Street & Adams: A parking area is being designed at 53rd Street. It is recommended that trail users park at Adams Street, south of 53rd Street, until a parking area is completed.

Berryton — Take Berryton Road south from 45th Street approximately 3.25 miles to Berryton. The trail is located on the south edge of the city, south of the Post Office.

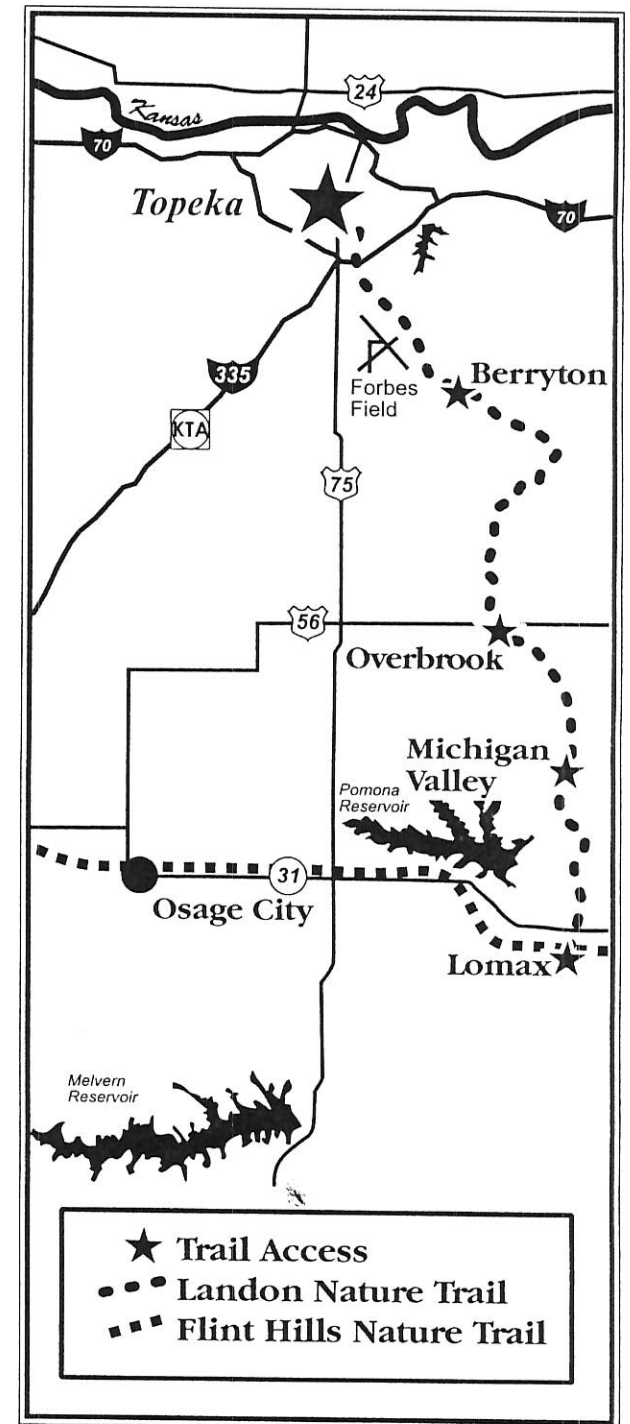
Overbrook from U.S. 56 Hwy. — Take Main Street south approximately four blocks. The trail is on the south side of the grain elevator, with parking available west of Main Street.

Michigan Valley — Take the county highway south from Overbrook approximately seven miles until you reach the city limits. The trail is located east of the highway.

Lomax — No access available.



Kansas Horseman Foundation
1895 East 56 Road
Lecompton, Kansas 66050
(785) 887-6405



B GROUND

C 27, 1994 the Union Pacific Railroad Company began abandonment proceedings on 130 miles of rail line between Osawatomie and Herington, and a spur line from Lomax to Overbrook. On October 31, 1994 a notice of interim trail use was served, establishing a 180 day negotiation period for anyone interested in preserving the corridor for future rail use. The Rails-to-Trails Conservancy, a national non-profit organization established to assist local organizations in railbanking, began negotiation with Union Pacific. Negotiations were completed in January, 1996 and the property was transferred to the Kansas Horseman Foundation.

The trail was named for the beautiful grasslands it traverses. This trail offers many hiking, bicycling, and horseback riding opportunities. There will be limited access to the trail, with no motorized vehicles allowed.

TRAIL ACCESS

Osawatomie — From Kansas City, take Hwy. 169 south to Osawatomie. For more information, contact the Osawatomie Chamber of Commerce at (785) 755-4114.

Rantoul ★ — No parking.

Ottawa — From Lawrence, take Hwy. 59 south. The trail can be accessed at any point along First Street. For more information, contact the Ottawa Chamber of Commerce at (785) 242-1000.

Lomax — No parking.

Vassar — No parking.

Osage City ★ — The trail enters the eastern edge of the city, and then detours north along Ninth St., west along Withrow St., and south along Sixth St. back to trail. For more information, contact the Osage City Chamber of Commerce at (785) 528-4090.

Admire — From Wichita, take the Kansas Turnpike north to Admire exit, Hwy. 56 west four miles to Hwy. 57, south one-half mile. The trail runs along the northern edge of town.

Allen — No parking.

Bushong — No parking.

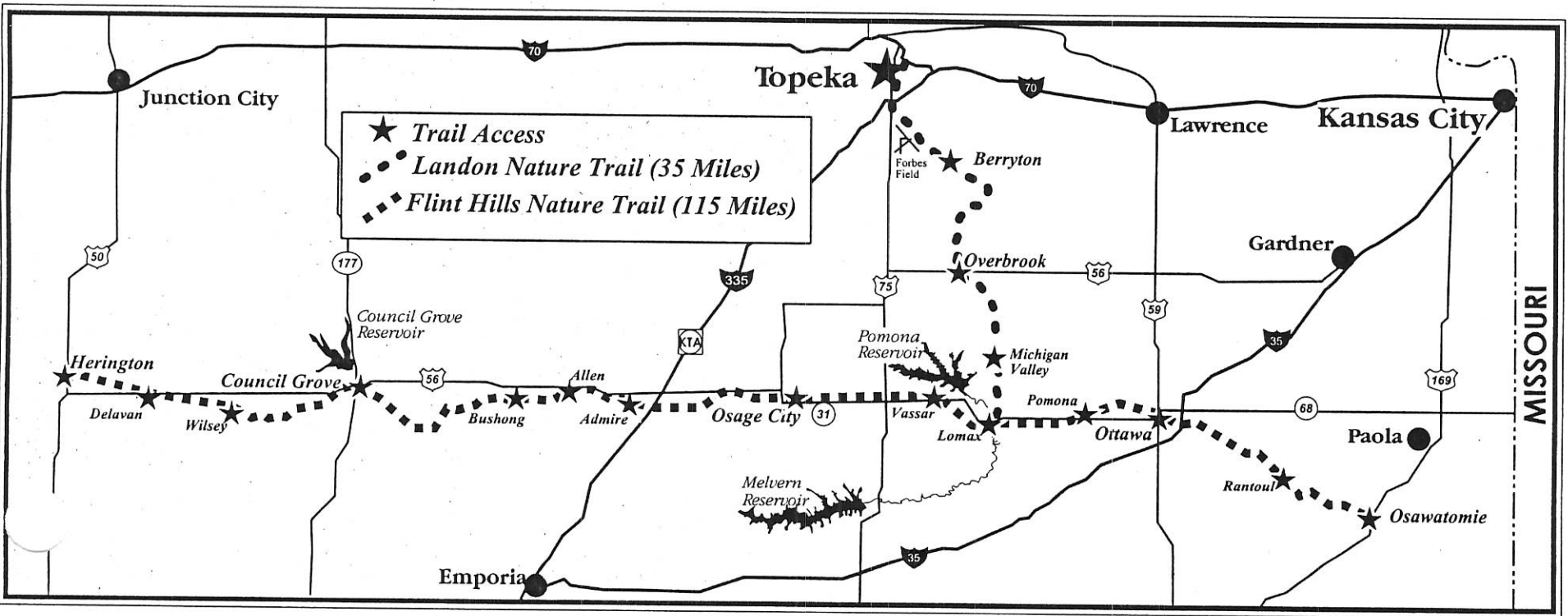
Council Grove — From I-70, take Hwy. 177 south approximately 27 miles until you reach Council Grove. For more information, contact the Council Grove Chamber of Commerce at (316) 767-5413.

Wilsey — No parking.

Delavan — No parking.

Herington — From I-70 take Hwy. 77 south to Hwy. 56 and then west to E-Street, then north five blocks. For more information, contact the Herington Chamber of Commerce at (785) 258-2115.

★ Designates private parking and camping areas available. Contact the KHF office for more information.



RAILS TO TRAILS MEETING ON FEBRUARY 17, 1998 IN THE BASEMENT MEETING ROOM OF THE MORRIS COUNTY COURTHOUSE.

MEETING BEGAN SHORTLY AFTER 11:00 A.M. WITH THE MORRIS COUNTY COMMISSIONERS PRESENT AND MIKE ENGEMAN FROM THE KANSAS HORSEMAN'S FOUNDATION. (KHF)

MIKE STATED THAT THE BALLAST HAS BEEN SOLD TO SHEARS, AND THEY HAVE UNTIL DECEMBER 1998 TO GET IT REMOVED. THEY ARE SUPPOSED TO BE SCREENING THE BALLAST SO THAT 1/8" MATERIAL AND SMALLER REMAINS FOR THE SURFACE OF THE TRAIL.

THE TRAIL IS PLANNING ON PUTTING UP SOME MEANS OF KEEPING VEHICULAR TRAFFIC OFF THE TRAIL. THESE MEANS WILL BE LOCKED WITH A UNIFORM LOCK, SO THAT LAW ENFORCEMENT AND EMERGENCY PERSONNEL (FIRE, AMBULANCE, ETC.) WILL HAVE ACCESS. MIKE SAID THAT THE TRAIL IS PAYING TAXES, BUT HAVE FILED FOR AN EXEMPTION DUE TO THE NATURE OF THE TRAIL.

MIKE SAID THAT THEY DO HAVE LIABILITY INSURANCE THAT COVERS ANY INJURIES ON THE TRAIL PROPERTY AND ANY DAMAGES TO ADJACENT PROPERTIES CAUSED BY FIRES, ETC. MIKE WAS ASKED TO FILE A COPY OF THE POLICY WITH THE MORRIS COUNTY CLERK.

THERE WAS DISCUSSION ON REPAIRING FENCES, AND MIKE'S GENERAL ANSWER WAS "ON A CASE BY CASE BASIS". MIKE DID MENTION THAT THE TRAIL HAS DONE SOME FENCE REPAIRING, AND NEW FENCES MAY BE ON A SHARED BASIS OR ALL AT THE TRAILS EXPENSE.

KANSAS HORSEMAN'S FOUNDATION = 785-887-6405.

THE ATTORNEYS FOR THE K.H.F. ARE OF THE OPINION THAT THE "KANSAS RECREATIONAL TRAIL ACT" DOES **NOT** APPLY TO THEM BECAUSE IT IS A DISCRIMINATORY LAW THAT WAS PASSED ONLY AGAINST RECREATIONAL TRAILS. THEY HAVE NOT POSTED A BOND WITH ANY COUNTY, AND THEIR ATTORNEY'S HAVE TOLD HIM NOT TO COMPLY WITH THE THE LAW.

WHEN ASKED ABOUT PARKING, MIKE SAID THAT THEIR BROCHURES INDICATE PARKING IN DESIGNATED PLACES ONLY, AND THESE ARE AT FORMER DEPOT AREAS IN TOWNS OR CITIES ALONG THE TRAIL. THEY PLAN TO HAVE RESTROOMS AND WATER AVAILABLE AT THESE AREAS ALSO. MIKE DOES NOT WANT PEOPLE PARKING ON COUNTY ROADS AND LEAVING VEHICLES THAT MAY INTERFERE WITH NORMAL TRAFFIC.

TRAIL EMPLOYEES ARE SUPPOSED TO KEEP THE TRAIL CLEAN OF LITTER AND HORSE DROPPINGS, ALTHOUGH VOLUNTEERS MAY HELP OUT. THEY ARE NOT PLANNING ON CHARGING PEOPLE FOR USING THE TRAIL, UNLESS DONATIONS DO NOT KEEP UP WITH THE COST OF MAINTENANCE.

MIKE SAID THAT HE IS AWARE OF THE NORMAL PRACTICE OF PASTURE BURNING, AND THINKS THAT THEY WILL POST SIGNS ADVISING OF THE BURNING SEASON, AND MAY CONSIDER CLOSING THE TRAIL FOR THE BURNING SEASON.

MIKE IS AWARE OF THE NOXIOUS WEED PROBLEM AND THAT THEY ARE SUBJECT TO THE NOXIOUS WEED LAW. HE MENTIONED HAVING LANDOWNERS NOTIFY HIM IF THEY SEE NOXIOUS WEEDS AND HE WILL TAKE CARE OF THEM, BUT LANDOWNERS PRESENT DIDN'T THINK THAT IT WAS THEIR RESPONSIBILITY TO MONITOR THE TRAIL. IF THE COUNTY HAS TO END UP SPRAYING WEEDS ON TRAIL PROPERTY, THEN THE WEED DEPARTMENT IS SUPPOSED TO BILL THE TRAIL.

MIKE SAID THAT THE TRAIL WANTS TO FOLLOW THE "GOOD NEIGHBOR POLICY", AND ANSWERED PHIL WINTER'S QUESTION THAT THEY CONSIDER THE TRAIL JUST LIKE THE RAILROAD.

WCW

Trail/County/Section _____
Flint Hills Nature Trail -- Landon Nature Trail

Project Planning at 10-21-98

Year: 1998 / 99

24-7

SUMMARY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	COMPLETED
PROJECT													
<i>Brush Disposal</i>													
<i>Telephone Wire</i>													
<i>Telephone Poles out</i>													
Bollards placed													
Bridges													
Signage													
<i>Pick up spikes, plates, anchors</i>													
<i>Trash Disposal</i>													
<i>Facility Improvements</i>													
Parking													
Restrooms													
Fencing													
Attractions / Signage													
Old Railroad Crossing													
Slag Pile													
Former Depot site													
Pomona Lake													
Vassar													
ATSF Crossing agreement													
Brochure													
Advertising													
Grand Opening													

Draft

Heritage Trail Herington, Kansas

NARRATIVE

The project area is a one-mile abandoned rail corridor that is in the control of the Kansas Horse Foundation. The President, Bud Newell has indicated complete support and cooperation of the City of Herington constructing this one mile path that is located on the Flint-Hills Nature Trail within the city limits of Herington, Dickinson County, Kansas. This project will have no negative impact on the environment, as it is being constructed in an existing rail-banked corridor. The purpose of this grant request is to construct this path into a diversified (non-motorized) recreational trail.

Our goal is to develop and maintain this trail for recreation, cultural railroad heritage and tourism.

RECREATION

This multi-use trail will be available to non-motorized activities such as; walking, bicycling, in-line skating, cross country skiing, horseback riding and jogging. The community will realize better mental and physical health through their usage of the trail, thereby resulting in an improved personal life and more efficient employees for the area business and industry. Activity programs may be implemented through the Herington Recreation commission to utilize this path and improve the quality of life in Herington.

CULTURAL RAILROAD HERITAGE

The founder of our community, M.D. Herington built this town on railroad development. Herington prospered by getting in on the ground floor of the rail transportation. By preserving this rail corridor, we will be preserving a piece of our heritage. The focus of this heritage may be emphasized through presentations and organized activities by the schools, civic groups and the local historical society in connection with the trail.

TOURISM

This project trail will be highly visible from Highway 77 going both North and South directions, thereby being a draw for travelers to pull off the highway and spend time in Herington. This will directly effect the economy by boosting extra dollars into the revenues. Eventually, this will be the last mile of the Flint Hills Nature Trail. When this trail is completed from Herington to Oswatomie, we will expect to enjoy many more revenues and growth in support retail and service businesses. Couple this with the fact that this trail will also be linked to the nation-wide American Discovery Trail, we are repeating history and getting in on a revolutionary transportation corridor, incomparable to any other.

Herington Narrative - Continued

FIVE YEAR PLAN

This project specifically ties in with the Kansas Wildlife and Park goals and strategies and the Herington comprehensive plan up to the year 2000. The City of Herington will construct and maintain this trail. The City's comprehensive plan indicates a need for linear activities that allow for group and individual activities. This project would fulfill that need. In addition to the comprehensive plan, the five year plan of this trail project includes expansion further into the City for possible connection to the South Park and the Historical Museum and Railroad Annex of the museum to further the pursuit of spreading information of our rich railroad heritage. Also included in this plan is the connection to the Flint Hills Nature Trail and the American Discovery Trail.

GRANT ADMINISTRATION HISTORY

The City of Herington has demonstrated dedication and efficiency in fulfilling other grant projects and the administration thereof. Some recently completed projects include: CDBG water clarifier system, 1992; a number of economic development grants for local business and industry and currently in progress a comprehensive grant and a geometric improvement grant.

SUMMARY

Upon a favorable selection outcome of this grant, the City of Herington, the Chamber tourism program and the populace at large will immediately benefit from an improved quality of life by having a safe place to exercise, recreate and enjoy the benefits of small town living while reaping economic benefits from attracting visitors and destination tourists.

The Kansas House

REPRESENTATIVE, 68TH DISTRICT
CENTRAL & SE DICKINSON, MORRIS &
NORTHERN LYON COUNTIES

OFFICE: STATE CAPITOL—182-W
TOPEKA, KANSAS 66612
(785) 296-7674

HOME ADDRESS: 934 UNION ROAD
HERINGTON, KANSAS 67449
(785) 258-3526



Representative
Shari Weber

COMMITTEE ASSIGNMENTS
— APPROPRIATIONS
— SUB-COMMITTEE ON CORRECTIONS AND
PUBLIC SAFETY
— SELECT COMMITTEE ON HIGHER EDUCATION
— JOINT COMMITTEE ON PENSIONS, INVESTMENTS
AND BENEFITS
DURING SESSION
LEGISLATIVE HOTLINE
1-800-432-3924
INTERNET E-MAIL rep_shari_weber@mail.ksleg.state.ks.us

November 1, 1998

Steve Williams, Secretary of Wildlife and Parks
Kansas Department of Wildlife and Parks
900 S.W. Jackson Street Room 502 N
Topeka, KS 66612-1233

Dear Secretary Williams:

Recently I requested a copy from your office of the 70 page report commissioned by the Kansas Legislature a few years ago to evaluate the affects and responsibilities of the development of walking and biking trails within vacated railroad corridors as part of a comprehensive state heritage trails plan in Kansas. Clearly the report thoroughly laid a plan for such development as advocated by the Kansas Legislature in House Resolution # 6027 passed April 5, 1991 and Senate Resolution #1843 which was adopted unanimously on March 28, 1991. Therefore I am requesting your department's favorable consideration of a grant request in the City of Herington by the Herington Main Street Program.

I believe that the development of the vacated railroad corridor within Herington will serve well not only the citizens of the Herington area for walking and biking (which occurs now on Herington city streets with risk to the participants sharing space with motor vehicles) but also citizens from Kansas who would potentially use the 120 mile Osawatomie to Herington trail corridor.

A month ago I attended a Herington city commission meeting during which the proposed development was discussed. The commissioners and city manager were favorable to the concept noting both the need for such a space and the aesthetic aspect of grooming the vacated corridor. *The Herington Times* edition of Thursday, October 8, 1998 carried a front page article about the agenda items. The publication made the acceptance of the trail concept a matter of public knowledge. At that point, the Herington Main Street Program began to gather information to submit a grant application for the National Recreational Trails Program funds administered by your department in conjunction with the Federal Highway Administration.

Rep. Shari Weber-pg.2-Herington Walking/Biking Project 11-1-98

Herington became a designated Kansas Main Street City in 1990. I was privileged to serve as the Main Street director from early 1993 through mid 1997. During that time I witnessed first hand the commitment of Herington citizens to better their community in positive promotion, economic development, resource management and public/private space design. One such project was the exploration of a park trail in and around Herington. Summer student interns from Kansas State University formulated plans and designs in the early 1990's. One of the barriers at that time to such a project was accessing the land for a trail. Since the railroad corridor was vacated and then railbanked for development as a trail in 1995, the land for such a trail is now available. Your department would be a catalyst by granting funds.

Herington sits at the crossroads of transportation. Not only was the town founded in the 1880's because M.D. Herington negotiated for two railroads to cross in Herington, but currently two state highways (#56 & #77) cross at Herington. The Santa Fe National Historic Trail also passes east to west within a few miles of Herington. During the early 1940's, a complete (3 runways) U.S. Army Airbase was constructed on a site near Herington to serve as a processing base for the Second Air Force. Rich with aviation history, the airport still functions today as one of Kansas' public airports. Most recently, a motel site has been developed for Herington's Industrial Park to accommodate travelers. The motel site is within a few blocks of the proposed access to the walking and biking trail which is also near a current visitor's information center. The development of the trail is a natural complement to the transportation aspect of Herington.

The proposed walking and biking project for the trail within the City of Herington is historical, recreational, functional, economically developmental, and has community, county, state and national impact and significance. I urge you to give favorable consideration to the grant request for a hiking and biking recreational trail within the city of Herington. Thank you for your consideration.

Sincerely,


Shari Weber

Enclosures:

House Resolution #6027

Map of the National Scenic and Historic Trails within Kansas
Thurs., Oct. 8, 1998 front page article in *The Herington Times*

**Kansas Department of Wildlife & Parks
Recreational Trails (RTF)
Application Form**

DATE: November 3, 1998

REQUESTOR: City of Herington LENGTH: One Mile

GOVERNMENT AGENCY: City of Herington COUNTY: Dickinson

PROJECT LOCATION: This is a one mile path within the city limits
of Herington, Dickinson County, Kansas

Section: 12 Township: 16 Range: 4

COST ESTIMATE:	Current Cost	
Construction Cost:	\$ <u>21,232.00</u>	<u>John Carder</u> Applicant's Contact Person
Right-of-Way Cost:	\$ <u>0</u>	
Utility Adjustment Cost:	\$ <u>0</u>	<u>City Manager</u> (Title)
Design Cost:	\$ <u>0</u>	<u>PO Box 31</u>
Construction Engineering:	\$ <u>0</u>	<u>Herington, KS 67449</u> (Mailing Address)
TOTAL PROJECT COST:	\$ <u>21,232.00</u>	
TOTAL REQUESTED FROM STATE:	\$ <u>13,907.00</u>	Phone No. (785) <u>258-2271</u>
BALANCE (Local Cost = 20%) 34.5%	\$ <u>7,325.00</u>	Applicant's Signature

Send Request to:

Jerry Hover, Parks Division Director
Kansas Department of Wildlife & Parks
512 SE 25th Avenue
Pratt, KS 67124



PO Box 2203
Shawnee Mission, KS 66201-1203
Ride Line --(816) 871-5150

February 18, 1999

House Environment Committee
Rep. Joann Freeborn, Chair
State Capitol Building
Room 423-S
Topeka, KS 66612

cc: Johnson County Representatives

Regarding: House Bill 2490

As past-president and current Board member of the Johnson County Bicycle Club (JCBC), thank you for this opportunity to address your committee. JCBC, consisting of over 300 members, stands in firm opposition to HB 2490. It is unfortunate that we must be heard today to again defend recreational opportunity, economic diversity and public-private partnerships in Kansas. JCBC has demonstrated its support in numerous public forums, such as this, and through repeated financial donations to the Friends of the Prairie Spirit Rail Trail.

Two years ago, the trail and cycling community was forced to respond to efforts to restrict rail-trail conversions. We came to the table on good faith, with respect and of open minds to reach a compromise that would be amenable to all involved. For the trail advocates, we left the table knowing there were challenges ahead, but feeling the issues raised by opponents had been adequately addressed. However, all compromise is just that; a combination of acceptance of others needs and challenges to meet. Unfortunately, through the introduction of this bill, we feel the previous legislation was passed with a wink and a nod. The opposition knew they would set the stage to justify their return to further restrict rail-trail conversion and attempt to put an end to economic diversity in rural Kansas.

Kansas already has one of the most restrictive, cumbersome pieces of rail-trail legislation in the county. This bill, will do for the opponents what the first bill did not, virtually kill any and all future rail-trails. These corridors represent recreational and economic opportunity for rural Kansas. While these resources have been determined of no further economic value to the railroad industry at this time, they can be a shot in the dying arm of many rural communities across our state. Rail-trails can provide what all communities, businesses and even individuals have understood for years, a diversified economic base.

Often citizens have heard politicians expound their goal of minimizing government and getting it off the back of businesses and citizens. This bill only creates more government, more red tape, and more costs for those that are trying to provide recreational opportunities for all Kansans at little or not cost to the taxpayer. The non-governmental entities this bill targets are citizens, just

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2-18-99
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like you and me, trying to do something for the good and benefit of others. They are not selfishly looking after their own profits, but instead are genuinely trying to improve the quality of life for all Kansans. We should be discussing a bill that helps these organizations, not discourages them.

All one has to do is look at the hundreds of successful rail-trail projects throughout the country to see the benefits, including economic, recreational, educational and environmental, they provide. If over 10,000 miles of trails on 1,003 projects can be converted in 48 states, why can't they be encouraged in Kansas? The 200-mile KATY Trail in Missouri is one of the most successful regionally. Iowa has over 600 miles managed by the state with more managed privately through non-profit organizations. Kansas has a paltry 38 miles on three trails, of which 35 miles are on one trail. The Michigan Farm Bureau supports rail trails for the economic benefits they provide small rural communities and the improved quality of life they offer all Michigan residents, both urban and rural. Across the country there is an additional 1,234 projects underway totaling 18,454 miles. The combination of developed and proposed rail-trails is less than 10% of the total railways that have been abandoned since the legalization of rail-trail conversions. Kansas has four other proposed projects totaling less than 200 miles being undertaken by private non-profit entities. These organizations should be encouraged, not strangled by forcing them to spend more resources dealing with bureaucracy than providing a recreational facility.

The animosity that exists between urban and rural areas in Kansas will only worsen if we allow the continuation of the current economic trends. The rural population is dwindling daily due to a lack of economic diversity and modernization of the agricultural industry. Rail-trails, while not a cure-all, can help slow the decline of rural communities by creating tourism in areas not otherwise possible. I annually spend hundreds of dollars travelling to places to bicycle annually. The JCBC membership bicycles an average of 500,000 to 600,000 miles a year and spends thousands of dollars annually, dollars that could just as easily be spent in rural Kansas, if the opportunity exists. Right now, only one of those places exists as a destination trail, the Prairie Spirit Rail Trail from Ottawa to Welda, south of Garnett.

Let's encourage trails, economic diversity, and recreational opportunities and promote private entrepreneurship by defeating this bill.

Sincerely,



Dale Crawford, Board Member
Johnson County Bicycle Club
512 N. Curtis
Olathe, KS 66061
(913) 829-6588

Committee on Environment
February 17, 1999

Re: HB 2490

Madam Chair and members of the Committee:

I would have liked to have been present to present the following views to you in person but I just found out today about your hearing tomorrow. I have a full schedule of patients, many of whom have been waiting over a month to get in to see me.

I have been the only dentist in Ashland Kansas since I took over the practice from my brother Stephen in 1982 who in turn took over the practice from my dad in 1962 who in turn had been practicing dentistry here since 1936. We Steins have always been leaders in our community, promoting it and trying to help it thrive. The state of Kansas predicts Clark County will decrease in population from the present about 2400 to 1600 in about 10 years. Since I returned to Ashland from dental school in 1982 I have watched a continuing exodus in population and decrease in number of businesses. I have seen pessimism creeping in to all levels of our community. The Short Grass Prairie Trail is an undeveloped and unopened but yet legally existing rail-trail stretching from Englewood to Protection with the potential of extending further eventually. This potential has seized the imagination of many people here for its tourism and economic impact potential. The people here and the local economy badly need this. Although there has been some opposition, I have made it a point to visit with the opponents and I have almost always found that when they understand what is involved and the implications, they either become favorable toward it or at least neutral.

Complying with the existing law is very burdensome but the proposed changes drastically increase the obstacles to us getting this trail open for use. Each year that goes by without it being open costs our communities in Clark and Commanche counties the loss of a desperately needed positive one million dollar economic impact. We estimate that there would be in excess of 20,000 users per year.

Most of the people promoting these enterprises are private individuals like myself who care deeply about our communities and willingly donate huge amounts of our time and resources but yet have very limited financial resources. It seems that the Farm Bureau is intent on eliminating these trails through the financial intimidation of the threat of fines and making compliance with the law extremely involved and difficult. It seems that the issue of fences is basically being used as a way to financially prevent a trail from even getting started. If one person can demand an exorbitant price for a fence, it will obviously kill the trail right there. This trail is legally the property of those to whom it was deeded by the train company. As such, why should the owners be responsible for erecting and maintaining a fence to keep out the neighbor's property such as cattle, horses etc. I live in town and if my neighbor has a dog it is his responsibility to confine it, if necessary by a fence which he maintains. If I get a dog then we jointly maintain the fence. There has not been a problem with people who use these trails leaving them to trespass on others property. I think it would be great if large sections of this trail which pass through large ranches could be open range as on the Cowboy Trail in Nebraska. Ranchers for years around here have

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let people bike through their lands without problems. I would not be reluctant to help keep up the fences, indeed people in town help their neighbors with many similar tasks. But to permit my neighbor to require me to put up an expensive fence to keep his property confined is unjust.

This land was set aside for use for the railroads to use for the public good many years ago. We prefer the railroads continue service on them since if they don't it causes grave economic hardships on the communities involved. When we (the trail developers) take over legal title to the trails we are continuing the use of that property as transportation for the public good. We have nothing personally to gain from these transactions. We do have strong beliefs that the public badly need them. Please support our communities by refusing to make it any more difficult to serve them than necessary. This is one of those cases where fewer governmental regulations are in the public's best interest. Ultimately this is what we are most concerned about.

Thank you for hearing me,

Richard Stein for the Short Grass Prairie Trail



Before the House Committee on the Environment

Testimony in Opposition to House Bill No. 2490

**Andrea C. Ferster,
General Counsel**

**Steve Emmett-Mattox,
Director, Trails and Greenways Program**

On Behalf of Rails-to-Trails Conservancy

Introduction

Three years ago, the Kansas legislature passed K.S.A. 58-3212 and 58-3213, which imposed requirements on trail managers of corridors railbanked pursuant to 16 U.S.C. section 1247(d) (1983). In its three years of existence, the statute has proven to be unworkable. Instead of improving the ability of trail managers to fulfill federal obligations relating to railbanked corridors and responsibly convert and manage these corridors as public trails, House Bill No. 2490, if enacted, would create additional burdens and add to the confusion surrounding the original legislation.

Rails-to-Trails Conservancy (RTC) is a nationwide non-profit organization with more than 70,000 members nationwide and 600 members in the state of Kansas. At its peak, the nation had some 300,000 miles of rail line in its built rail system. Fewer than 150,000 miles remain today, and abandonments are continuing at an average rate of about 1,500 miles of track per year. Recognizing the value of preserving our nation's built rail system, Congress enacted section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), which was signed into law by President Reagan in 1983. Section 8(d) requires the federal agency charged with rail abandonment regulation to "railbank" rail lines otherwise qualifying for abandonment whenever (a) any "state, local subdivision, or a qualified private organization" offers to assume the financial responsibilities of maintaining the right-of-way and (b) the railroad consents. Today, there are 11 railbanked rail corridors in Kansas, stretching more than 300 miles.

Rail-trails offer many benefits to communities where they are located, including preserving valuable open space, improving quality of life by providing safe and accessible places for people to recreate and exercise, preserving a sense of history, attracting new businesses and economic development opportunities, and generating revenue from new tourists. A 1992 study of three rail-trails found that the average annual economic impact of each trail was \$1.5 million. A significant portion of that money comes from tourists - people living outside of the towns and counties where the trails are located. Rail-trails also do not, as is sometimes suggested by trail opponents, increase crime or decrease property values. On the contrary, these trails can quickly

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Washington, DC 20036

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become a source of community pride.

There are several railbanked corridors in Kansas that have not yet been converted to trail use. Each of these (with the possible exception of the Parnell to Topeka line, currently owned by a salvage company with no intention of developing a trail) represent an opportunity to provide new places to recreate, improve local quality of life, and attract new dollars to the communities where they are located.

In Kansas, several promising opportunities exist, including the proposed Flint Hills Nature Trail between Herington and Osawatomie, the Shortgrass Prairie Trail connecting Englewood to Protection, the Meadowlark Trail between Lindsborg and McPherson, and the Landon Trail between Topeka and Overbrook. When linked to the Prairie Spirit Trail, some of these trails would create a network of trails through eastern and central Kansas, hundreds of miles long, connecting small towns that were once connected by the railroads.

In the years since enactment, K.S.A. 58-3212 and 58-3213 have proven to be overly burdensome and significant deterrents to trail development. Several non-profit organizations in Kansas have struggled to meet the unnecessary requirements imposed by the statute, and new trail development has all but ground to a halt. House Bill No. 2490 would further aggravate efforts to create public amenities on railbanked corridors in Kansas.

House Bill No. 2490

Section 1 of the proposed legislation creates a practical obstruction to trail development and practically guarantees that trail managers will be unable to comply with its provisions. The new language requires the trail manager at all times after entering into the interim trail use and railbanking agreement to control noxious weeds, provide for litter control and enforce laws prohibiting litter along the trail, provide for law enforcement personnel, grant easements to adjacent property owners for crossings, maintain existing fencing between the trail and adjacent property, install new fencing, maintain traffic signs, and file a bond or proof of an escrow account. Under current state law, the trail manager must perform these duties only after recording the deed transferring the rail line from the railroad to the trail manager. The new language would require any potential trail manager to arrange for all of these requirements before the transaction is closed and before the trail manager has the legal right to possess the property. As a result, persons entering into trail use agreements will be placed on a position of having extensive obligations to manage property they do not yet -- and may never -- own.

Section 1 continues to impose unnecessary, unworkable and illegal requirements by now permitting the counties to unilaterally establish the amount of the bond or escrow account required of the trail manager, and the amount of liability insurance the trail manager must carry. The trail manager is not provided with an avenue to provide input to the county or appeal the county's decision. In the past, counties have attempted to require trail managers to pay exorbitant bonds to pay for fencing that is unreasonable and unnecessary (such as requests by

adjacent property owners for fencing composed of steel or redwood trees as much as eight feet high, with costs likely to exceed the value of the adjacent legal subdivisions.) The law provides no standards, criteria, or guidance as to what even constitutes a "reasonable and sufficient" bond or escrow account, and fails to delegate the responsibility to develop such standards of criteria to any responsible agency. The due process clause of the U.S. Constitution forbids the state from imposing exorbitant payments or licensing requirements on trail managers based on vague standards such as "reasonableness" that are not tied to any standards or criteria of general applicability.

Moreover, the determination of what is a "reasonable" bond or amount of liability insurance will be left to the unfettered discretion of the various counties, with the result that multi-jurisdictional trails may be subject to wildly fluctuating insurance and bonding requirements depending on the jurisdiction through which they pass.

Section 1 further impedes a trail manager's ability to convert a corridor to a trail by giving the counties in which the trail is located the authority to set the amount of liability insurance required of the trail manager. The trail manager is given no means of providing input into the decision or appeal the county's decision, and the bill provides no guidance as to what constitutes "reasonable and sufficient" liability insurance.

The new Section 2 as proposed would require a potential trail manager to maintain existing and future fencing and install fencing where none exists, again before they have reached closed on their agreement with the railroad and therefore have not taken title to the property. Potential trail managers should not be made responsible for the maintenance and installation of fencing on someone else's property (i.e. the railroad's). What interested home-buyer would reasonably be asked and expected to install and maintain fencing on property they have merely expressed an interest in and before they have taken over ownership?

In Section 3, by requiring a trail plan to be completed and filed with the counties and cities within 90 days after the public hearings (and only 180 days after reaching a railbanking agreement), the bill would result in hasty trail plans and, ultimately, poorer quality trails for the public to enjoy. Trail planning is a lengthy process that can take a year or more to complete. Further, the bill would impose an additional burden on the trail manager by requiring a report to each county and city at intervals determined by the county commission or city's governing body, and require the trail manager to consider all recommendations made by the commission and governing body. Here, as elsewhere in this bill and the existing statute, trail managers of railbanked corridors are being singled out -- other private property owners are not required to either seek input from or consider recommendations from county commissions before developing their property.

Section 4 provides that violations of the statute are a misdemeanor offense punishable by a fine. Only private trail managers may be found guilty and fined, adding further burdens to already struggling groups. The fines alone could bankrupt private organizations doing rail-trails. The bill

sets them up for automatic failure by imposing requirements before and immediately after reaching a railbanking agreement, again before the trail managers even have a right to enter the property, much less erect fencing and provide for litter and weed control. Under these circumstances, no private organizations would ever be willing to enter into an interim trail use/railbanking agreement under the federal railbanking law, since to do so would result in unlimited liability for criminal penalties, thus undermining Congress' express intention that "qualified private organizations" act as interim trail managers under Section 8(d). Moreover, the imposition of this requirement represents an unconstitutional *ex post facto* law, since it imposes criminal penalties on trail managers who have already entered into interim trail use/railbanking agreements and who will, by legislative fiat, be turned into criminals. See U.S. Constitution, Art. 1, Section 10.

Finally, this present legislation further exacerbates our previous objections concerning the law's effect of unconstitutionally interfering with a valid enactment of Congress, its imposition of unconstitutional burdens on interstate commerce, and now, its taking of property owned by trail managers without due process of law. Moreover, we point out this law violates Kansas's own constitution, which specifically declares that "state of Kansas will not interfere with . . . any regulation of congress ." See Preamble to Kansas Constitution.

Conclusion

Across the country, communities have had overwhelmingly positive experiences with rail-trails. Trails not only serve as a key means to provide for non-motorized commuting, but also sustain a wide variety of recreational activities, including hiking, bicycling, walking, horseback riding, bird-watching, and so forth. Many states have adopted legislation to encourage the preservation of rail corridors and their conversion to trail use. Additionally, under the "transportation enhancements" program of current federal transportation funding law, federal funds are available for development of rail trails through state highway departments. Many states are employing these funds to develop trail systems in and for their communities.

Notwithstanding the popularity of trails, the legislation designed to encourage the preservation of rail lines at the federal level and in some states, and the increased availability of funding, the task of preserving a rail corridor remains arduous. As a result, although roughly 150,000 miles of rail line has been abandoned in this country, only about 10,000 miles have been preserved. The rail corridors which have been preserved are extraordinary assets: they include the Cowboy Trail under development in central Nebraska, the Prairie Spirit Rail-Trail in eastern Kansas, the Cedar Valley Nature Trail in Iowa, the John Wayne Trail in Washington, the W&OD Trail in Virginia and so on. These corridors are not just trail assets, but rail assets as well. For example, the state of Washington is returning 100 miles of the state's cross-state trail to active rail service in support of burgeoning rail commerce in the Puget Sound area.

Accordingly, we urge this Committee to refrain from imposing further unnecessary, unworkable, and unconstitutional burdens of federally protected rail corridors that have been railbanked to carry out Congress' intent to preserve our Nation's rail infrastructure.

CENTRAL KANSAS CONSERVANCY, INC.

PO BOX 322
MCPHERSON, KS 67460

Telephone (316) 241-0350
Fax (316) 241-0666

2-17-99

Kansas House of Representatives
Committee on Environment

Testimony for hearing 2-18-99

To Whom It May Concern:

My name is Ronn Peters, President of the Central Kansas Conservancy, which is a 501c3. We have trails railbanked in both McPherson and Marion Counties. We started in this adventure in what we thought was a public service type of activity, that being to build a trail for the public to use for hiking, bicycling, nature observance, bird watching and the like. We anticipated that it would draw some tourist activity and be a great place for them to observe both our way of farm life and nature. It would also give them a close up view of what it must have been like not only to cross the country in wagon trains, but what it must have been like to live on the Great Plains. A place where students of all ages could observe the history, nature and learn to enjoy the beauty that is Kansas. We anticipated that it would be one more thing that could be added to the list of incoming employees when they ask, "What is there to do here".

As we got deeper into the adventure, what we found was a handful of motivated and vocal individuals who lead a very organized campaign against a foe that they obviously knew very little about. Much of the information that was distributed to local levels of government was full of distortions, half-truths and isolated incidents that did not represent an average day on the trail.

We also soon found out that the state statute that attempts to control the construction and use of the trails are difficult and unreasonable at best to follow. It attempts to hold any organization building and maintaining a trail to higher standards than any of the adjacent landowners are being held.

First, litter controls. While this is not a problem on most of the other 900 or so rail-trails, Kansas saw fit to see that trail users keep it picked up. Shooting ranges, racetracks, swimming areas and many other recreational areas are not required to do this.

Second, fire hazards. What is a bigger fire hazard than a ripe wheat field or a good stand of native grasses on CRP ground?

Third, law enforcement. Why, when trails have extremely low instance of crime across the United States would we be required to provide any more law

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enforcement that any other land owner, the local sheriff's office. Professional security personnel are normally reserved for high crime or high-risk areas of which trails are neither.

Fourth, fencing. We have ridden of trails in many other states and are unaware of there being any fencing requirements imposed by those states. This is an issue that seems to us to be taken in the wrong context. Fencing is normally built to keep something in, kids or cattle. Trail users for the most part are observers, not trespassers. If adjacent landowners have live stock or other need for fencing they should be required to build it. The County does not assist in the construction or maintenance of fence along county roads. Why would another private property owner be required to do so?

This bill as it stands is an attempt to make one landowner responsible for another landowner's property. Landowners all over this great nation, rural and urban maintain their own fences and are not required to maintain their neighbors fence "in a condition consistent with the use of the adjacent property". This is overbearing and does nothing but set a stage for argument and civil actions.

County fence viewers is another way of saying County Commissioners and puts them in the position of being judge and jury. In some situations this may be okay, but can also open the door for their involvement in civil litigation and take up valuable time. There has not been a fence viewing in McPherson County in the past 5 years in a contested situation.

Fifth, Bond. The issue of the bond is really several issues in one. We are not sure whether a bonding company will even issue a bond as this bill is configured. As part of the fencing is to be paid for by the adjacent landowners, and they are not required to post bond for their part, and given the generally hostile environment that at least McPherson County has gotten to, what guarantee does the bonding company have that the project will be completed? Second, a bond normally takes effect when construction starts as guarantee of completion. Bonds are set on bids or some kind on contractual arrangement, not on a county commission's opinion of reasonable. Commissioners in McPherson County have had immense pressure and unreasonable fencing requests placed on them by the small groups that oppose the trail. Fencing requests for 8-10 foot high redwood fence with 3 strands of barbed wire is now what any farming operation needs to keep cattle in. If this is what they need, why don't they have them now. Will they fence the other three sides in the same manner? We have already seen evidence of this pressure when McPherson County Commissioners tried to set a bond based on adjacent landowners for the above type of fencing. Nowhere else does the County Commission interfere with what goes on between adjacent property owner without first giving them sufficient time to come to a solution.

Sixth, public hearing. We have held some of these public hearings. They are nothing but a platform to build hate and divide communities for and against. They serve no public good.

Seven, trail plans. Construction and trail plans are like any other building project and should come under the same type of system. A new golf course would not come under this type of scrutiny. You do not require them to turn in an itemized estimate of the costs and sources of the funding. Notification of "any change" is very vague wordage. This could be construed to mean the movement of a sign or the type of tree that may be planted in an area. In no other type on construction project is the owner not allowed to make changes without turning them in to the county commission. Under this legislation, if we make changes, even small changes, and fail to turn them in we shall be guilty, before trial, and if found guilty, pay fines.

In closing we have found the current legislation very difficult to work with. It has set neighbor and friends against each other. It has undermined several civic-minded groups efforts to bring a great cultural, environmental, and recreational facility to many communities. This is not to mention the positive economic impact that the construction and operation of these trail could have already been having on the involved communities.

The proposed legislation only compounds the problems by setting up County Commissions as project managers in a situation that is as it effects non governmental agencies. It also asks them to be judge, jury, and arbitrators in many other areas. In short it forces Commissioners into a situation in private business that they are not involved in other business. It opens them up to more civil litigation than they should be required to be involved in.

In short, if governmental agencies want to build trails, then let them take over as the responsible parties. If they don't, then get them out of the business. This bill should be repealed, not amended.

Respectfully

Ronn Peters

Written Testimony Concerning Misleading Information about Certain Rail-Trails In Kansas

**Testimony to the House Committee on the Environment
Thursday, February 18, 1999 Re: HB 2490**

**As Published in the Jan. Feb. 1999 Issue of the
Alliance for America Newsletter *TRUMPET CALL***

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Rails-to-Trails: Stealing Private Property?

By Dale E. Anderson*

Many wonderful things have been stated about the nationwide rip-off called rails-to-trails. This is one of the biggest and most widespread land grab schemes of the 20th century. The chief perpetrator is known as the Rails to Trails Conservancy (RTC), a Washington D.C. lobby group that often appears to the uninitiated as a quasi-government agency. Its backup support certainly comes from our own U.S. Government. The RTC, of course, isn't the only pro-trail group, just the principal and most visible one.

To listen to the propaganda parroted by the pro trail groups, any small community allowing a rail trail through their town will be granted a Midas Touch. In fact, some of these trails do almost nothing to help with the local economy. The one thing such trails do accomplish is spend *millions* of your tax dollars for rail trail private interest groups.

The "rails-to-trails" acquisition process often functions like a "loose cannon." It doesn't seem to matter by what means they are obtained, how much the cost, or how many private property owners' lives they disrupt. The idea is to get the trail for the alleged "good" of the nation.

This writer is an owner of the Prairie Spirit rail trail in Eastern Kansas. Notice I said "owner," because the concept promoted by pro trail groups, like the RTC, is to call the owners "adjacent" when in fact, in Kansas at least, we, the landowners, own the corridors.

Since the opening of this claimed trail in March, 1996, it has made no profit, the local economy has not seen any increase directly attributable to the trail, and the trail issue has split the community to the extent that, for some, it will never again be the same. What the alleged Prairie Spirit rail trail has done is cost the taxpayers. In fact, at the present rate, it has cost \$105,000 per mile in ISTEA gas tax funds; state funds, local funds and some private sector donations. If completed to its proposed 50 miles, it will cost taxpayers over \$5 million. This is for development only, not for salaries, maintenance, and other miscellaneous expenses. The trail has made no money, yet it keeps begging the various governments for more and more funding help.

Much hoopla has been spread about the wonderful benefits of rail-trails. The claims and exaggerations spread about them seem to have no limit to their absurdity.

As an example, April 25th, 1996, the RTC gave out the following amazing predictions for an abandoned Union Pacific Railroad corridor running from Osawatomie to Herington Kansas, a distance of 130 miles. The name of this dream trail was the "Flint Hills Nature Trail". The RTC had an "interim trail agreement" handed over to the Kansas Horse Foundation which amounted to a quitclaim (KHF) deed that is illegal under Kansas Law. That law, K.S.A. 66-525 (f) states: *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 purposes.*

The KHF Executive Director, Mike Engeman, stated that the trail would be an "economic boost for more than half a dozen small Kansas towns that stand to benefit from expanded tourism dollars and more job opportunities."

RTC president David Burwell stated "This is a 'goose and the golden egg' situation..." To sum it up, advocates' propaganda asserts that "an estimated \$18.7 million in new annual revenues will be generated by the network of 22 existing and proposed rail-trail projects spanning 389.5 miles of the state." This is ridiculous... and false! There are actually less than 50 miles of rail trails in use, (and all in dispute) in the entire state.

Another exaggerated claim: The new Flint Hills Trail will generate \$6.2 million, or a third of the state's economic benefits from rail-trails. It will be the "jewel of the crown" of the mis-represented 'emerging' Kansas rail-trail network. The deal goes on to state: "If the Flint Hills rail-trail becomes part of the cross-continental American Discovery Trail, the local economic benefits could increase significantly." Some crystal ball. The Flint Hills Nature Trail has not made one red cent, and landowners can't even contact the elusive Mike Engeman who, by now, may have nothing to do with the trail. Some more 'off-the-wall' claims not based on facts or sound research: Nationwide, an average of \$1.5 million a year per rail-trail is pumped into local communities by rail-trail users. This figure is the average for the purchase of goods and services generated per rail-trail. The 750 rail-trails (the RTC now claims 1,000) in operation across the U.S., bring revenues into their communities that top \$1.13 billion. To find out more about these figures, just try to contact Mike Engeman. The number is listed as (785) 887-6405.

Kansas Congressman Jim Ryun wants to protect private property rights from being taken without compensation in converting rails to trails. "About half of the nation's rail corridor is in private hands", says Dan Schneider, Ryun's administrative assistant. "For years, the railroads used the land under easements." Schneider pointed out that (former Olympic Gold medalist) Ryun is not against trails. "Jim Ryun has probably run more miles on trails than anyone else," Schneider said. "But he does not believe his desire to run on someone else's property should supercede that property owner's right to his land. The Rails to Trails Conservancy likes taking private land without having to pay for it."

When owners do finally get correct information, it filters down from the Surface Transportation Board, the Department of Transportation, the individual state bureaucracies, the Kansas Department of Wildlife and Parks (KDWP) and local land grabbers, most often considered to be "friends" of local trail advocates. It is estimated that 85% of all railroad corridors were built on easements, most often granted by farmers. This is NOT land owned by the railroads or any governmental entity. Railroads were granted easements for running tracks across America. As clearly stated in Kansas law, when the railroad ceased to run, the land was to revert to the original property owners of the rail corridor. Opposition has increased as more miles of abandoned railroad (known as ROWs) are converted to trails. The figure could go as high as 100,000 miles, and obviously would effect many landowners.

Pro-trail activists like to say trails are "popular" in some areas, but this avoids the major issue: private property rights. Popularity has nothing to do with the fact that this land is being confiscated at an alarming rate. Now is the time for action. State legislators must act to aid landowners and Congress is being urged to straighten out this mess which they, in fact, created. . _____

February 18, 1999

House Bill No. 2490

I appreciate the opportunity to present written testimony on House Bill 2490 to the Committee on Environment. My name is Don L. Schroeder. I am a County Commissioner and farmer from McPherson County.

The proposed changes to K.S.A. 58-3212 and 58-3213 would make the law more understandable. Most of the changes are simply to smooth out the language. I do, however, have some concerns with the proposed changes.

The proposal to completely eliminate a time restriction to complete the trail construction could allow an easement to be in limbo indefinitely. It would be terribly frustrating for an adjoining landowner as well as the County Commissioners to have the possibility of this strip of property laying idle and undeveloped for an indefinite period of time.

I like very much the provision to assess fines for violations of the law. One of the most frustrating parts of the existing law is the lack of enforceable fines or penalties.

The fact that Kansas has a state law regulating rail-trails is testimony that the Kansas Legislature understands the concerns of property owners and is willing to work to maintain those rights. I applaud the efforts to make the law more workable and responsive to those needs.

Thank you very much for listening. With your help, we can do a better job of regulating rail-trails and protecting the property-owners rights.

Don

Don L. Schroeder

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The secretary may require a person who accumulates used or discarded drums, railroad ties or pallets that are not recyclables to dispose of such drums, ties or pallets as prescribed by the secretary. The secretary shall give notice to the person that the accumulated materials are solid waste and that they must be disposed of as directed by the secretary. If the person refuses or is unable to dispose of the materials in a timely manner in accordance with the direction of the secretary, the secretary or an authorized representative of the secretary, at reasonable times and upon written notice, may enter upon the premises where the materials are stored to dispose of the materials. The secretary, in a civil action in district court, may recover from the person who accumulated the nonrecyclable drums, ties or pallets all costs incurred by the department in carrying out the disposal of the materials. The secretary shall remit to the state treasurer any moneys recovered for costs incurred by the department in carrying out disposal of the materials. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the solid waste management fund.

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