Approved March 9, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:10 a.m. on March 7, 2000 in Room 123-S of the Capitol.

All members were present.

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Orville Cole, landowner, Anderson County
Greg Dye, Wichita
Dale Anderson, National Association of Reversionary Property Owners, Garnett, KS
Clyde Boots, Welda, KS
Tracy Presnell, McPherson, KS
Cheryl Swisher, McPherson, KS
Delton Gilliland, Osage County Counselor
Leslie Kaufman, Kansas Farm Bureau
Senator Don Biggs
Amelia McIntyre
Mike Taylor, City of Wichita
Bill Maasen, Johnson County Parks and Recreation
Bart Budetti, Attorney, Overland Park, KS
Jim Cox, Overland Park Parks and Recreation

Others attending: see attached list

The minutes of the March 6th meeting were approved on a motion by Senator Bond, seconded by Senator Oleen. Carried.

SB 538–Rails to trails safety and protection act

Conferee Cole testified as a proponent of **SB 538.** He presented a brief overview of the "rail trail" problem and discussed why present Kansas law is inadequate to protect the landowner or hold trail operators responsible. (attachment 1)

Conferee Dye testified as a proponent of **SB 538**. He discussed conflicts between the Rails to Trails bill and The Intergovernmental Cooperation Act of 1968 which establishes a form of Regional Government. He stated that Rails to Trails does not qualify under this law but that even if it did, this law is in violation of the prohibitions of the US Constitution. (attachment 2)

Conferee Anderson testified as a proponent of **SB 538.** He discussed rail trail problems which have occurred in other states and discussed statewide rail trail problems in Kansas. He stated that current Rails to Trails bills are not specific enough when it comes to who is accountable for enforcement of the laws. There are ten attachments to his written testimony provided for informational purposes. (attachment 3)

Conferee Boots testified as a proponent of **SB 538.** He discussed how this bill would, rather than prevent the development of rail trails in Kansas, "actually encourage closer relationships with the trail's proposed management or development entity and the affected adjacent landowners." (attachment 4)

Conferee Presnell testified as a proponent of **SB 538.** He stated that most trail groups are ignoring the current law by "failing to perform even the most compulsory of tasks outline in the state law" and are able to do so because the existing law has no significant punishment. He stated that this bill gives county commissioners and the state attorney general the tools to enforce the law. (attachment 5)

Conferee Swisher testified in support of **SB 538.** She cited examples of trail groups non-compliance with the current State Recreational Trails Act and stated she felt this bill was necessary to assist county commissions in imposing effective enforcement penalties against officers of the non-compliant trail groups. She provided photos of abandoned railroad ties, trash, weeds, erosion, etc. to support her statements. (attachment 6)

Conferee Gilliland testified in support of **SB 538.** He discussed: the status of rail trail "responsible party" compliance; effect of rail trail legislation on local government; suggestions for improvement in enforcement power; and problems with this bill. (attachment 7)

Conferee Kaufman testified in partial support of **SB 538** discussing positive improvements the bill makes to current legislation. She identified questionable provisions in the bill and discussed them in detail. (attachment 8)

Conferee Biggs testified in opposition to **SB 538.** He defined the bill as "drastic control legislation" and expressed fears that it could close down hiking and biking trails throughout Kansas. He stated that Kansas is far behind other states in trail development and is losing federal dollars for trail development as well as economic benefits of eco-tourism. (attachment 9)

Conferee McIntyre, testifying in opposition to **SB 538**, called the bill "overkill" and identified and discussed, in depth, problems inherent in the bill. (attachment 10)

Conferee Taylor, testifying in opposition to **SB 538**, stated the bill was "over reaching in its attempt to regulate recreational trails" and takes away local control from citizens. He requested the City of Wichita be exempted from the restrictions and requirements in this bill . (attachment 11)

Conferee Maasen, testified in opposition to **SB 538.** He presented a brief overview of recreational trails in Johnson County and discussed plans for further trails. He identified and discussed problem areas in the bill. (attachment 12)

Conferee Budetti, testifying in opposition to **SB 538**, made general comments and addressed specific sections of the bill that concern the City of Overland Park. (attachment 13)

Conferee Cox testified in opposition to **SB 538.** He provided general comments about Bike Hike trails in Overland Park and briefly discussed the "Greenway Linkage Plan." He limited his comments regarding areas of concern with the bill to Section 4 which addresses the issue of fencing and stated that this provision is cost prohibitive to trail managers. (attachment 14)

Written testimony supporting **SB 538** was submitted by: Dudley Feuerborn, Anderson County Commission Chair (attachment 15); Nels Ackerson, Attorney, Washington DC (attachment 16); Mike Bean, Kansas Livestock Association (attachment 17); and Noble Carter, Lane, Kansas (attachment 18).

The meeting adjourned at 11:00 a.m. The next scheduled meeting is March 8, 2000.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 7, 2012

NAME	REPRESENTING
Lynn Gulley	LKM
Leslie Kaufman	Ks Farm Bureau
Amelia McIntyre	self
Bud Newell	Kansas Horseman Foundation
Clint Riley	KDWP
Don Briggs	Ks. Senator
Stan Parsons	Smoot & Assoc.
RUTH HOLLIDAY	Support bicycle trails
GARY LONG	TO SUPPORT TRAIL USE
Delton M. Gilliland	Osage County Counselor
Charles Benjamin	KNRC/Sierra Club
W.D. Lieber	landowner
Noble Carter	SPONSOR OF bill 538
Ernie L Johnson	Concerned Citizen
Paula Lentz	Kansas Corporation Commission
TRACY PROSNELL	SELK
KEVIN GRAHAM	KSC
Carl Sobba	Concerned citizen
Cheryl Swisher	landowner

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-7-00

NAME	REPRESENTING
GALEN SWISHER	LANDOWNER
Kelly Kultala	City of Overland Park
Bart Budetti	City of Overland Park
James Cof	City of Overland Park
SUSAN Bechard	RTC
Jason Dexter	LANDOWNER
Lalene Cole	Landowner
Clyde Bixler	Landowner
Stacy Kramer	Western Resources
LAURA KELLY	KS Recreation and Park Assn
PAT LEHMAN	KRPA
W.A. MANNERS	LAND OWNER
Sarah Plinsky	Johnson County
Bill Maasch	Johnson County Park & Rec
BILL RIPHAHN	TOPEKA PARKS & RECREATION
Dale Anderson	Nat'l. Assn. of Reversionary Property Owners
Ann Durkes	DOB
Greg Dye	Concerned Citizen Self
Dick Carter Jr	TIAK

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/7/00

NAME	REPRESENTING
Barbara Ruhnke/Doniphan Co.	myself [don't call on me]
Arlen Ruhnke	
Bill Henry	Ks Governmental Consulting

SENATE JUDICIARY COMMITTEE

TESTIMONY IN SUPPORT OF SB 538

Mr. Chairman and members of the committee. My name is Orville J. Cole. I am a landowner along the Prairie Spirit Rail Trail in Anderson County.

THE RAIL TRAIL PROBLEM

Hundreds of miles of railroad right-of-ways are being abandoned in Kansas. Under Kansas law these right-of-ways never belonged to the railroads. The title remained with the landowner and railroads had only an easement that reverted when the trains no longer operated. (Harvest Queen Elevator v. Sanders, 189 Kan. 536 and KSA 66-525) Congress passed the railbank and railtrail acts that without notice to the landowner or payment of any compensation to him allowed trail groups to take over the right-of-ways. Trail groups applied to the ICC and now STB promising to develop the trails and assume all managerial, financial (including the payment of all property taxes) and legal responsibility for the right-of-way including any liability arising out of its use.

Miles of these right-of-ways in Kansas are now claimed by these trail groups. They have little money, carry no insurance, have not posted bonds as required by Kansas law, fix no fences or maintain the bridges and tressels. A prime example is the horse trail running 130 miles from Osawatomie to Herrington. The landowner has to live with this situation. Many times he can't even find the trail operater.

PRESENT KANSAS LAW IS INADEQUATE TO PROTECT THE LANDOWNER OR HOLD TRAIL OPERATORS RESPONSIBLE

K.S.A. 1999 Supp. 58-3211 through 3216 provides that the bond required will be set in an amount to be agreed upon by County Commissioners and the trail operator. Since they cannot agree on an amount there is no bond posted. Also, the present law has no teeth in it to force trail operators to comply.

SB 538 IS NEEDED TO PROTECT PRIVATE PROPERTY RIGHTS

SB 538 will bring order out of the present chaos. This bill lays out a precise procedure that the "responsible party" or trail group must comply with. It requires bonds and liability insurance in amounts set

by the Boards of County Commissioners in each county. It spells out landowner remedies when the trail group fails to perform. It gives County Commissioners the authority to inspect the trail and require compliance. It provides a criminal penalty for violations by the trail group. These trail groups must be held accountable and not allowed to claim private property rights they do not own. These trails are an eye-sore and a real burden on people who have to live with them. Landowners have had their land confiscated by government and their constitutional rights under the Fifth Amendment violated. They are entitled in Kansas to the protection of SB 538.

Respectfully,

Orville J. Cole
Garnett, Kansas

Rails to Trails Land Grab

Committee Members:

Something is happening that many view with alarm. A land grab is taking place in Kansas – Rails to Trails. This has been happening for many years in other parts of the country; Sage Brush Rebellion and The Ten Thousand Shovel Brigade in Nevada are examples.

I call your attention to Public Law 90-577, known as The Intergovernmental Cooperation Act of 1968, which establishes a form of Regional Government. The Rails to Trails bill is in conflict with item 2 of this public law, which calls for "wise development and conservation of natural resources including land, water, minerals, wildlife and others." Another conflict is item 4 of the PL 90-577 calling for "adequate outdoor recreation and open space." A third conflict is found in item 5 of the law, which calls for "protection of areas of unique natural beauty historical and scientific interest."

Does Rails to Trails really qualify under this law? I say no, but even if it did, this Public Law 90-577 is in violation of the prohibitions of the United States Constitution, Article IV, Section 4. I don't know of any administrative law or bureaucratic rule or bureaucratic regulation that can become law under our Constitutional Republic.

Let's stop Rails to Trails because it isn't right by the individuals and families from whom the land was taken in the first place.

Signed – Greg Dye

Greg Dye

In Favor
3-7-00
Att 2

Intergovernmental Cooperation Act of 1968
P.L. 90-577 (82 Stat. 1098)

An Act to achieve the fullest cooperation and coordination of activities among the levels of government in order to improve the operation of our federal system in an increasingly complex society, to improve the administration of grants-in-aid to the States, to permit provision of reimbursable technical services to State and local government, to establish coordinated Intergovernmental policy and administration of development assistance programs, to provide for the acquisition, use, and disposition of land within urban areas by Federal agencies in conformity with local government programs, to provide for periodic congressional review of Federal grants-in-aid, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That: This Act be cited as the "Intergovernmental Cooperation Act of 1968".

Federal Law Established Regionalism as a Way of Life

Transformation of the Republic into a totalitarian state under the terms of the United Nations Charter could not occur, of course, without the compliance of elected officials.

Betrayal of public trust by Congress (via U.N.-conferred powers) was given legal coloration by passage of landmark regional bill, "The Intergovernmental Cooperation Act of 1968," (Public Law 90-577) dated October 16, 1968. The word "intergovernmental" is interchangeable with the word 'regional.'

Public Law 90-577, 90th Congress, S.698, October 16, 1968:

"To achieve the fullest cooperation and coordination of activities among the levels of government in order to improve the operation of our federal system in an increasingly complex society, to improve the administration of grants-in-aid to the States, to permit provision of reimbursable technical services to State and local government, to establish coordinated intergovernmental policy and administration of development assistance programs, to provide for the acquisition, use, and disposition of land within urban areas by Federal agencies in conformity with local government programs, to provide for periodic congressional review of Federal grants-in-aid, and for other purposes."

Public Law 90-577 destroyed the separation of powers which is the principle of the U.S. Constitution. By its Title IV Congress purported to yield legislative power to the U.S. President.

Title IV — **Coordinated intergovernmental policy and administration of development assistance programs.**

Sec. 401. (a) ". . . The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives. Such rules and regulations shall provide for full consideration of the concurrent achievement of the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between such objectives when they conflict:

(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

(2) Wise development and conservation of national resources, including land, water, minerals, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design."

The President, in turn, purported to yield these law-making powers to his appointees in the federal regions and sub-divisions, per Sec. 403 of the Act.

Sec. 403 — **Rules and Regulations**
"The Bureau of the Budget or such other agency as may be designated by the President is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this title."

Out of this arrangement has grown the controversial A-95 clearing house review system designed by the Presidential Office of Management and Budget. The system straps regional governance over the entire nation. American citizens are now ruled by non-laws, rules and regulations formulated by agents of the Council on Foreign Relations to advance the "Purposes and Objectives" of World Government.

2-3

Testimony of Dale E. Anderson, Garnett, Kansas

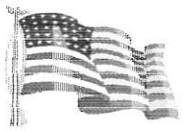
Executive Director, MidAmerica Division,
National Association of Reversionary Property Owners (NARPO)
and
adjacent landowner along the Prairie Spirit trail in Northern Anderson County KS.

Concerning Senate Bill 538

Testimony and 10 attachments included

Jud
3-7-00
att 3

The National Assoc. of Reversionary Property Owners



Dale E. Anderson, Executive Director
MidAmerica Division
120 South Elm Garnett Ks. 66032-1011. (1-785-448-5832)

Testimony Regarding SB 538

My name is Dale Anderson. I live in Garnett Kansas. I am an adjacent landowner along the Prairie Spirit rail trail in Northern Anderson County Kansas, and also the Executive Director of the National Association of Reversionary Property Owners, MidAmerica Division.

I would like to thank the members of this Committee for the opportunity to express my support for SB 538. I have included 10 attachments for informational purposes.

Since the beginning of the rail trail situation the most affected group in the entire scenario is the landowners along the abandoned railroad corridors. The term "adjacent" is very misleading. In virtually all rail trail situations the "adjacents" actually own the abandoned right of ways. SB 538 would clarify this misconception of ownership promoted by groups involved in obtaining land for rail trail development. Kansas Law K.S.A. 66-525 (f) concerning railroad right of way ownership is very simple and self-explanatory. (Attachment 4).

Two Recent court decisions have been handed down that will likely change the way rail trail use is allowed. One of these decisions was in Morris County Kansas. (Attachment 2) A trail group called the Kansas Horseman's Foundation was not complying with state laws governing the operation of recreational trails. A writ of mandamus found the KHF in violation of Kansas recreational trail laws. Senate Bill 538 would be a great asset in the designation and enforcement of Kansas trail laws. I firmly believe the KHF's motive for trail development was simply a money

grab. Money is the driving force behind many private trail management groups. (Attachments 6 and 9)

January 21st of this year the Federal Supreme Court's Court of Claims found rail trail laws were in violation of the 5th amendment to the constitution. It found that when The Missouri Department of Natural Resources developed the KATY trail State Park, the easement terms changed also. Corridor use changed from railroad to recreational use. The court found that the government would have to compensate landowners because of the change. (Attachment 3). Also recently an Indiana court found the landowners must be compensated $45,000 per mile for use of an abandoned corridor. SB 538 would help eliminate this problem before it becomes serious for Kansas.

There have been statewide rail trail problems in Kansas. (Attachments 1 and 7). Present laws are not specific enough when it comes to who is accountable for enforcement of Kansas rail trail laws. SB 538 would help clarify possible future misunderstandings as to who is responsible for the enforcement of Kansas trail laws. Over 40 Kansas counties are now affected by rail trails. Most members of this committee likely have a rail trail "railbanked" in their district. (Attachment 8)

The $105,000 per mile Prairie Spirit trail has proven to be unpopular and a tax waste. According to The Kansas Department of Wildlife and Parks, trail permit sales are declining. Sales for 1997, $6,178.94; 1998, $4,298.00; and 1999, $4,153.96. This is figured at $2.50 daily and $10.50 for annual permits. Giving the KDWP the best advantage, this figures out to 1,662 trail users outside of local community's city limits. SB 538 describes trail use within a city's limits.

Even after Millions of dollars are spent to build these trails, some bicyclists are still not satisfied. (Attachment 5) Honorable members of this committee: Property Matters. (Attachment. 10)

Once again, I thank the committee for allowing me to comment on and express my support for Senate Bill 538.

ESTIMATED RAIL TRAIL STATISTICS 03/07/00

There are now approximately over 100,000 persons directly affected nationally by rails to trails projects. Those persons are chiefly adjacent landowners.

I have an estimate on the amount of persons affected by rail trail projects throughout Kansas. I used Anderson County as an example.

There are 40+ counties in Kansas with some type of rail trail deal in some stage or another. I will use Anderson County's as a base.

Anderson County is approximately 24 miles across. Some counties may be a bit smaller and some may be a bit larger. At 24 miles per county you would have approximately 960 miles of abandoned RR rights of way associated with some type of trail management.

In Anderson County, the 24 miles has approximately 65 parcels affected, not counting any cities. So again, if you take an average of 65 parcels per county multiplied by 40 counties, you have approximately 2,600 affected properties.

Again, I have used Anderson County as a model for the estimates. When you figure land valuation, property taxes, earnings and expenditures, I am certain that the approximately 2,600 landowners put far more through the economy than any bicycle club with a couple of hundred members.

The cities usually own the land a trail uses. Trails that are on properties owned by the state, cities, or counties would have no problem with proof of ownership.

At my last check, there are already over 400 miles of trails in the present state park system. With this many miles of trails already in operation, why do we need rail trails in the first place?

The problems with rail trails mostly involve the outlying areas of the counties, not in the cities.

Concerning the fiscal note attached, the Kansas Department of Wildlife & Parks has shown the taxpayer burden rail trails have on counties.

Before the rail trial deal came up, Santa Fe Railroad was Anderson County's largest property taxpayer; sometimes nearly $250,000 in taxes were paid to the county. If the KDWP pays the back taxes, Anderson, Franklin, and Allen County would receive badly needed revenue.

According to their own figures, Anderson County would realize approximately $1,000,000 in back taxes. Franklin and Allen Counties would theoretically share the remaining $1/2 million.

Many of the counties affected by non-payment of property taxes are rural counties that sorely need the revenue. As it is at present, trail groups are sitting on private property and paying no taxes to the counties. To allow this situation to continue is downright lack of common sense and responsibility of the state. Once again, the Kansas Department of Wildlife and Parks shows no concern or accountability to the citizens along the Prairie Spirit trail. The abutting landowners own the abandoned corridor, not the state of Kansas.

RAIL TRAIL PROBLEMS IN MARION COUNTY

County Attorney seeks Stovall's assistance with rails to trails issue

By ROWENA PLETT
Staff reporter

County Attorney Dan Baldwin told representatives of the Citizen's Association of McPherson and Marion counties Monday that he and Attorney John Klenda have written a letter to Kansas Attorney General Carla Stovall requesting help in litigating legal issues arising out of the rails to trails controversy.

Baldwin and Klenda wrote the letter on behalf of the commissioners of McPherson and Marion counties. They told Stovall that Centrail Kansas Conservancy , which was given quitclaim deeds to the railroad right of way, has ignored requests to comply with state law.

"The organization has failed to post a bond as requested and it appears it has no intent to comply with any of the statutory requirements," they wrote. "Based upon the comments from their president, Ron Peters, it appears the organization refuses to recognize your earlier interpretation and applicability of Kansas law to this matter."

They stated that the issues facing the two counties are being faced by other counties: "No one county should be responsible for bearing the costs of litigating these statewide issues." They requested that the attorney general's office consider taking whatever action is necessary to enforce the law.

Baldwin read a letter from one of CKC's representatives in which he stated: "The trail is not open and no date has been set for an official opening."

The attorney said he believes CKC would like to see the whole law rewritten.

Kevin and Angy Jost spoke on behalf of CAMM and were joined by at least five others who own property along the abandoned railroad corridor in Marion County. Kevin proposed that the county draw up a legal pronouncement that no trespassing is allowed on the trail. Marion County Sheriff Dan Harper said his department would enforce it.

Kevin said he is requesting that Central Kansas Conservancy help pay for replacing a pasture fence along his boundary with the railroad right of way.

"They (the CKC) are *not* afraid *not* to notify landowners, *not* to pay taxes, *not* to show up, so why should we be afraid to stand up for our rights?" Angy Jost asked.

The CAMM people assured county commissioners and Baldwin that they had no desire to close the trail, only to see that it was developed and used according to the laws governing it and to prevent problems along the trail in the meantime.

(Attachment 2)

(This is a replica of the original document to save space and legalese.)

FILED '99 MAY 26 AM 10:45

Case No.: 98-C13
Journal Entry

BE IT REMEMBERED, that on this 11th day of May 1999, the above captioned matter comes before the Court for Judgment. The Plaintiff appears by and through William A. Kassebaum, Assistant Morris County Attorney. The Defendant Kansas Horseman Foundation, Inc., appears by and through its attorney, Kenneth W. McClintock. There are no other appearances.

THEREUPON, the Court pronounces from the bench its findings in the above captioned matter. The court finds that there is a significant State interest in the health, safety and welfare of the inhabitants of the State. Fencing and weed control are legitimate State interests and should be enforced. That posting a bond is a legitimate way to enforce health, safety and welfare type statutes. The Court further finds that K.S.A. 58-3212 et. sec. does not violate the State or Federal Constitution. The Court further finds that K.S.A. 58-3212 et. sec. does not interfere with interstate commerce, that the statute does not deprive the defendant of due process, and that the statute was not preempted by federal legislation.

The court finds and orders that the Defendants Motion for Summary Judgment be denied, and that the Plaintiffs Motion for Summary Judgment granting a Writ of Mandamus be granted. The Defendants are hereby ordered to comply with K.S.A. 58-3212 et. sec. and to post a bond and to provide proof of liability insurance to the County Clerk with ten (10) days of today's date to comply with said statute.

IT IS SO ORDERED

S/s David Platt
DISTRICT

COURT JUDGE

(SEAL)
MORRIS COUNTY, KANSAS

(Attachment 3)

January 21, 2000: Federal U.S. Supreme Court of Claims decision

Landowners to be paid in rails-to-trails cases

The associated Press

ST. LOUIS –Hundreds of Missouri property owners will get paid by the federal government for abandoned railroad easements that have been converted into recreational trails.

U.S. Supreme Court of Claims Judge Eric Bruggnink issued a summary judgment in a case that combined three lawsuits by Missouri landowners against the government. The cases involve the 200-mile Katy Trail railroad easement that stretches from St. Charles County to mid-Missouri and the 6.2 Grants Trail railbed that abuts Grant's Farm in St. Louis County.

The U.S. Supreme Court has previously upheld the federal government's right to preserve unused railroad right-of-ways for future railroad use by converting it to trails. Bruggink's ruling Friday in Washington will not interfere with public use of the Katy Trail or Grant's Trail in south St. Louis County, but it does mean the federal government owes the landowners compensation in a yet-to-be determined amount.

"I'm disappointed, to say the least," said Stephen Mahfood, who directs the Missouri Department of Natural Resources. The DNR manages the Katy Trail as part of the State's park system.

Mahfood said the decision could add to the cost of acquiring railbed for trail development, thus limiting the state's ability to develop new trails.

Two of the underlying suits involve the Katy Trail easements. They include a class action by prominent St. Charles County landowner Dorothy M. Moore and about 330 others, and a claim filed by Maurice and Delores Glosemeyer.

The third case joined by Bruggink was brought by the town of Grantwood Village and involves Grant's trail. Bruggink's decision also will impact a fourth case, a class action suit of landowners with interests in the Grant's Trail easements.

Mark F. Thor Hearne II represents Grantwood Village and the class action litigants in the Grant's Trail case. Hearne said the suits before Bruggink have attracted national interest because they involve the rights of landowners whose property and privacy are affected by the biking and hiking trails created under the federal Rails to Trails Act of 1983.

William Travis, an attorney for the Katy Trail landowners, said the landowners made a successful Fifth Amendment claim that private property should not be taken for public use without just compensation.

Bruggink said that under Missouri law, the railroad easements revert to landowners when a railroad abandons them. The federal rails-to-trails law imposed a new recreational easement, Bruggink said, and in so doing, created a federal debt to the affected landowners.

(Attachment 4)

Kansas Law Concerning Abandoned Railroad Rights-of-Way

K.S.A. 66-525 (f)

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

(Attachment 5)

The following is a letter from Clark Coan, Lawrence; co-chair of the rails-to-trails coalition of Kansas to the Anderson County Review. A $100,000-per-mile trail and he is not satisfied? There are no apparent economic gains in Garnett that can be attributed to the Prairie Spirit rail trail. Trail supporters don't seem to understand that to build tunnels, waterfalls and the like will only add more expense to a trail that already has accomplished nothing except more and more expenses. I don't believe trail users will see many waterfalls, caves or high cliffs in Kansas. Also the loss of privacy is also brought to light with this letter. The Prairie Spirit rail trail sold $4,153.96 worth of trail permits for calendar year 1999. Giving the Kansas Department of Wildlife and Parks the best advantage ($2.50 for daily permits, $10.50 for annual permits) using the daily amount, that would add up to only 1,662 trail users outside of the city limits of the communities along the trail. This is a $2,024.98 drop from the high year of sales, 1997 at $6,178.94. This would amount to a loss of 810 daily users. The trail has proven to be very unpopular, as in the below article, even with trail enthusiasts. The decline will likely continue in the future.

Prairie Spirit Trail (*yawn*)

Dear Editor:

Recently I bicycled the Prairie Spirit Trail from Garnett to Welda. Towards the end of the excursion, a first-time trail user remarked that the trail is rather boring compared to the Katy Trail near Rocheport, Mo. Since there are no tunnels, caves, waterfalls, or high cliffs, that trail user is not very likely to return. On the trip I did see four eyesores: three private dumps and a junkyard. So, why aren't county and state health and environment regulations being enforced?

If trail usage is to increase, the Prairie Spirit Trail needs to be made more interesting. For example, an old-fashioned railroad tunnel could be built in a railroad cut north of Garnett. Also, picnic areas could be built along scenic portions of streams. Further, signs point out natural and historic features could be installed along the trail. With a few creative projects and periodic publicity campaigns, the Prairie Spirit Trail can attract people from all over eastern Kansas and Western Missouri. The tourism dollars generated from these trail users are likely to give the local economy a shot in the arm.

Sincerely
Clark H. Coan ***Lawrence***

(Anderson County Review, April 05, 1999)

(Attachment 6)

How trail entities make money on rails to trails

First off, the federal law allows private and public entities to get rights to railroad rights of way that are proposed for abandonment. The railroad has to agree to trail use. This is an important point because it gives a bargaining advantage to the railroads. The railroads tell the private or public entity (entity) if you do not give us what we want, we will allow the right of way to revert to the rightful owners, the abutting property owners, thus no trail. BIG ADVANTAGE FOR THE RAILROADS!!!

Okay, so now the railroad agrees to trail use. The entity then attempts to line up some government money to give the railroad money for something it does not own--great concept!! This government money usually is in the form of ISTEA or as it is now called, TEA-21. ISTEA and TEA-21 are fancy names for the federal gas tax--$250 billion dollars a year. Of that $600 million is set-aside for "Enhancements". Enhancements are a list of ten project types that are not associated with roads or highways. Rails to trails have taken 90% or more of this money since ISTEA was formed in 1991. It usually takes a year or two for a rails to trails project to get to the top of each state priority list for this gas tax enhancement money so in the meantime, the railroad just sits tight on the abandonment all the while pressuring the entity to come up with some cash. Most project are approved for funding with some taking up to five years to get approved meanwhile the right of way is lying fallow and open to any use as no one takes responsibility for the care of the right of way. You can imagine what takes place when a right of way grows up weeds and is hidden from the view of the road, but still in the backyards and fields of the abutting property owners.

Not only does the government pay through the gas tax scam, they also pay when the abutting property owners go to the U.S. Federal Claims Court to get just compensation for the "taking" of their reversionary rights. For your information, reversionary rights are state law created rights when a property owner gives an easement or has their land condemned for a railroad right of way or any other utility for that matter. Once an easement is abandoned for the use it was given for, the property "reverts" back to the grantor of the easement or the now owner of the underlying land. At the present, there are many property owners working their way through the Claim Court along with two class action lawsuits in Claims Court. One property owner in Vermont will probably get $1.5 million from the U.S. government for the "taking" of his reversionary rights--this includes 18 years of legal fees built up through 12 court actions. Other will get considerably less, but it will add up to very large numbers of taxpayer dollars.

Then we get to the third way the federal government (a.k.a. as U.S. taxpayers) pays for the same trail right of way. The railroads also coerce the entities into giving them a blank IRS Donor Acknowledgment form (IRS Form 8283) so the railroad can fill in the donated amount. The railroad then gets their in-house appraiser to appraise the right of way as if the railroad owned the whole thing in fee title. Then the railroads use that appraisal to justify their corporate federal charitable tax deduction for the right of way. A case in point: Burlington Northern Santa Fe Railroad owned 1500 feet in fee title out of 12.5 mile (64,000 feet) right of way, but they still took a $41.7 million corporate charitable tax deduction which netted them $15 million off their taxes; or put another way, the rest of the U.S. taxpayers picked up the tab for this trail scam.

Mind you, this is the third time the U.S. taxpayers picked up the tab for this trail.

1--Gas tax money

2--Federal Claims Court compensation money

3--Corporate charitable tax deduction money

This is all documented with media articles and other documentation. Can you somehow publicize this scam? I sent this, with documentation to many news outlets both large and small and no one wanted to touch it. 20/20 put out an expose that was a lie, but they felt this was too dangerous to take on the railroads and green groups. I sent it to the IRS, with full documentation, and they would not respond as to what action they took citing confidentiality laws--B.S. They knew they would have to pay me a 10% bounty fee (millions) if I knew they took the railroads to task and I was correct. So much for the gentler IRS!

Meanwhile while all these shenanigans are going on with these rail trails, the green groups are collecting huge sums on "flips". Flips are when a green group acquires rights to land and immediately or very soon flips the land to a government agency for considerably more money. A green group flipped the same 12.5-mile rail line in 15 minutes for a gain of $1.5 million, which was twice what they paid for it. Great scam!!! The green attorneys are also getting a very large kickback on these transfers. We have documentation where they admitted to taking at least 5% for a $3.2 million transfer. The Rails To Trails Conservancy (RTC), a green group in D.C., paid one of their staff attorney $320,000 in 1993 for his kickback on a group of rails to trails scams the RTC was involved in during 1993. These numbers came from the RTC IRS Form 990 they are required to file every year if they bring in over $25,000. We call these green groups "limousine liberals".

(Research by Richard Welsh, National Chairman of the National Association of Reversionary Property Owners (NARPO), La Quinta California.)

(Attachment 7)

Property owners upset with trail

Claim horse group has not done work

BY JOY LUDWIG
Herald Staff Writer

Property owners along the rail bed formerly occupied by the Missouri Pacific Railroad want the Kansas Horseman Foundation to do something with the land the group wants to turn into a 115-mile nature trail.

Although KHF received the land from the Rails-to-Trails Conservancy in 1996, little has been done at the portion going through Franklin County this past year, except for mowing the part of the trail in Ottawa.

"In four years, I have never seen an official on this railroad. They have had plenty of time to get something done, and nothing has happened," said Harlan Page, who raises cattle east of town on a third-generation farm.

Three property owners explained the situation to the Franklin County Commission Wednesday and asked if the commission could do anything about KHF, a not-for-profit organization, or at least view the fences along the trail. KHF has been trying to convert the old railroad into a trail that would stretch from Osawatomie to Herington in central Kansas.

Page said many of the fences along the trail have deteriorated and brush has grown up around them. Since no one from KHF has repaired the fences, he said he fixed a half-mile of fence along the trail himself to keep his cattle from straying. The repairs cost him three days of work and a couple hundred dollars, he said.

Under Kansas law, the horseman's group is responsible for repairing and replacing fences as well as for hunting or trapping that occurs along the railway.

"They're liable. There's no question," said County Attorney Larry Wright about the members of KHF. "They are supposed to be insured or have a bond to cover any expenses that might come up."

Wright said KHF should have a liability bond or insurance in case anyone gets hurt along the trail, as well as a performance bond to keep the fences intact.

KHF has a liability bond, but not a performance bond.

Attempts to reach KHF Director Bud Newell of rural Topeka were unsuccessful this morning.

In September, Newell admitted that the organization had done a "terrible job" maintaining the trail. But, he said several factors such as negative publicity and money woes, have contributed to the lack of development. He said the KHF was trying to reorganize and create a new group that would raise money to start building the trail and pay off property tax debts.

The group owes $2,591 in back property taxes in Franklin County from 1998 and about $1,700 in 1999.

Page said he and some of the other property owners think the KHF should be forced to pay those taxes.

"We have the horse trail running through our properties and they haven't made the taxes on it. We think they should be paying taxes like anyone else," he said.

Last year, the KHF attempted to gain a tax-exempt status from the Kansas Board of Tax Appeals but failed, Wright said.

If the taxes are not paid by the end of 2000, which will be the third year the taxes have gone unpaid, Wright said the property might be on the county's tax sale in 2001. If that happens, Page said he definitely would buy the trail land adjacent to his property.

In September though, Newell said he thought "returning" or "reverting" the land to property owners was inappropriate. In the past, the federal government generally deed property to railroads before areas were settled by private landowners, he said.

As the next step, Wright said he would try to call the assistant county attorney in Morris County and see if KHF had cone anything there recently. Awhile back, he was told KHF had collected the ballast along the trail and sold it to another county to make some money.

"Morris County is the only one I know they've done anything in," he said.

Franklin County Commission Chairman Don Waymire said the commissioners will send a letter to KHF letting them know they are going to view the fences along the property of Page, Eldon Turner and Joel Thomas. Waymire said members of the KHF can meet with the commissioners if they want. In addition, he said the commissioners will send a list of fence expenses the property owners have incurred.

If the situation is not remedied, Wright said the individual property owners or the county could sue the KHF.

THE OTTAWA HERALD, December 30, 1999

(Attachment 8)

Areas affected by trail groups in Kansas

See if your county or area is included, approximately 38% of all Kansas Counties are.

If your county is listed, check with the County Commissioners and see if the rail trail management group/friends/non-profit organization is or has paid their property taxes. Most likely, they have not paid one penny to the affected county.

Also trail groups are not keeping up weed control, fencing etc. under Kansas law. The affected County Commissioners need more and stricter enforcement laws, and power delegated to specifically name the entity responsible for the enforcement of the laws. There is precedent in the District Court in Morris County. The judge found the Kansas Laws Constitutional and important to the health and welfare of Kansas Citizens.

Trail management groups have failed in their agreement with the federal government to assume ALL financial responsibility and pay all taxes levied on the abandoned corridor. By not paying property taxes, the burden is shifted from the responsible parties to the other tax paying citizens in the counties. I hope this table helps to illustrate the scope of the rails to trails situation in Kansas.

Doc.	No.			Deciding Body	ID No.	Case Title	Decided	Type
AB	406	7	X	DIRECTOR OF PROCEEDINGS	28832	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN BARTON, ELLSWORTH AND RICE COUNTIES, KS	01/27/98	DECISION
AB	471	2	X	DIRECTOR OF PROCEEDINGS	30451	SOUTH KANSAS AND OKLAHOMA RAILROAD INC -- DISCONTINUANCE OF SERVICE EXEMPTION -- IN BUTLER AND GREENWOOD COUNTIES, KS		
AB	563	1	X	DIRECTOR OF PROCEEDINGS	30451	KANSAS EASTERN RAILROAD, INC.-- ABANDONMENT EXEMPTION -- IN BUTLER AND GREENWOOD COUNTIES, KS	08/19/99	NOTICE
FD	32549	0		ENTIRE BOARD	21302	BURLINGTON NORTHERN INC. AND BURLINGTON NORTHERN RAILROAD COMPANY--CONTROL AND MERGER--SANTA FE PACIFIC CORPORATION AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY	12/19/96	DECISION
AB	33	140	0	DIRECTOR OF PROCEEDINGS	30399	UNION PACIFIC RAILROAD COMPANY-ABANDONMENT-LANCASTER AND GAGE	07/27/99	DECISION

					COUNTIES NEBRASKA AND MARSHALL COUNTY KANSAS		
AB	406	7 X	DIRECTOR OF PROCEEDINGS	30328	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN BARTON, ELLSWORTH AND RICE COUNTIES, KS	06/22/99	DECISION
AB	437	1	ENTIRE BOARD	30036	KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT--IN SUMNER, HARPER, BARBER, RENO AND KINGMAN COUNTIES, KS	06/09/99	DECISION
AB	437	2 X	DIRECTOR OF PROCEEDINGS	30143	KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT EXEMPTION--IN RENO, PRATT AND STAFFORD COUNTIES, KS	05/27/99	DECISION
AB	437	2 X	DIRECTOR OF PROCEEDINGS	30052	KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT EXEMPTION--IN RENO, PRATT AND STAFFORD COUNTIES, KS	05/28/99	DECISION
AB	406	8 X	CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	30107	CENTRAL KANSAS RAILWAY LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN HARPER COUNTY, KS	03/31/99	ENVIRONMENTAL REVIEW
AB	406	8 X	DIRECTOR OF PROCEEDINGS	30104	CENTRAL KANSAS RAILWAY LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN HARPER COUNTY, KS	03/19/99	NOTICE
AB	437	1	CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	30078	KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT--IN SUMNER, HARPER, BARBER, RENO AND KINGMAN COUNTIES, KS	03/24/99	ENVIRONMENTAL REVIEW
AB	437	1	DIRECTOR OF PROCEEDINGS	30065	KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT--IN SUMNER, HARPER, BARBER, RENO AND KINGMAN COUNTIES, KS	03/03/99	DECISION
AB	406	6 X	DIRECTOR OF PROCEEDINGS	25421	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN MARION AND MCPHERSON COUNTIES, KS	04/07/97	DECISION
AB	406	6 X	SECRETARY	30084	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN MARION AND MCPHERSON COUNTIES, KS	03/01/99	NOTICE OF COURT ACTION
AB	437	2 X	DIRECTOR OF PROCEEDINGS	30062	KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT EXEMPTION -- IN RENO, PRATT AND STAFFORD COUNTIES, KS	02/22/99	DECISION
AB	437	2 X	DIRECTOR OF PROCEEDINGS	29981	KANSAS SOUTHWESTERN RAILWAY, L.L.C.--	01/27/99	DECISION

						ABANDONMENT EXEMPTION -- IN RENO, PRATT AND STAFFORD COUNTIES, KS		
AB	437	2	X	CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	29850	KANSAS SOUTHWESTERN RAILWAY, L.L.C.-- ABANDONMENT EXEMPTION -- IN RENO, PRATT AND STAFFORD COUNTIES, KS	12/31/98	ENVIRONMENTAL REVIEW
AB	437	2	X	DIRECTOR OF PROCEEDINGS	29852	KANSAS SOUTHWESTERN RAILWAY, L.L.C.-- ABANDONMENT EXEMPTION -- IN RENO, PRATT AND STAFFORD COUNTIES, KS	12/14/98	NOTICE
AB	406	7	X	DIRECTOR OF PROCEEDINGS	29889	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN BARTON, ELLSWORTH AND RICE COUNTIES, KS	12/21/98	DECISION
AB	406	6	X	ENTIRE BOARD	28415	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN MARION AND MCPHERSON COUNTIES, KS	12/10/98	DECISION
	0	X		ENTIRE BOARD		K & E RAILWAY COMPANY-- ABANDONMENT EXEMPTION--IN ALFALFA, GARFIELD AND GRANT COUNTIES, OK, AND BARBER COUNTY, KS	12/23/96	DECISION
AB	381	1	X	DIRECTOR OF PROCEEDINGS	29763	T AND P RAILWAY-- ABANDONMENT EXEMPTION--IN SHAWNEE, JEFFERSON AND ATCHISON COUNTIES, KS		
AB	33	124	X	CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	29480	UNION PACIFIC RAILROAD COMPANY-ABANDONMENT-SEDGWICKCOUNTY KANSAS		ENVIRONMENTAL REVIEW
AB	33	124	X	DIRECTOR OF PROCEEDINGS	29550	UNION PACIFIC RAILROAD COMPANY-ABANDONMENT EXEMPTION-IN SEDGWICKCOUNTY, KS	09/09/98	DECISION
AB	3	131		DIRECTOR OF PROCEEDINGS	29569	MISSOURI PACIFIC RAILROAD COMPANY-- ABANDONMENT--HOPE-BRIDGEPORT LINE IN DICKINSON AND SALINE COUNTIES, KS	08/31/98	DECISION
FD	33626	0		DIRECTOR OF PROCEEDINGS	29473	UNION PACIFIC RAILROAD COMPANY AND KANSAS SOUTHWESTERN RAILWAY CENTRAL KANSAS RAILWAY -- JOINT RELOCATION PROJECT EXEMPTION -- IN WICHITA, SEDGWICK COUNTY, KS	08/10/98	NOTICE
AB	33	124	X	DIRECTOR OF PROCEEDINGS	29488	UNION PACIFIC RAILROAD COMPANY-ABANDONMENT-SEDGWICKCOUNTY KANSAS	08/06/98	NOTICE
FD	33603	0		ENTIRE BOARD	29250	RICHARD B WEBB AND SUSAN K LUNDY -- CONTROL EXEMPTION -- BLUE MOUNTAIN RAILROAD, INC AND SOUTHEAST KANSAS RAILROAD COMPANY	08/07/98	DECISION

FD	33623	0		DIRECTOR OF PROCEEDINGS	29365	RICHARD B. WEBB AND SUSAN K. LUNDY -- CONTINUANCE IN CONTROL EXEMPTION -- TIMBER ROCK RAILROAD INC.	07/09/98	NOTICE
FD	33619	0		DIRECTOR OF PROCEEDINGS	29354	RICHARD B. WEBB AND SUSAN K. LUNDY-CONTINUANCE IN CONTROLL-STILLWATER CENTRAL RAILROAD, INC.	07/01/98	NOTICE
AB	406	7	X	DIRECTOR OF PROCEEDINGS	29390	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN BARTON, ELLSWORTH AND RICE COUNTIES, KS	06/30/98	DECISION
AB	3	140	X	CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	21368	MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--IN CLOUD AND JEWELL COUNTIES, KS		ENVIRONMENTAL REVIEW
AB	381	1	X	ENTIRE BOARD	19523	T AND P RAILWAY--ABANDONMENT EXEMPTION--IN SHAWNEE, JEFFERSON AND ATCHISON COUNTIES, KS	02/07/97	DECISION
AB	3	60	X	DIRECTOR OF PROCEEDINGS	28668	MISSOURI PACIFIC RAILROAD COMPANY	12/04/97	
AB	33	101		ENTIRE BOARD	21326	UNION PACIFIC RAILROAD COMPANY--ABANDONMENT--PLAINVILLE BRANCH (PLAINVILLE-COLBY LINE) ROOKS, GRAHAM, SHERIDAN AND THOMAS COUNTIES, KS	03/21/97	DECISION
AB	470	1	X	ENTIRE BOARD	28296	SOUTHEAST KANSAS RAILROAD COMPANY--ABANDONMENT EXEMPTION--IN MONTGOMERY, LABETTE AND CHEROKEE COUNTIES, KS	10/02/97	DECISION
AB	3	140	X	ENTIRE BOARD	21354	MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--IN CLOUD AND JEWELL COUNTIES, KS	04/01/97	DECISION
AB	406	7	X	ENTIRE BOARD	21352	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN BARTON, ELLSWORTH AND RICE COUNTIES, KS	04/15/97	DECISION
AB	3	123	X	DIRECTOR OF PROCEEDINGS	25399	MISSOURI PACIFIC RAILROAD COMPANY	04/16/97	DECISION
AB	33	89	X	DIRECTOR OF PROCEEDINGS	21705	UNION PACIFIC RAILROAD COMPANY - ABANDONMENT EXEMPTION- IN MCPHERSON COUNTY, KS (MCPHERSON BRANCH)	03/25/97	DECISION
AB	33	89	X	DIRECTOR OF PROCEEDINGS	20651	UNION PACIFIC RAILROAD COMPANY - ABANDONMENT EXEMPTION- IN MCPHERSON COUNTY, KS (MCPHERSON BRANCH)	01/27/97	DECISION

AB	3	136	X	DIRECTOR OF PROCEEDINGS	21509	MISSOURI PACIFIC RAIL ROAD COMPANY -- ABANDONMENT EXEMPTION -- IN SHAWNEE COUNTY, KS	01/23/97	DECISION
FD	33292	0		DIRECTOR OF PROCEEDINGS	21157	KANSAS EASTERN RAILROAD, INC.-- ACQUISITION EXEMPTION-- BURLINGTON NORTHERN RAILROAD COMPANY	11/21/96	NOTICE
FD	33293	0		DIRECTOR OF PROCEEDINGS	21158	SOUTH KANSAS AND OKLAHOMA RAILROAD, INC.--TRACKAGE RIGHTS EXEMPTION--KANSAS EASTERN RAILROAD, INC.	11/21/96	NOTICE
AB	33	101		CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	21342	UNION PACIFIC RAILROAD COMPANY--ABANDONMENT--PLAINVILLE BRANCH (PLAINVILLE-COLBY LINE) ROOKS, GRAHAM, SHERIDAN AND THOMAS COUNTIES, KS		ENVIRONMENTAL REVIEW
AB	33	101		DIRECTOR OF PROCEEDINGS	21311	UNION PACIFIC RAILROAD COMPANY--ABANDONMENT--PLAINVILLE BRANCH (PLAINVILLE-COLBY LINE) ROOKS, GRAHAM, SHERIDAN AND THOMAS COUNTIES, KS	01/15/97	DECISION
AB	471	0	X	DIRECTOR OF PROCEEDINGS	21742	SOUTH KANSAS AND OKLAHOMA RAILROAD, INC.--ABANDONMENT EXEMPTION--IN SUMNER COUNTY, KS	03/27/97	DECISION
AB	471	0	X	CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	21376	SOUTH KANSAS AND OKLAHOMA RAILROAD, INC.--ABANDONMENT EXEMPTION--IN SUMNER COUNTY, KS		ENVIRONMENTAL REVIEW
FD	33314	0		DIRECTOR OF PROCEEDINGS	21309	NEBRASKA, KANSAS & COLORADO RAILNET, INC.-- ACQUISITION AND OPERATION EXEMPTION-- LINES OF THE BURLINGTON NORTHERN RAILROAD COMPANY	12/17/96	NOTICE
AB	3	136	X	DIRECTOR OF PROCEEDINGS	28098	MISSOURI PACIFIC RAIL ROAD COMPANY -- ABANDONMENT EXEMPTION -- IN SHAWNEE COUNTY, KS	07/23/97	DECISION
AB	3	111	X	DIRECTOR OF PROCEEDINGS	28070	MISSOURI PACIFIC RAILROAD COMPANY	07/21/97	DECISION
AB	406	5	X	DIRECTOR OF PROCEEDINGS	28021	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY-- ABANDONMENT EXEMPTION --IN CLARK AND COMANCHE COUNTIES, KS	07/09/97	DECISION
AB	406	6	X	DIRECTOR OF PROCEEDINGS	27933	CENTRAL KANSAS RY, LLC-AB EXEMP-MARION & MCPHERSON COUN	06/12/97	DECISION
AB	103	9	X	DIRECTOR OF PROCEEDINGS	27860	KANSAS CITY SOUTHERN RWY. CO.- BAXTER SPRINGS & WACO	06/12/97	DECISION
FD	33492	0		DIRECTOR OF PROCEEDINGS	28492	STATE OF OKLAHOMA BY AND THROUGH THE OKLAHOMA DEPARTMENT	10/22/97	NOTICE

						OF TRANSPORTATION AND BLACKWELL INDUSTRIAL AUTHORITY--ACQUISITION EXEMPTION--CENTRAL KANSAS RAILWAY, L.L.C.		
FD	33470	0		SECRETARY	28488	CENTRAL KANSAS RAILWAY, L. L. C.--LEASE EXEMPTION--UNION PACIFIC RAILROAD COMPANY	10/15/97	NOTICE
FD	33470	0		DIRECTOR OF PROCEEDINGS	28425	CENTRAL KANSAS RAILWAY, L. L. C.--LEASE EXEMPTION--UNION PACIFIC RAILROAD COMPANY	10/01/97	NOTICE
AB	470	1	X	CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	28022	SOUTHEAST KANSAS RAILROAD COMPANY--ABANDONMENT EXEMPTION--IN MONTGOMERY, LABETTE AND CHEROKEE COUNTIES, KS		ENVIRONMENTAL REVIEW
AB	471	1	X	DIRECTOR OF PROCEEDINGS	27891	SOUTH KANSAS AND OKLAHOMA RAILROAD INC -- ABANDONMENT EXEMPTION -- IN NEOSHO AND WILSON COUNTIES, KS	06/18/97	DECISION
AB	471	1	X	CHIEF OF SECTION OF ENVIRONMENTAL ANALYSIS	25540	SOUTH KANSAS AND OKLAHOMA RAILROAD INC -- ABANDONMENT EXEMPTION -- IN NEOSHO AND WILSON COUNTIES, KS		ENVIRONMENTAL REVIEW
AB	471	1	X	DIRECTOR OF PROCEEDINGS	25537	SOUTH KANSAS AND OKLAHOMA RAILROAD INC -- ABANDONMENT EXEMPTION -- IN NEOSHO AND WILSON COUNTIES, KS	05/15/97	NOTICE
AB	406	7	X	DIRECTOR OF PROCEEDINGS	27865	CENTRAL KANSAS RAILWAY, LIMITED LIABILITY COMPANY--ABANDONMENT EXEMPTION--IN BARTON, ELLSWORTH AND RICE COUNTIES, KS	06/25/97	DECISION

(attachment 9) (*Mike Engman was formerly employed by Wildlife & Parks)*

Kansas Trail operators simply lie to communities and trail groups about the economic 'windfall' a rail trail would bring to their communities along the abandoned RR right of way between Herington and Osawatomie KS. The trail is now evading property taxes; some of it has been cleared and returned to farming. This pie-in-the-sky scheme is typical of the propaganda spread by trail groups wanting support for their land-grab schemes. (Engman is former KDWP).

Reprint from The ***New Jersey Farmer***

From Kansas to Delaware...Rails-to-Trails Warning Sounded

By JOHN FULTON LEWIS

Mid-Atlantic farmers take note. There's a rail-trail threatening your "South Forty."

Dale Anderson of Garnett, Kan., has sent us a warning. What Kansans know as the "Flint Hill Nature Trail," a land-grabbing proposal to take overgrown and abandoned railroad rights-of-way to provide hikers and bikers with half a transcontinental route through a lot of farms, woods and private property east of the Mississippi, is intended to go all the way to Cape Henlopen, Del.!

If that doesn't get your attention, Anderson warns us that a Washington, D.C.-based lobby group called the Rails-to-Trails Conservancy (RTC) has filed a Notice of Interim Use (NITU) as a "legal" way to steal property many 19th and early 20th Century farm families generously loaned to rail companies seeking to link rural America with big city market centers. Many of those rights-of-way were supposed to be returned to the property owners if and when rail companies suspended train operations. Anderson heads NARPO (National Association of Reversionary Property Owners) in Garnett, which is trying to alert all of us to this new and largely illegal invasion of private property rights by recreationists and self-styled environmentalists. He says RTC has become the mouthpiece for pro-trail sympathizers, often acting like a quasi-government agency.

"Congressional action is urgently needed to stop this national land grab of 'rails-to-trails' and subject it to the U.S. Constitution's Fifth Amendment 'takings clause' as it was intended," he contends.

Congress must act to amend or nullify the National Trails Act to stop this scheme and make reversion retroactive, to return reversionary land that has been virtually 'stolen' from private landowners.

(Anderson and NARPO's Mid-America Division are located at 120 South Elm, Garnett, KS 66032-1011; Phone 785-448-5832 or Internet URL: http//www.**railtrail.org**& e-mail: (rtrail-opponent@terraworld.net)

An RTC news release from earlier this year and now brought to the attention of *The Delmarva Farmer* reports that the Conservancy has unilaterally "donated" a 130-mile-

long former rail corridor to the Kansas Horse Foundation (KHF). RTC estimates its "gift" may be projected to eventually deliver over $6 million a year in economic benefits to eastern Kansas. The Foundation wants the corridor converted into Kansas' longest rail-trail open to the public, including horseback riders, bicyclists and hikers.

"This generous donation by the Rails-to-Trails Conservancy represents a major step forward in the availability of safe pathways for horseback riders and others," said Kansas Horse Foundation Executive Director Mike Engeman. "It also means a major 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 summarized benefits based on, three similar rail-trails across the United States.

On a statewide basis, the Kansas economy could eventually benefit to the tune of $18.7 million a year from three existing rail-trails (the Lawrence Rail-Trail in Lawrence, Whistle Stop Park in Elkhart and the Richmond-to-Welda Prairie Spirit Rail-Trail) and 19 other rail-trails are still on the drawing board.

Burwell commented: "We are delighted to be able to make this donation to the Kansas Horse Foundation and the people of Kansas.

The Flint Hills Nature Trail illustrates that rail-trails are an important means of improving the quality of life in America's communities through economic and other benefits. The area and the state come out winners in this deal because we will be preserving this corridor for possible future railroad use when technology once again makes such transportation feasible. Without this 'holding action,' much of eastern Kansas would be cut off from rail traffic forever. With a rail-trail, however, Kansas communities that thrived on the railroads in their heyday can reap major benefits once again. And should the railroads return, these local communities will be well positioned to be major beneficiaries all over again."

The problem, says Anderson, and the American Farm Bureau Federation in a pending lawsuit, is that the railroad rights of way are not legitimately the property of RTC to "donate" to anyone in many instances so the so-called Conservancy is basically "conserving" and disposing of someone else's land simply because the rail companies have stopped using it.

RTC's Engeman argues that aside from the obvious attraction of the trail to Kansas residents, there also is the possibility for a major tourism boost if the rail-trail eventually becomes part of the American Discovery Trail, a major project that will run continually from Point Reyes National Seashore, Calif., to Cape Henlopen State Park in Delaware.

He notes confidently: "We intend to make sure that this rail-trail is an attractive and safe place for those who use it and live nearby, as well as a national attraction for other Americans seeking safe, welcoming places to recreate."

Any farmer or landowner who has a prior legal right to such land, which was loaned to railroads by forebears, is to be shunned aside as being of no serious consequence, Engeman implies.

(attachment 10)

Property Matters

Rails to Trails

Rails-to-trails (RTT) is an ingenious idea. The rise of the highway and airplane caused a steady decline in miles of railroad track in use. At the peak, around 1930, railroads operated 230,000 miles of mainline. By 1993, this was down to about 131,000 miles. Rails-to-trails is based on the idea that these old rights-of-way would make excellent trails for walking, biking, cross-country skiing, and other healthy recreations. As a blurb for the annual Rails-to-Trails Conference puts it, "A vast network of trails across the nation connecting our cities to each other…linking neighborhoods to workplaces and congested areas to open spaces…serving both transportation needs and the demand for close-to-home recreation."

In 1983 Congress enacted the Rails to Trails Act, which rests on the premise that the nation might someday need these railroad rights-of-way again. Therefore, it would be foolish to let them disappear. A railroad is not allowed to abandon trackage without the approval of the Surface Transportation Board of the Department of Transportation. The law provides that when abandonment is contemplated, the railroad must give private groups or states an opportunity to take over the right-of-way and turn it into a trail. In theory, it is not abandoned but banked against the day when the trains must roll once again. To sweeten the pot, starting in 1991, Congress decreed that states can use money from the Highway Trust Fund to create these trails.

The program has caught on. Over 800 trails containing 8,000 miles are open, with another 800 or so in development; $200 million of Highway money has been allocated. The national association boosting the program, the Rails-to-Trails Conservancy, claims it is also a moneymaker for localities. It says existing trails generate $1.5 billion annually in spending on lodging, food, bike services, and other tourism.

Rails-to-Trails is a fine program, for me. My house lies about one-quarter of a mile from the Capital Crescent Trail, and from there I can get on the Washington & Old Dominion, which is another rail turned trail or on numerous other hiking and biking paths. Most people seem to agree with me. A survey of Marylanders found that 86 percent support the program.

Many people who are a little closer to the action---the trail runs through their backyard---hate it. Having an occasional freight roll by was no problem compared to the intrusion of a parade of bikers, walkers, and packs of snowmobiles. Landowners have put up barricades, yelled at passers-by and dumped manure on trails. Some owners cite examples of drunken parties and express concern about trails as natural routes for criminals, but it is impossible to pin down the legitimacy of this concern. Certainly, in a time in which people pay heavily to live in gated communities with security guards it is not fair to dismiss it out of hand.

Because many people dislike a rail-to-trail in their backyard, the program lessens the value of their homes. The quarter-mile difference between my homesite and theirs is crucial. The proximity raises the value of my house, since I have the advantages without having strangers traipsing through my backyard. The ***National Association of Reversionary Property Owners (NARPO)***, which is fighting the program, cites numbers showing serious losses by its constituents, ranging as high as half the value of their homes in some cases.

Other economic interests are also at stake. Railroad rights-of-way are used for cables and pipelines. Whoever owns the land has the right to collect the tolls for these, and they can be substantial. The railroads also make a good thing out of rails-to-trails. The railroad's consent must be obtained for the conversion of the right-of-way into a trail. Consent does not come cheap, so part of the cost of the program is that the railroads get cash payments. The railroads profit in another way. Wooden rail ties are treated with preservative, which over the years soaks into the soil. Railroads also spill chemicals out of tank cars and spray heavily with herbicides. Just about every mile of old right-of-way is contaminated with these chemicals, which makes them Superfund sites under the antipollution laws. To be responsible for a Superfund site is bad luck indeed. You are legally liable for cleaning up any contaminates found there, and the standard of "clean" imposed by the EPA can be stringent indeed. If the rails-to-trails program lets railroads avoid this liability, it is like money in the bank for them.

Some of the unhappy landowners are not limited to cursing their fate. *NARPO* estimates that 85 percent of all railroad trackage was built on easements, not on land owned by the railroads. This means railroads did not buy the land. They got only the right to use it as a railroad right-of-way. The standard clause in the deed is that if the land ceases to be used as a railroad, it reverts to the owner of the parcel containing the easement.

The owners contend that the Rails-to-Trails Act takes their property by overriding the clause in the deed that says the land returns to them when rail use ceases. The government and the proponents of the program counter that railroad use has not really stopped; it is just suspended. The right-of-way is railbanked, against the possibility of future need. No one really believes this, and it is amusing to imagine the reaction of the hikers and bikers if the government tried to take the trails back for railroad use, the banking idea was a convenient fiction to justify keeping the rights-of-way.

A number of cases challenging this program are pending in the courts. So far, the results are inconclusive. The Supreme Court has ruled that the program is indeed legal, but it has not ruled on whether it is a taking that requires compensation. As that issue bounces around in the courts, the reversionary owners are becoming increasingly active politically. If *NARPO* is right about the magnitude of the potential losses imposed by the program, this opposition is sure to increase as the number of trails increases. One hundred thousand miles of unused right-of-way affects a lot of landowners.

Rails-to-Trails is a good example of the point made earlier about the loss of community, as embodied in the callous willingness to inflict hefty losses on others for one's own minor gratification. The issue of trails is not cluttered up with concerns about endangered species, or wetlands, or old-growth forests, or anything else. It is not even cluttered with issues of the economic need to provide transportation net. It is purely about the pleasure people get from this source of recreation. Personally, I like this program. Washington and its suburbs have a wonderful network of greenways, parks, and trails, and they add substantially to the quality of life. Nonetheless, it is hard to fathom why I should be allowed to impose losses on others because I like to walk and bike. For a stare, it is hard to fathom why the railroads should collect the value of easements that they are abandoning. Why doesn't this money go to the landowners? It also seems worth investing considerable energy to create mechanisms (card readers, trail use stamps, whatever) for charging us trail users and compensating the property owners. I would be willing to use the government's power of eminent domain to force the property owners to sell the right-of-way for public use. Otherwise holdout problems and transaction costs will make it impossible. But I am queasy about going even this far, and outright stealing is way beyond the bounds.

From "Property Matters" by James V. Delong

My name is Clyde Boots. I am an adjacent landowner along the undeveloped section of the Prairie Spirit rail trail near the community of Welda in Southern Anderson County Kansas.

I wish to thank the members of the Senate Judiciary Committee for allowing me this opportunity to comment on Senate Bill 538.

If one studies the bill, it would become apparent that this bill is not meant to prevent the development of rail trails in Kansas. Rather, it could actually encourage closer relationships with the trail's proposed management or development entity and the affected adjacent landowners.

Senate Bill 538 would give a management group the opportunity and duty to explain fully the desires and intentions of their proposed trail project. Presently, trail groups simply promote their project with bureaucratic agencies, such as *The Kansas Department of Wildlife and Parks* or Washington D.C. lobby groups such as *The Rails to Trails Conservancy*.

Trail groups too often attempt to develop a rail trail without the financial ability to actually afford such an operation. Senate Bill 538 would make it mandatory that a trail group have enough financial resources to properly adhere to laws necessary for the operation of a rail trail. Financial fitness would have to be proven before trail development could begin. Senate Bill 538 would address the problem of trail groups not having enough assets to pay for bonding, liability insurance and taxes levied against the property.

Trail management organizations have too often said, "we are putting in a trail through your property and that's that, period." There has been an excessive lack of notification concerning trail management organizations. There has been nothing but meager attempts, if any, by trail groups to work with adjacent landowners along these abandoned railroad rights-of-way.

Too often adjacent landowners are at the bottom of the list when it comes to developing a rail trail. This is an unfortunate situation because the adjacent landowners are the groups most affected by rail trail development. When a trail is developed, they are forced to live adjacent to the trail; everyone else concerned can go home. For trail users and managers, the trail is then out of site, out of mind. Adjacent landowners cannot avoid the situation that easily. Adjacents have to live along the trail, 24 hours a day, 7 days a week, 356 days a year; like it or not. Senate Bill 538 addresses many legitimate landowner concerns.

Senate Bill 538 is a good bill and has many sections that would automatically address many of the problems now associated with landowner/trail management problems. Clearly, more and better communication between the landowners and trail managers is needed. Senate Bill 538 would be a positive step toward a more mutual understanding between the affected parties.

Again, thank you for allowing me the opportunity to express my views to your committee. In conclusion I would urge the committee to pass SB 538.

Su Jud.
3-7-00
att 4

Sen Jud 3-7 att 5

March 7, 2000
Kansas Senate Judiciary Committee
Year 2000 Session

RE: Senate Bill 538

I wish I could speak to the unconstitutionality of converting abandoned railroad rights-of-way to trails today. But I won't. However, what I would like to do is offer my whole-hearted support to Senate Bill 538. The constitutionality of trail conversions won't be fought on these grounds, but in Washington, DC. For today, all we can do is ensure that those issued a right to steal another's property are made to abide by the law. You see self-government doesn't work without self-discipline; that's why we have laws. And when a law is being ignored, it's time to change that law. That's why we're here today.

Having lived next to a proposed rail-trail for nearly four years, myself and about 35 of my close neighbors have a unique prospective of the laws governing such trail conversions. I can tell you first hand that the existing Kansas statute lacks enforcement fortitude. It leaves the county commissions and the state attorney general hungry for justice. Because right now, there's a whole slue of unlawfully acting trail-groups in our state simply thumbing their noses at the existing law. 538 can change that.

When one has witnessed the attempted enforcement of the existing law it becomes obvious that the law falls short in ensuring compliance. The changes proposed in 538 will go far in solving that dilemma.

While most trail-groups purport to be well intending, most fail to perform even the most compulsory of tasks outlined in the state law. Knowing that the existing law has no significant punishment, these groups continue to ignore it. The county commissions and the state attorney general stand, with their hands tied, helpless.

I can't tell you how frustrating it is to appear before our county commissioners time and time again pleading for compliance with the law. Even letters and trips to the attorney general's office produce no result. The response is always the same; the state legislature must change the law. It's simple; the commissioners and the attorney general must have the tools that allow them to do their jobs. SB538 gives them those tools.

The fact is, without a much-needed boost to the current law, this rash of unlawful activity will continue to spread across the state like a raging wildfire. And why not? If they can get away with it in McPherson and Marion counties, they get away with it in every county. And that's exactly what is happening.

In the state, right now, there are numerous trail-groups in the exact position I have just described. These groups alienate county commissions and abutting landowners by refusing to abide by Kansas law. Because these groups didn't really know what they were getting into, and since the current law lacks enforceability, we are left with a standoff. Without the changes specified in Senate Bill 538, these groups will continue their

Sen Jud
3-7-00
att 5

unlawful behavior, unchecked. It is truly unfortunate, though. One would imagine that those purporting to be so righteous and benevolent in proposing the development of a recreational trail would also show some respect for the law and for those whom own the property that has been taken for a use of questionable benefit.

I, personally, do not consider myself an advocate of new or more-strict laws. However, in this case, I very much support emendation of the rail-trail statute to help keep honest and law-abiding people honest and law-abiding. The changes proposed by 538 do not thwart trail development. They do, however, provide a clear and significant penalty to dissuade those that may be less than earnest and reward those capable of planning and implementing such a grand and substantial project.

Without the passage of 538, we will continue to be right here, nothing having changed. The standoff will persist.

It's in your hands now. We plead with you to do the right thing and support the passage of Senate Bill 538 into law.

Respectfully Submitted,

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

Sjud 3-7 att 6

Galen & Cheryl Swisher
PO Box 82
McPherson KS 67460

March 7, 2000

Kansas Senate Judiciary Committee
Year 2000 Session

Dear Committee Members:

First, let's establish why we're here and who brought us here.

If trail groups were complying with the current State Recreational Trails Act and being "good stewards of the land" and "good neighbors" as they have often asserted, we wouldn't be here. If trail groups were fulfilling the obligations that they willingly assumed when accepting their trail use permit from the Surface Transportation Board all of this wouldn't be necessary. These obligations include paying property taxes (ZERO paid by our local group in 3 years), building and maintaining fences (NONE built in 4 years), noxious weeds (NO spraying has taken place to my knowledge), mowing weeds (please see the attached photos for illustration), etc.

Trail groups have been in complete control of their destiny from the beginning. All they've had to do is obtain financing to satisfy their obligations to landowners and the public, as stipulated in state law.

Now, let's establish why this bill is necessary.

Several county and city governments across the state are struggling with the ambiguities of enforcing the current state law. McPherson and Marion counties are two that I have personal knowledge of. County commissions need the ability to impose effective enforcement penalties against the officers of the trail groups that are not in compliance with state law or operating in good faith.

Let me give you one example of my husband's and my experience with our local trail group. We sent the local "responsible party" a letter, return receipt requested, in November 1998. In this letter, we informed the group that we were ready to build a fence between the right-of-way and our remaining property during the following spring. We specifically requested that they do a survey so we would know how much of the erosion repair we would be responsible for and where to build the fence. We did not receive a reply. We sent another letter in February 1999. As of today, we still haven't received a reply.

We have gone to our County Commissioners numerous times with these and other grievances regarding law enforcement, lack of signage, weed control, etc., to no avail.

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Sn Jud 3-7-00 att 6

The commissioners claim they need a better mechanism to hold the trail groups accountable.

The penalties proposed in SB538 would, in deed, be an effective tool for commissioners to use to motivate the officers of these negligent groups to honor the obligations – let me say it again - that they willingly assumed.

The penalties in this bill will not hinder the efforts of trail groups who are lawfully performing their duties in good faith. But, it is desperately needed to effectively influence those groups that cannot or will not abide by the current state law.

The landowners and the unsuspecting public are at risk when these groups are allowed to continue to disrespect the law without penalty. The Kansas Legislature would be well justified in augmenting the current state law by passing SB538.

Thank you for the opportunity to speak out on this issue.

Sincerely,

Cheryl Swisher

Shotgun Shell Casing

Trash

Abandoned Railroad Ties

Weeds

More Weeds

Erosion

Erosion and / Abandoned Railroad Ties

Erosion next to Smoky Hill River

Erosion / 1/4 of Railroad Bed Gone

Erosion

Erosion

Weeds Erosion

Erosion

Bridge Unsuitable for Public Pedestrian Traffic

Childern Have Repeled From These Bridges

Unimproved Railroad Bridge

7 March, 2000

TESTIMONY OF DELTON M. GILLILAND RELATIVE TO SENATE BILL NO. 538

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. $4029.66 delinquent in Osage County now. This is exclusive of interest, publication fees, etc.

C. Not responding to demands to provide bond and liability insurance.

D. Not replying to letters.

E. Not providing security on the trail.

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. Senate Bill 538 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.

Sn Jud
3-7-00
att 7

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.

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 Senate Bill 538:

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. K.S.A. 58-3213(c) is repealed by S.B. 538. There should be a time limit for development of the trail or lose trail rights.

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
7 March, 2000

PUBLIC POLICY STATEMENT

SENATE JUDICIARY COMMITTEE

RE: SB 538 – Enacting the Rails to Trails Safety and Protection Act

March 7, 2000
Topeka, Kansas

Presented by:
Leslie Kaufman, Assistant Director
Public Policy Division
Kansas Farm Bureau

Chairman Emert and members of the Senate Judiciary Committee, thank you for the opportunity to appear today and comment on SB 538, the Rails to Trails Safety and Protection Act. Farm Bureau members have been involved in protecting landowner rights from our organization's inception. One of the biggest challenges many of our landowners have faced during the past two decades have been the property rights violations that have stemmed from the federally authorized rail banking system.

We have lengthy national and state policy dealing with the underlying property rights issues connected with rail banking. In short, we oppose legislation that denies or postpones the reversionary property rights or interests of underlying or adjacent landowners. Easement rights-of-way should not be converted for new or additional purposes, including recreational purposes, without the consent of the owner of the underlying easement. This bill does not deal with these underlying issues, so I will not elaborate further. We would welcome the chance to discuss these issues with any of you, should you so desire. Please feel free to contact us at any time.

Farm Bureau was instrumental in the passage of our state's current Recreational Trails Act (KSA 58-3211 through 58-3216). Last year Farm Bureau was supportive of

HB 2490, which sought to strengthen and clarify the current act. We still believe the original HB 2490 was a valid and needed piece of legislation. Many of the provisions in SB 538 mirror or relate to portions of the current act and/or HB 2490. We support these provisions and, what we see as the central theme of SB 538, insuring that if a rail trail is operated in Kansas, it must meet certain maintenance and safety standards.

Although we are supportive of SB 538's general intent and some of the requirements it would add to current rail trail legislation in Kansas, we have identified some areas of concern with the bill, as well. As such, we would characterize our position on SB 538 as one of partial support.

There are several elements of SB 538, which appear to us, to be positive improvements to the current recreational trails legislation. These include:

- ✓ Requiring a title search and the filing of a legal description of all properties proposed to be included in a recreational trail (pg. 1, lns. 29-37);
    - Our national policy supports the responsibility of informing each landowner, prior to abandonment, of the legal basis on which the railroad claims the right to occupy the corridor.
    - Although SB 538 places the responsibility on the trail operator and not the railroad, the intent is consistent with our belief that owners of the underlying or adjacent property need to be apprised as to the legal basis for the railroad/responsible party occupying the corridor.
- ✓ Allowing the county commission to determine the amount of liability insurance which must be maintained by the responsible party (pg. 2, ln. 4);
    - Farm Bureau supported this concept last year in HB 2490.
    - Current law requires agreement on the amount of liability insurance and bond/escrow by the commission and the responsible party. The practical result is, the two entities seldom reach agreement, and so it is not maintained at a sufficient level, if at all.
- ✓ Expansion of the public notice and public hearing process (pg. 2, lns. 28-8);
- ✓ Providing a mechanism for county commissions to perform and recover costs for trail clean up (pg. 3, ln. 28) and elimination of a fire hazard (pg. 3, ln. 37) in the event the responsible party fails to comply with the act;

- ✓ Allowing adjacent landowners to make temporary/emergency repairs to fencing (pg. 4, ln. 12);
    - KFB supported this concept in HB 2490.
    - Adjacent landowners need the ability to react to fencing problems immediately.
- ✓ Utilizing the county fence viewers to settle disputes over the cost or type of fencing/fence repairs requested (pg. 4, ln. 25);
    - KFB supported this concept in HB 2490.
- ✓ Requiring, in essence, an in-lieu-of tax payment from non-profit entities in order to protect the county tax base (pg. 5, ln19);
    - A diminishing tax base is one critical implication when a railroad discontinues service and transfers control of a corridor to a not-for-profit entity.
    - Although, the diminishing tax base implications are present when a governmental entity assumes responsibility for a rail corridor, Farm Bureau policy is solidly against using state or federal tax revenues for development, enhancement or maintenance of rail banked corridor.
- ✓ Clearly defining that primary enforcement for the act lies with the County Attorney and, if the County Attorney fails to respond, with the state's Attorney General (pg. 6, ln. 4).
    - KFB supported this concept in HB 2490.
    - We believe a clear statement as to enforcement responsibility is critical to ensuring any recreational trails act is complied with.

As noted earlier, these are some of the main, positive improvements SB 538 would make to our current recreational trails law. There are also some provisions that we have questions and/or concerns about. They include:

- ➢ Applying the Rails to Trails Safety and Protection Act to any recreational trail, even if it is not on rail banked corridor (pg. 1, ln. 17);
    - Farm Bureau policy recognizes the differing implications which stem from whether the trail property was obtained by rail banking or other means.

- Our policy positions on recreation trails are mainly directed at rail trails.
- We support the current Kansas Recreational Trails Act's application only to rail trails.
- We recognized that maintenance, upkeep and oversight issues regarding a governmentally managed trail are vastly different from a trail operated by a private entity (although, the underlying property rights issues may remain the same).
- We supported provisions in the current recreational trails act that allow cities to tailor upkeep and safety requirements to their own needs.

➢ Tying the definition of "responsible party" to "marketable title" (pg. 1, ln. 23);

- Title issues are often blurred under the federal rail banking system.
- Under SB 538, if all a trail group has is a quitclaim deed from a railroad that had an easement for railroad purposes only, does the "responsible party" become the underlying property rights holder/adjacent landowner?
  - If so, we would adamantly oppose extending that responsibility to the underlying easement holder.
- We believe this question is extremely pertinent in light of the Jan. 14, 2000 decision by the U.S. Court of Federal Claims holding, in-part, that rail banking and interim trail use pursuant to the Rails-to-Trails Act, does not constitute a "railroad purpose" under Missouri law, so as to preclude abandonment of a railroad easement (Glosemeyer v. U.S., 45 Fed. Cl. 771).

➢ Making the provisions of the act effective "from the date the responsible party entered into . . . *a rail banking agreement with the appropriate federal agency* . . ." (pg.5, ln. 36);

- From our understanding of the federal rail banking laws and process, we believe this to be an incorrect designation.
- A federal agency grants **permission** for a railroad and another entity to enter into negations for interim trail use.
- The actual interim use (rail banking) agreement is entered into by the railroad and the entity seeking interim use (trail sponsor). The federal agency is not a party to the agreement.

- As far as we can tell, the responsible party's requirement to make periodic reports to the local governing board, as required by K.S.A. 58-3213(b)(4), is eliminated;
    - We support this provision in current law and believe it should remain in any future legislation.
- The repeal, with no apparent similar replacement of K.S.A. 58-2314 regarding adjacent landowner's duty of care.
    - Although this concept may be embodied in other law, particularly negligence law, we believe the affirmative statement that the adjacent landowner has no duty of care to trail users, other than liability as a result of gross negligence or willful or wanton misconduct, is important to have within any recreational trails act.
- The apparent elimination of a severability clause (K.S.A. 58-3216).
    - There is argument that such a clause is not essential, but as long as severability clauses are routinely used in legislation, we feel one should be included in any recreational trails act.

It is vitally important that Kansas have a strong state law delineating minimum standards for operating a rail trail in Kansas. We support the current Recreational Trails Act and we support efforts, as evidenced by our attempts to see HB 2490 passed last year and our testimony today, to improve upon the current act when and where needed.

Although we support many of the concepts of SB 538, we cannot fully support its implementation as written. Farm Bureau is willing to assist in discussion and attempts to revise and improve the current act or SB 538. We encourage this committee to look closely at SB 538, examine the concerns and recommendations we have outlined above, and pass a bill that improves and strengthens the entire Kansas Recreational Trails act. Thank you.

STATE OF KANSAS

DONALD E. BIGGS
SENATOR, 3RD DISTRICT
LEAVENWORTH & JEFFERSON COUNTIES

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER:
ENERGY AND NATURAL RESOURCES
MEMBER:
AGRICULTURE
ARTS AND CULTURAL RESOURCES
FEDERAL AND STATE AFFAIRS
FINANCIAL INSTITUTIONS AND INSURANCE

LEGISLATIVE HOTLINE
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TOPEKA

SENATE CHAMBER

March 7, 2000

TESTIMONY FOR SENATE JUDICIARY COMMITTEE
SB538 – RAILS TO TRAILS

This is drastic control legislation that could very well shut down the small number of hiking and biking trails in Kansas and certainly stop any future development. This is apparently the purpose of the authors.

Hikers and bicylists are not litterers or property violators. They love the outdoors and are as environmentally conscious as any group to be found. There is no healthier form of recreation for families and groups to enjoy.

Kansas is already so backward and far behind other states in trail development. Our 33 mile Prairie Spirit Rail Trail pales in comparison with Iowa's 500 miles, Nebraska's 300 miles, and Missouri's 230. Kansas is at the bottom of states in per capita spending on our parks. We also have the smallest percentage of public lands of any state in the nation. We are losing federal dollars available for trail development and losing the economic benefits of eco-tourism which is growing rapidly throughout our nation. If this or any similar legislation passes, we might as well post signs at every highway leading into Kansas – "hiking and biking prohibited". I oppose SB538, and my thoughts are further expressed in a letter to the editor of 10-27-97, which is attached to my testimony.

Don Biggs

Attachment

Jud 3-7-00 att 9

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SENATE CHAMBER

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FEDERAL AND STATE AFFAIRS
FINANCIAL INSTITUTIONS AND INSURANCE

October 27, 1997

Letter to the Editor:

I am pleased to report that phase 2 of the Prairie Spirit Rail Trail from Richmond to Ottawa is now under construction. It was a joy for me to join with a large number of other interested citizens at a ground breaking ceremony at Ottawa on October 24. The first phase of 18 miles from Richmond to Welda opened to the public in 1996. It passes through Garnett with strong civic and citizen support and major economic benefits. The new extension north will add 15 miles to the trail and bring it considerably closer to Leavenworth and the metropolitan Kansas City area. A still unfunded phase three would be a 17 mile extension to Iola for a total trail of 50 miles.

The trail is being built on an out of use railbed with title transferred to the Kansas Department of Wildlife and Parks in 1992. Such railbanking was created by Congressional action in 1983. Most other states are far ahead of Kansas in trail development. A vocal few individuals and organizations in Kansas continue their opposition to authorized trail development. Congressman Jim Ryun is the latest in such opposition. His proposed legislation could cause hundreds of miles of trails to be dismantled and prevent thousands of miles of trails from being built.

Former Governor Mike Hayden is somewhat dismayed by the Kansas trail opposition. He states that Kansas is 50th in the nation in per capita expenditure on our parks. Kansas also has the smallest percentage of public lands of any state in the nation. It seems time for Kansans to speak up to promote projects that benefit family recreation, quality of life, and the total community. Without vocal citizen support, special interest groups and greedy individuals could win out and give Kansas a giant set-back and image problem.

Don Biggs
State Senator

9-2

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(DURING SESSION)

8-6-97

Garnett 8-6-97

Testimony Presented to the Senate Judiciary Committee
March 7, 2000
S.B. 538

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 by Senate Bill 538. 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".

Based on *The Kansas Heritage Trails Plan* prepared in 1993 by the Kansas Heritage Trails Committee representing the Kansas Department of Wildlife and Parks, the Kansas Department ofTransportation, Kansas State Historical Society, and the Kansas Department of Commerce and Housing pursuant to Kansas Senate Resolution 1843 and Kansas House Resolution 6027, both adopted in the Kansas Legislature in 1991, it was projected that Kansas would experience a major loss of railroad mileage. See page 43. Again based on *The Kansas Heritage Trails Plan,,* of the 6,491 railroad miles that existed in 1991, 3,000 miles, or nearly one-half, carried less than one million gross ton-miles per mile annually, making them "light density" rail lines with a high probability of being abandoned. Again as noted in the *The Kansas Heritage Trails Plan,* the risk of abandonment was "highest for the lines that are unprofitable, because of deferred maintenance, the high cost of rail line rahabilitation and the railroads' increased competition from highway motor carriers." Those projections made in 1993 have proven correct. In areas where the rail lines have already been abandoned, the increased costs now being faced by highway motor carriers through increases in the costs of petroleum leaves the Kansas shipping public, including the Kansas farmers, with reduced options. The hostility toward the interim use of rail lines for recreational purposes has significantly reduced Kansas' options to address future

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transportation issues. If corridors are left intact, then they remain available for use in the circumstances of national emergencies, an energy crisis or renewed need and profitability of rail transportation. The United States Supreme Court has upheld the constitutionality of 16 U.S.C. 1247, allowing railbanking, [Presault v. ICC, 494 U.S. 1 (1990)], and recognized that railbanking is a reasonable and legitimate exercise of government power for these reasons. The posture of Kansas Legislature has been to thwart railbanking as an interim use, by limiting the use of federal funds available for the development of railbanked trails.

Now through Kansas Senate Bill 538, opponents to the interim trail use of railbanked corridors, have significantly broadened their targets to include all recreational trails, not just railbanked corridors. The provisions of SB 538 apply to the "operation of a recreational trail, no matter its type or designation." See Section 1(b). It is on this basis that I also offer testimony as a user of trails in a variety of municipal and county owned areas that are not in anyway linked to railroad corridors. As a former City Councilman for the City of Mission, Kansas, I aggressively worked for the acquisition of park land, including what is now know as Broadmoor Park, and one of the primary uses is a walking path along the perimeter of the park. As a city, we bid against an office developer for one of the few remaining undeveloped parcels in a land locked municipality. The substantial amount paid for the land demonstrates the will of the people to have recreational facilities. Many Johnson County municipalities have developed, in response to demand, trail corridors in parks, along streamways or paralleling arterial roadways. Through the public referendum process, the City of Olathe recently adopted a tax increase which is partially being used for trail development and other recreational facilities. The City of Gardner has announced a plan for trail development. As a participant in the recent Johnson County Infrastructure Mini-Summits, I observed that the collective will of a significant number of the participants from the developed, developing and *rural* parts of Johnson County placed a high priority on the acquisition of park land and the development of recreational facilities. Participants came from business, elected or appointed office, and residential neighborhoods. Senate Bill 538 is an effort to substitute *negative will of a state mandate* in lieu of the demonstrated will of the local constituents.

Senate Bill 538 would significantly increase the costs of development and operation of these trails, without achieving any corresponding benefits. The proposed legislation fails a basic cost benefit analysis.

Specifically, my concerns about Senate Bill 538 are as follows:

1. **Delivery of financial assurance prior to entering into a trail-use agreement or development 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 a bond or other form of financial assurance to be filed "prior to entering into any trail-use 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 **prior delivery of the financial assurance** 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 amount of financial assurance within an appropriate time frame and not penalize the responsible 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-433 (Sub-No.2X), served April 1, 1998), 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. There is a similar concern about the timing of the providing of proof of liability insurance as amending subsection c of K.S.A. 58-3212. 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 the Board of County Commissioners' determination must be reasonable.** The present language of the proposed amendments Section 3 (d)(1) could be clarified by restating it as follows: "*that the county commission reasonably determines sufficient...*" ,which change would clarify that the commission must act reasonably in making the determination of the appropriate amount.

3. **Fencing requirements imposed by new section 4 (b) (7) 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 thirty 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. In addition, a railroad is given sixty days, not thirty, to build a fence after notice. K.S.A. 66-309. The original negotiations on the existing recreational trail law passed in 1996 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).

4. **Reconcile the penalty cap with existing statutes applicable to other property owners.** Carefully consider whether the penalty provisions of new section 8(b) are discriminating between other property owners and responsible parties of recreational trails. By way of example, 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 $10,000 per count. The "per count" addition could have a significant discriminatory impact on a recreational trail. Further there are safeguards, including notice of noncompliance, within the general weed control statutes and other nuisance statutes that should be expressly applied no differently to a responsible party of a recreational trail, than any other property owner.

5. **Marketable title may not be available.** Section 3 (b) requires a responsible party to inform local governments of intended trail use, and provide proof of marketable title (quit- claim deeds are deemed insufficient by the proposed statute) ***prior to*** entering into an Interim Trail Use Agreement with the railroad. There is an inconsistency between what actually happens and what appears to be unrealistically contemplated by the statutory amendments. Quit-claim deeds conveying whatever interest a railroad has are no delivered until after the Interim Trail Use Agreement is signed. The statutory amendment appears to impose an obligation to accept title prior to dealing with cities and counties, such requirement is inconsistent with good public policy as well. Adequate time to do due diligence along and about the trail would seem to be appropriate. The statutory amendment would have the effect of elevating what constitutes marketable title under state law to thwart the federal railbanking provisions. Railroads cannot give marketable title or a warranty deed because they may only have easements on the corridor. The normal railroad business practice is to give a quit claim deed, conveying whatever interest they may have. Also, there are fragmented forms of ownership along any particular railbanked trail (simple easement, perpetual easement, a limited fee, a fee simple determinable, and even a fee simple subject to a condition subsequent). These same type of fragmented titles may also occur on trails that are not railbanked. In addition, significant portions of the railroads were federal land grants, with reversionary interests to the federal government. The statutory amendment will most certainly have a chilling effect on further conveyances for railbanked corridors, and as to other types of trails will significantly increase the costs of acquiring land, or interests in land, for trails. Most importantly, how can the trail operator give proof of title before it has even completed an Interim Trail Use Agreement (the final step in railbanking)? Deeds are not issued until after the ITUA is entered into.

6. **Insertion of the requirement of entering into an agreement with a county takes away local initiative to provide for the needs of citizens of municipalities.** Section 3 (c) requires the trail entity to submit to each affected county commission a "written agreement" that it will comply fully with the act. But an agreement with whom, what purpose and if the statute is binding, why is an agreement needed?

7. **The term "abandoned" is inappropriately used in Section 3 (f).** Notice must be given to adjacent landowners that the responsible party intends to develop and use the "abandoned" rail corridor or other type of property for a recreational trail. However, under Federal railbanking a corridor is not abandoned only rail use is discontinued for an indefinite

period. Municipalities are impacted since this applies to all recreational trails not just rail-trails. It's unclear when notice must be given.

8. **The requirement of three hearings is burdensome and also misleading that the result can be changed at a county level.** Section 3 (g) requires three official public hearings must be held in each affected county. It should be clarified as to what purpose is actually being served by the hearings. Whether a corridor is going to be railbanked is a decision made at the federal level. If the hearings are intended to be advisory only as to how the trail will be developed then that may be appropriate, but on a more limited scale. If transcripts are already maintained of public meetings of the county commissioners and city councils to whom plans are presented, or by the city councils acquiring and developing trails themselves, what purpose is served by requiring additional hearings or additional transcripts?

9. **Shortening the time period for development is unreasonable.** Section 4 (b)(8) requires development of a trail within one year times the number of counties affected. The previous law called for two years. If a trail lies solely within one county they have only one year to develop a trail.

10. **Payments in lieu of taxes will increase costs for development and operation of trails.** Section (6) requires all entities, including government agencies and tax-exempt organizations, to pay an amount equal to real estate taxes (payments in lieu of taxes). Traditionally governmental agencies are exempt from paying taxes. Also, non-profit organizations by their very nature are providing a public benefit, so why should the facility be taxed? Section (6) also requires the county appraiser to base the value of rail corridor upon the adjacent use or the last use whichever is the best use of the property. However, most abandoned rail corridors can be considered to be wasteland because they are partly gravel, trees and grass and it would take considerable work to make it arable land. Further, determining the fair market value of agricultural property takes into account factors such as crop production. The last use of the property would be rail use. Why should a recreational trail without rails and freight traffic be taxed as a railroad?

11. **The threat of a recall due to inaction on a complaint of a single property owner substitutes the judgment of one disgruntled property owner for the judgment of an elected official, for whom there is already an accountability to the people of the county**. Section 8(b) enables the recall of elected officials responsible for overseeing enforcement of the Act, without necessarily the safeguards otherwise present in the existing recall statutes. The threat could pressure county commissioners and county attorneys to become the private enforcers of the Act for the benefit of a limited few that may be contrary to the benefit of the broader constituency of the county. Section 8(c) places the primary enforcement of the act with the county attorney. However, in some counties the county attorney is different from the district attorney. For example, in either Johnson or Douglas County the county attorney represents the county but does not enforce laws. If the county attorney fails to enforce the act, a citizen can petition the attorney general to enforce the act. This shifts enforcement to the Kansas attorney general. Is this the appropriate level in which to enforce local police powers?

Submitted by,

Amelia J. McIntyre
6401 Reeds Drive
Mission, KS 66202
913/677-5991

Jud 3-7 att 11

CITY OF WICHITA

TESTIMONY

City of Wichita
Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Phone: 316-268-4351 Fax: 316-268-4519

Senate Bill 538
Rails to Trails Safety and Protection Act

Delivered March 7, 2000
To
Senate Judiciary Committee

The City of Wichita opposes Senate Bill 538.

The bill is over reaching in its attempt to regulate recreational trails and in the process, takes local control away from Cities and the people who live in them. Section 1 of the bill states,"the provisions of this act apply to all governmental and private entities that own or are responsible for the operation of a recreational trail, no matter its type or designation."

The City of Wichita owns and is responsible for miles and miles of bike paths, recreational trails and riverwalks all contained within the corporate limits of the City. The Wichita City Council and Wichita Parks Department are fully capable of managing these trails on behalf of the citizens of Wichita. There is no need to impose the onerous restrictions and requirements called for in this bill on walking trails and bicycle paths within the City limits.

I understand one of the concerns about rails-to-trails projects is whether the group developing and managing the trail has the financial ability to maintain it. That is not a concern when it comes to recreational trails owned and operated by the City of Wichita. And the bike paths and recreational trails in Wichita are on publicly-owned land, usually along the river or in established greenspace and park areas.

The City of Wichita requests that City government be exempted from the restrictions and requirements called for in Senate Bill 538. They go way too far and are unnecessary.

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JOHNSON COUNTY PARK & RECREATION DISTRICT

SHAWNEE MISSION PARK OFFICES

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66219-9723

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TESTIMONY

to

KANSAS SENATE
JUDICIARY COMMITTEE

by
William R. Maasen, Land Acquisition Specialist
Johnson County Park and Recreation District
March 7, 2000

SENATE BILL NO. 538

Honorable Chairperson Emert and Committee Members:

Thank you for the opportunity to appear before you today with regard to Senate Bill 538. I am Bill Maasen, Land Acquisition Specialist for Johnson County Park and Recreation District (District), responsible for acquiring land and overseeing development of the Streamway Parks System in our county. The Streamway Parks System is a voter-approved initiative to fund the construction, operation, and maintenance of a multi-use recreation trail system.

I have been asked to speak in opposition to Senate Bill 538 because of the District's involvement in multi-use recreation trails and the burdens that will be placed on Johnson County Park and Recreation District and other agencies in Johnson County and across the state as a result of this legislation.

The citizens of Johnson County appreciate, demand, and utilize recreation trails. In 1999, over 740,000 users visited the District's recreation trails facilities. In addition, there are six (6) other agencies or cities within the County actively constructing trail facilities to meet the increasing demand. They include Overland Park, Leawood, Olathe, Shawnee, Lenexa, and Prairie Village, the largest cities within the County. Attached is a "Trails Report" taken from the District's data base showing that there are approximately 130 miles of recreation trails in the county maintained by these organizations. The District spends approximately $170,000 per year in maintenance costs for the 32 miles of facilities under its control. I have handed out to each of you, for your reference, a copy of the "Trail Guide," a map of Johnson County showing all of these facilities. In addition to the completed trails shown on this map, approximately 15 additional miles of recreation trails are in various stages of planning, design and construction in Johnson County.

Problem Areas in the Legislation

Section 3 of Senate Bill 538 will require that legal descriptions of all properties to be acquired for any recreation trail be sent to the Kansas Corporation Commission. This is not only improbable, but also impossible. The recreation

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trails in Johnson County are typically developed over a several year time frame and what property is to be acquired is not known in the first year.

Section 4, Subsection 8 will require that all recreation trails be completed within one calendar year. This is a goal that is impossible for any public agency to achieve if a trail is more than a couple of miles long. For example, the 17-mile Mill Creek Streamway Park was initiated in 1988 and will finally be completed this spring, 12 years later. The total cost of the entire facility will exceed $5 million and it would not have been within the budget to meet such a restrictive requirement. Even if the funds would have been available, this trail could not have been completed in one year. Another example is the 20-mile Indian Creek Bike/Hike Trail running through Leawood, Overland Park and Olathe. This multi-jurisdictional recreation trail has been under development for over 15 years and will not be completed for another five (5) years.

Section 6 will require that fees be paid to the County equal to the value of the removal of the recreation trail area from the tax rolls. The approximate 600 acres of land necessary for the Mill Creek Streamway Park have been acquired over the past 12 years and has already cost the taxpayers significantly to purchase this property. It seems illogical to remove tax money from one department and transfer to another county department to be in compliance with this language.

Section 8 requires that all recreation trails in the state, not only rail trail conversions, are impacted by this legislation and must be in compliance within one year according to **Section 9**. **Section 8** further allows the public to recall the politicians of any political subdivision that is responsible for noncompliance. These requirements are thinly veiled attempts to prevent certain types of recreation trails from being developed, specifically rails to trails, but the impact is significant to every type of recreation trail.

This is the third occasion in the past five (5) years that I have testified against legislation attacking recreation trails. Are these facilities causing such a blight on our communities that special legislation is required to cure the ills that these trails create? To the contrary, I argue that recreation trails are a positive influence and greatly impact the "quality of life " in our communities. The volume of visitors at recreation trail facilities and the number of homes constructed near trail facilities are evidence of this in Johnson County.

In the opinion of the Johnson County Park and Recreation District, Senate Bill 538 is not a good bill for Johnson County or the State of Kansas and we appreciate the opportunity to provide opposition testimony on the bill.

Trails Report

AGENCY	*Miles*
Edgerton	
Summary for 'AGENCY' = Edgerton (1 detail record)	
Sum	*0.63*
Gardner	
Summary for 'AGENCY' = Gardner (4 detail records)	
Sum	*0.74*
JCPRD	
Summary for 'AGENCY' = JCPRD (110 detail records)	
Sum	*32.16*
Leawood	
Summary for 'AGENCY' = Leawood (20 detail records)	
Sum	*6.04*
Lenexa	
Summary for 'AGENCY' = Lenexa (129 detail records)	
Sum	*13.51*
Mission Hills	
Summary for 'AGENCY' = Mission Hills (1 detail record)	
Sum	*0.91*
Olathe	
Summary for 'AGENCY' = Olathe (37 detail records)	
Sum	*26.33*
Overland Park	
Summary for 'AGENCY' = Overland Park (175 detail records)	
Sum	*43.69*
Prairie Village	
Summary for 'AGENCY' = Prairie Village (1 detail record)	
Sum	*0.73*
Shawnee	
Summary for 'AGENCY' = Shawnee (10 detail records)	
Sum	*5.75*
Grand Total	*130.50*

The City of
Overland
Park
KANSAS

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March 6, 2000

TESTIMONY TO THE KANSAS SENATE JUDICIARY COMMITTEE

BY J. BART BUDETTI, SENIOR ASSISTANT CITY ATTORNEY, CITY OF OVERLAND PARK, KANSAS

MARCH 7, 2000

SENATE BILL NO. 538

Honorable Chairperson and Committee Members:

Thank you for the opportunity to appear before this Committee to state the opposition of the City of Overland Park, Kansas to Senate Bill 538. I would first like to make some general comments and then address specific sections of the Bill that greatly concern the City of Overland Park.

The City of Overland Park has had a lot of experience developing our extensive bike-hike trail system. The vast majority of real estate professional and persons who reside along the trails report that the presence of the trail is a desired amenity and makes the properties sell more easily and has a positive effect on property values and sales. This anecdotal evidence is supported by numerous planning studies done throughout the country. I can't recall any complaints being made in the last 11 years about trail usage having any negative impact on neighbors. We have no discernable increase in crimes on adjacent homes as the result of the trails. If anything, the presence of people on the trails and the usage of the trails at various hours of the day probably deters criminal activity such a break-ins to the rear of a home visible from the trail. Privacy is not an issue, since in the absence of a trail the rear yard would

be visible to the adjacent property, and any persons desirous of privacy can erect a privacy fence within city codes. The fact is that most of the homeowners abutting these trails become users and supporters of the trails. A comprehensive National Park Service/Penn State University study conducted in 1992 quizzed landowners about their views on property values in the neighborhoods surrounding three different rail-trails across the U.S. Only one out of every 20 (five percent) of the surrounding landowners felt that the trails had worsened the quality of their neighborhoods. An average of 93 percent thought that living *near* the trail was better or about the same as they expected it to be. More than 90 percent of the *adjacent* landowners believed that the trail bordering their land had no negative effect on their property values. Typically, initial worries about a nearby rail-trail appear to vanish in the face of what turns out to be a positive experience for the vast majority of those involved. There simply is no problem that needs to be addressed by legislation. Our Parks and Recreation Department is very sensitive to the needs and desires of residents living along existing and proposed bike-hike trails and has worked very hard to accommodate their interests along with the recreational needs of the larger community, and the heavy hand of state government is simply not needed in this situation.

Senate Bill No. 538, in its present form, is a badly drafted and dangerous piece of proposed legislation. From a legal standpoint, much of its language is vague, confusing and difficult to understand and interpret. For example, the act defines "county commission" as including the city governing body but later requires the trail developer to notify the county commission and city government about any intended trail. The bill is replete with onerous, unnecessary and unrealistic procedural and substantive requirements that are obviously included within the bill in a not to well disguised effort to make the development and maintenance of such trails virtually impossible. This may satisfy some misguided zealots who see an evil conspiracy behind the attempt to develop and maintain important recreational amenities, but does little to serve either the needs of those residents who desire and utilize such facilities or the legitimate interests of the larger community.

I do not want to repeat the specific issues raised by Mr. Maasen in his written testimony, but the City of Overland Park wants to go on record as supporting and adopting his comments as our own. In addition, Mr. James Cox, our Parks and Recreation Director will address the fiscal impacts of the fencing requirements and how such requirement make development of such trails cost prohibitive.

The so-called provision in Section 6 requiring payments in lieu of taxes is a good example of how badly drafted and poorly thought out this proposed bill is. In Overland Park the property used for trails is commonly flood plain land not usable for any development, but the bill purports to require the City to make these payments based on the use of the adjacent property for residential or commercial purposes. This is clearly punitive in nature and not really intended to recoup any supposedly lost taxes. The precedent of requiring such so-called payments to be made for development of important recreational facilities is clearly intended to downgrade the importance of such facilities and discourage their development.

Section 7 of the bill has numerous problems. Does modification include outright repeal, and, if not, what lesser changes are allowable? Is modification of any of the provisions of this proposed act on a par with the enactment of a tax thus justifying the cumbersome, time-consuming and expensive processes and the super-majority requirements attendant to the enactment of a tax for revenue purposes?

In summary, this bill is bad in concept, bad in execution, bad in public policy, adverse to the legitimate interests of the citizens of this state and their elected representatives in local government, and should be rejected by the legislature.

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TESTIMONY

To

KANSAS SENATE JUDICIARY COMMITTEE

By

James D. Cox, Director of Parks and Recreation Department
Overland Park, Kansas
March 7, 2000

REGARDING: SESNATE BILL NO. 538

Honorable Chairperson Emert and Committee Members:

Thank you for giving me the opportunity to testify today regarding Senate Bill 538. I am James Cox, Director of Parks and Recreation for the City of Overland Park, Kansas. Part of my responsibility includes the construction and maintenance of nearly 45 miles of Bike Hike Trail within the City of Overland Park. We are currently in the middle of a Greenway Linkage Plan that will include the construction of an additional 20 miles of bike hike trail over the next 10-15 years. I have copies of our Greenway Linkage Plan for your review.

First of all I would like to emphasize the benefits of Bike Hike Trails in Overland Park. In the City of Overland Park we are using the trails to connect major greenway developments, schools, recreation facilities, and neighborhood parks. The Greenway Linkage Plan will connect major shopping centers with at least 34 new subdivisions in the southern part of our City as well as connecting several schools. All bike hike trails include green space and landscaping and provide excellent buffers between different kinds of development.

There are several sections of Senate Bill No.538 that would hinder or severely complicate the construction of bike hike trails but I am going to speak only to Section 4, part B, Part 7, which refers to fencing. The requirement to install and maintain fencing between the trail and adjacent property, ½ of the cost to be paid by the one constructing the trail would be cost prohibitive. The cost of the surveying and location of exact property

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lines and installation of fencing would cost more than the bike hike trails. ln effect, we would probably stop constructing bike hike trails and leave everything existing unconnected. If your purpose with this bill is to stop the construction of bike hike trails in the City of Overland Park, this would certainly do it. However, I hope that is not your purpose and I doubt that it is.

If this bill was written and introduced for the purpose of addressing a specific problem in some area of the State, then it should be rewritten to address that specific problem. I truly believe that the Bike Hike Trails in Overland Park have served our citizens well, they are very popular, and we have worked successfully with many developers and hundreds of individual residents over the years without any state legislation. We do not have any problems that this legislation would solve. The only thing this bill would do for the citizens of Overland Park is more than double the cost of what we have been doing for 27 years without any major problems. I speak very strongly in opposition to Senate Bill 538. Thank You

SS Willa... 3-15

Statement for Dudley Feuerborn
Anderson County Commission Chair

I only had time to quickly type this out and run through the printer this morning. Anderson County Commissioner Dudley Feuerborn is unable to attend today's hearing. He asked me to speak on his behalf.

Dudley and his son own and run the Ferris-Fuerborn funeral home in Garnett.

His son's wife is going through a difficult childbirth. The child was overdue and complications are possible. There were deaths locally yesterday and without his son, Dudley has to do the preparations to the deceased and whatever goes with it.

I feel we all have had family emergencies and I trust the committee understands the situation.

He is 100% in support of SB 538. He said he just got notice that the county's share of taxes has been cut some 6% this year. He said the county is on the brink of very serious economic problems as things now stand.

He feels that if the county had the tax revenue from the abandoned RR corridor, this would help the present financial crunch and add around $50,000 of revenue that the county sorely needs. He feels that it doesn't make sense for the KDWP to avoid paying the county badly needed revenue when the permit sales have dropped yearly since the trail opened. He said how can the state justify the county's $50,000 revenue loss when the rail trail only took in a little over $4,000 last year?

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COMMENTS OF

NELS ACKERSON

THE ACKERSON GROUP
CHARTERED
ATTORNEYS AND COUNSELLORS
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REGARDING KANSAS STATE SENATE BILL NO. 538

MARCH 7, 2000

I am writing at the request of many Kansas citizens who have asked me to address the important issues that are addressed in Senate Bill 538. I hope that my experience will be of some help as your Kansas state legislators attempt to correct long ignored injustices and needs in the railroad abandonment process and rails-to-trails conversion processes.

I have the privilege of representing thousands of citizens who have had their land threatened or taken from them unfairly. They are the people next to the railroad tracks — owners of often modest homes, families, farmers, ranchers, retirees, small businesses, both rural and urban, and even units of state and local government, all across our Nation. My clients are the kind of people you would be proud to call your constituents. Many are your constituents. They are good citizens.

My clients stand alone among all others whose interests have been considered in rails-to-trails legislation. They *own* the land on which railroads once operated trains, and upon which trails are now operating or proposed. They are not just *adjacent* landowners. They are ***the*** landowners. They own the land where trains once ran next to their yards or through their farms every bit as much as any other homeowner owns a back yard, a driveway, a porch or a deck.

I am honored to speak often for the legitimate owners of the land on which both our railroad system and our growing trails system are built. I ask on their behalf for nothing more than simple justice and fair play. I have been asked to testify on these subjects three times before committees of the United States Congress, and I have spoken to legislators and legislative committees in several states.

Policy makers in several states have addressed issues that are of concern to state and local governments and law enforcement agencies regarding law enforcement on trails that have been created under the Federal Rails to Trails Act.[1] Public office holders have expressed concern about their abilities to protect the public health and safety and to exercise other important governmental functions because some sponsors of such trails have claimed that they are not required to comply with state or local law. Citizens, particularly those living near such trails, often are concerned about issues of privacy, property protection, and liability, as well as security and safety. Public office holders generally wish to abide by federal law and also to uphold their duties to enforce and defend state and local law, and to address the legitimate concerns of their constituents.

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[1] The Rails-to-Trails Act was enacted on March 28, 1983, as part of the National Trails System Act Amendments of 1983. Pub. L. No. 98-11, Title II, 97 Stat. 42, 48 (codified at 16 U.S.C. § 1247(d) (1994) (herein called "The Trails Act Amendments of 1983"). The amendments are part of the National Trails System Act, which was first enacted on October 2, 1968. Pub. L. No. 90-543, 82 Stat. 919 (codified as amended at 16 U.S.C. §§ 1241-51 (1994)).

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My comments below will be focused on three subjects:

1. **Question**: Do the owners of land on which railroads once ran have legitimate concerns about safety and other issues that arise with rails to trails conversions?

   Answer: No one has a greater right to be heard or a more important set of interests to be protected.

1. **Question**: Does federal law prohibit state and local governments from enforcing reasonable state and local land use plans, zoning ordinances, and public health and safety legislation with respect to Rails-to-Trails Corridors?[1]

   Answer: As explained below, federal law does not prohibit state and local governments from enforcing reasonable laws and ordinances on those subjects on Rails-to-Trails Corridors.

1. **Question:** Specifically, does federal law prohibit the State of Kansas from enacting and enforcing the Rails to Trails Safety and Protection Act?

   Answer: As explained below, the Kansas Rails to Trails Safety and Protection Act appears to be a reasonable exercise of state and local authority to legislate in areas that are not exclusively federal in nature, and therefore reasonable enforcement of the Kansas Rails to Trails Safety and Protection Act should not be prohibited by federal law.

DISCUSSION

I. Landowners' Interests in the Use and Management of Trails Have Long Been Ignored and Must Be Addressed.

Part of the greatness of this country is that any person – regardless of wealth or position – can bring a message of fairness to their elected representatives. Here, individuals who live by the railroad tracks have as much right to be heard as the Nation's most powerful railroads and trail interest groups. The real test, however, is: Who will listen? When such individuals ask not for privileges but just for simple justice, will their small bright lights of concern for fairness be seen in the glare of popular support for a national trails system? Will anyone listen to those who are compelled to give the most but gain little or nothing in return?

Several things distinguish those I represent from all others whose interests are being heard by this Committee with respect to the railroad abandonment process: (1) They own the most valuable asset in the national railroad system. (2) They alone have their land taken involuntarily for a stated public purpose, while others who do not own their land are being paid for it. (3) They alone are given no notice in the abandonment process, even though they have the most to lose. (4) They alone have no choice and receive none of the safeguards of due process, such as those that are given to shippers, employees and even railroads, governmental entities, and trails sponsors. (5)

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[1] The term Rails-to-Trails Corridor is used in this letter for convenience to refer to corridors that have been converted to trails under the Rails-to-Trails Act.

They alone must give, but gain nothing in return. Uncompensated, ignored, unthanked and abused, these landowners deserve to be heard.

Tragically, the backbone of the rails-to-trails system of which so many are proud is land taken from my clients and thousands of others like them. Countless small landowners from coast to coast are the silent benefactors of the land for the trails. Rarely discussed and intentionally ignored is the fact that the core of the entire railroad abandonment and rails-to-trails process has become a vast program for the quiet confiscation of land.

A cruel irony is that the primary beneficiaries of this confiscation are not the public, although the noble purposes that are held out are public recreational trails and preservation of corridors. Rather, the real beneficiaries are opportunistic railroad companies and their salvage and utility company allies and consultants. Railroads are paid for the true landowners' property, instead of the landowners, and utilities and others who are given licenses by the railroads or trails sponsors to use the property get bargain prices. Like buying a watch from the sleazy lining of a trench coat, it is cheaper to buy something from one who does not own it. Meanwhile, the true landowners receive nothing, not even a notice or a thank you.

Everyone in the process except the landowners seem to have options during the abandonment process. According to the Surface Transportation Board ("STB"), a railroad has an absolute right either to negotiate a trail use or to refuse to do so. Likewise a trail sponsor may choose to negotiate a transfer from a railroad or not. However, if a railroad reaches agreement to transfer a corridor to a trail sponsor, then the STB has determined that virtually no-one can stop it. Certainly a landowner cannot. Of those most directly affected, only the landowner has no choice in the matter.

Landowners' interests, however, can be addressed and protected by state legislatures and by county and municipal officials in many ways.

II. State Government and the Federal Government Have Simultaneous Authority to Regulate the Use of Railroad Corridor Land Where There is No Overriding Federal Interest.

The STB has exclusive and plenary authority to determine whether a rail line has been abandoned. *See, e.g., Chicago & N.W. Transp. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 321 (1981). The STB's jurisdiction terminates when a line is abandoned. *See, e.g., Fritsch v. I.C.C.* 59 F. 3d 248, 253 (D.C. Cir. 1995). However, before abandonment is consummated, the STB has exclusive authority under the Trails Act Amendments of 1983 to order interim trail use on lines that would otherwise be subject to a determination of abandonment. *See, e.g., Preseault v. I.C.C.*, 494 U.S. 1, 8 (1990).

State Governments and the federal Government both have authority to exercise jurisdiction over their respective interests in land that is used for railroad purposes. Therefore railroads and their successors may not hide behind federal jurisdiction in order to avoid complying with reasonable state laws and local ordinances. Thus the ICC has explained:

> We will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of State law where there is no overriding Federal interest in interstate commerce.

Modern Handcraft, Inc. — Abandonment in Jackson County, MO, 363 I.C.C. 969, 972 (1981).

With specific reference to land use laws, zoning ordinances, and public health and safety legislation, the ICC has explained:

> [I]n *Iowa*, slip op. 9, . . . we stated that the trail use must still comply with State

> and local land use plans, zoning ordinances, and public health and safety legislation, and in Ex Part No. 274 (Sub.-No. 1_) *Rail Abandonments — Use of Rights-of-Way as Trails — Supplemental Trails Act Procedures* (not printed), served May 26, 1989, . . . we declined to adopt rules to monitor and supervise these matters. State and local agencies, who are attuned to the specific interests and needs of their communities, enforce these matters.

Burlington Northern Railroad Company — Abandonment Exemption — In Skagit County, WA, Docket No. AB-6 (Sub.-No. 299X), Service Date: June 23, 1989. *See also Iowa Southern Railroad Company — Exemption — Abandonment in Pottawattamie, Mills, Fremont and Page Counties, IA*, 5 I.C.C.2d 496, 505 (1989).

III. Specifically, Federal Law Does Not Prohibit the State of Kansas from Enacting and Enforcing Reasonable Measures Like Those of the Rails to Trails Safety and Protection Act.

The above reasoning is directly applicable to the apparent intent of the Kansas Rails to Rails Safety and Protection Act, and the same conclusion appears appropriate: Trail sponsors, as successors to railroads should not receive greater rights than were possessed by the railroads. There appears to be no overriding federal interest in interstate commerce that would conflict with the reasonable interests of Kansas and its political subdivisions to protect the public health and safety or to enforce reasonable land use restrictions on trail corridors. However, good judgment suggests that such restrictions should be reasonable. Therefore, consistent with the doctrine of federal preemption, state laws should not be so restrictive that they would frustrate or render impractical the federal purpose of interim trail use.

The Rails-to-Trails Act's stated purpose is to preserve railroad corridors for future use, not to create a new system of property rights. 16 U.S.C. §1247(d). Operating railroad companies already have all the rights they need to operate a railroad. Thus, no new property rights are created to achieve the Act's railbanking purposes. Similarly, trail use is only an interim use of the corridor and property rights possessed by railroad companies are adequate to allow the corridor to be used for trails. No additional property rights are required to satisfy the Rails-to-Trails Act. Interim trail use is implemented by a transfer from the railroad company to the trail group with no reference to new property rights. 16 U.S.C. §1247(d). The Surface Transportation Board procedures implementing the Act are ministerial and give the Board no broad authority to modify underlying property rights. The Board simply recognizes that the railroad corridor will be used for a trail on an interim basis and issues the necessary notices to indicate the corridor has not been abandoned for railroad use purposes. *See* Interstate Commerce Commission *Policy Statements on Rails-to-Trails Conversions*, 55 Fed. Reg. 4126 (February 6, 1990).

The intent and objectives of the Rails to Trails Safety and Protection Act are within the federal purposes of railroad corridor preservation and interim trail use. Applied properly, therefore, this law should accomplish its legitimate objectives of safety and protection without conflicting with federal preemption.

IV. The Perspective Across The Right-of-Way.

For too long federal Rails-to-Trails policy makers have seen only the view *down* a railroad corridor and have envisioned a scenic recreational trail. So focused has been their gaze that they have not stopped for a moment by the fence line, where they could have seen an equally beautiful and compelling view *across* the right-of-way. Thus they have been blind to a critical perspective that the landowners see every day. That blindness, I believe, has created misconceptions of both facts and law. A balancing of the interests of both those who look down the corridor and those who look across the corridor is needed. States can help restore this balance.

Railroad companies, trails advocates, and trail users often fail to look at any perspective on this issue except their own. The true landowners' perspective is quite different. Because it is their land, they not only look

down the abandoned railroad corridor, but also across it. Looking across the right-of-way, they see the rest of their farm, reunited for a more efficient farming operation, now that the railroad has brought to an end the agreement that allowed the railroad to use it. They see a backyard in which their children can play in safety and privacy. Sometimes they see a strip of land that has become a sanctuary for wildflowers, berry bushes and wildlife, which they would like to preserve, free from asphalt surfaces and traffic. In short what they see is *their home, their farm, their land*. If it is taken for a public trail, at the least they have a right to expect that reasonable standards will be afforded for the safety, security, privacy, and protection of the remainder of their property.

Some time ago, I addressed to Congress a number of misconceptions about Rails-to-Trails, that may also be helpful here. My comments are attached.

The final statement in my comments to Congress almost two years ago was that under the apparent protection of federal law, trails sponsors can operate in a lawless state, accountable to no one for their conduct. That does not have to be true. State legislatures have authority to adopt reasonable measures to protect the safety, security, privacy and well-being of their constituents – both those who use trails, and those who own the land under and next to trails.

MISCONCEPTIONS OF LAW AND FACT

How can the treatment of my clients, the true owners of land which is confiscated under the abandonment procedures of the Trails Act, be ignored or condoned by so many, including even well-intentioned policy makers? Some of the justifications for the treatment of landowners are based on misconceptions about the abandonment process and the effects of the Trails Act. Misconceptions should be removed to present a clear and accurate understanding of the true situation in which thousands of property owners find themselves under the Trails Act and its implementation by the STB in the abandonment process.

Misconception 1. Railroads really own the corridors after abandonment, and any other ownership claims are either wrong, speculative, unprovable or trivial.

The fact is that property ownership in railroad corridors is governed by established state property law. The deeds by which the railroads originally acquired the rights to use landowners' property for railroad purposes are enforceable documents just as any other deeds. In many cases, the railroads did not buy the land where they placed their tracks, but rather only obtained an easement or a right to cross the land for railroad purposes, rights which are extinguished when the railroad ceases to use the right-of-way for railroad purposes. The landowners have owned the land all along, and *they alone* retain the right to sell it. Upon abandonment of the railroad the landowners are relieved of the burden of the railroad easement and have full rights to use the land as they see fit, within the law.

> *"The railroad's right-of-way was an easement to use the land to carry on the railroad's business. When [the railroad] abandoned the right of way . . ., the easement was extinguished."*
> — Indiana Supreme Court, 1987

The law protects landowners' title against unjustified claims by railroads and those who claim to have received title from railroads. Just this past year three very significant state supreme court decisions favorable to landowners were handed down in cases in which we represented the interests of landowners against Penn Central, Conrail and AT&T (claiming to have obtained fiber occupancy rights from Conrail). Assertions that landowners either do not own significant amounts of abandoned railroad land, or cannot prove it or have only trivial claims, are just wrong.

Misconception 2. Replacing a railroad with a trail doesn't hurt anyone, and it creates no greater burden than the railroad did, so landowners' concerns should not be considered.

For many landowners, a railroad operating on a regular schedule on fixed tracks in the middle of the corridor is much less invasive of ownership rights than a trail open to the public for pedestrian, equestrian, cycling, snow-mobiling, three-wheeler or roller-blading traffic round the clock. When a trail is built, people will come. Farmers who have animals and legitimately use large machinery and chemicals near a railroad corridor may have their farm and business activities greatly curtailed by the presence of trail users, and their liability may increase to those who wander off of the trail.

More basically, as a matter of property law the right to sell or lease the use of land belongs to the owner of the land, not to a railroad that had only an easement across the land or a right to a limited railroad use of the land. If the railroad never bought the land, it is fundamentally unfair -- and unlawful under state property law -- for the railroad to sell it. That right belongs to the landowner alone.

Misconception 3. Because the Rails-to-Trails law is constitutional, there is no taking when a railroad is converted to a trail.

The Supreme Court has held that the National Trails System Act does not violate the constitution, because when an ownership interest is taken under the Act the landowner may obtain compensation by filing an action in the Court of Federal Claims. Far from concluding that no compensable taking has occurred, the Supreme Court has held that private property is taken for public purposes and the Trails Act is constitutional only because a procedure is available for a landowner to obtain compensation for property taken. When the railroad owns the fee simple interest in the land, then its transfer of the land for a trail use is not a taking of anyone's land. However, if the railroad's right to the land under state law terminates upon the cessation of railroad use, then the trail conversion deprives the landowner of his or her full possessory rights in the land, and that process is a taking for which the Fifth Amendment Takings Clause requires the United States to compensate the landowner. In plain English, it is taking something that belongs to someone else.

> *"[W]e reject the Government's central thesis that general federal legislation providing for the governance of interstate railroads, enacted over the years of the Twentieth Century, somehow redefined state-created property rights and destroyed them without entitlement to compensation."*
> — U.S. Court of Appeals for the Federal Circuit, 1996

Misconception 4. Creation of a trail under the Trails Act involves public participation and the permission of landowners whose property is taken for the trail.

Policy makers are often led to believe that the conversion of a railroad corridor to a recreational trail is a public process in which elected officials consider the costs and benefits of such a trail, then make a decision on behalf of their constituents as elected or appointed officials. Policy makers are also led to believe that landowners whose property is being taken are consulted and made part of the process.

Neither of these is true. By the terms of the Trails Act, appropriation of landowners' property for a trail involves only two parties. The abandoning railroad must agree to negotiate with a trail sponsor and a trail sponsor (who can be a private group or and individual and need not even agree to create a trail) must agree to accept liability for the trail. Public participation is not required nor is any approval of the local governmental bodies in whose jurisdiction the trail will run. No hearings are required and no public official has any authority to represent the public interest. Even more bizarre, the landowners whose land is being appropriated for the trail have no standing whatsoever under the Trails Act to participate or defend their property rights. If the railroad and the trail

> *"[A salvage company] may be forming railroads ... in order to acquire railroad lines without any intention to operate, then scrapping the lines for profit." ("Railroad" later formed "trail sponsor" to use Trails Act to control corridor)*
> — Kansas Corporation Commission, 1993

sponsor (even if the trail sponsor was created by the railroad or is a private individual with no intention of ever actually creating a trail) agree, the corridor is taken for a recreational trail.

Misconception 5. Federal regulatory procedures can better preserve corridors, protect owners, supervise trials, and enforce the law than state or local law.

The STB has held that it has no discretion but to order trail use if a railroad and a trail sponsor agree to such use. Thus no determination is made that a railroad corridor is appropriate to preserve for future use before railbanking is ordered. Further, no determination is made that a trail is appropriate on a particular corridor, or that the federal government can afford to pay for the land if trail conversion constitutes a compensable taking for which the federal government is liable.

The STB also has held that it has no responsibility to determine the legitimacy of a trail sponsor, such as whether it is properly organized to do business, has any intention to operate a trail, or has the means and capabilities to manage a trail or to preserve a corridor for future railroad use. The STB will not look behind the bare assertion of a trail sponsor that it is "willing" to assume financial responsibility for a trail. Neither does the STB have investigative, supervisory, or enforcement staff or budget to conduct the kind of law enforcement that state and local governments would be expected to do under zoning, health, fire and safety laws, if federal law did not preempt state and local authority under the Trails Act. Railroads and trail sponsors have used the STB's procedures to avoid local regulations.

"Our discretion in issuing a NITU does not . . . extend to investigating either the corporate character or the financial health of the organizations requesting a trail use agreement."
— ICC Decision, 1995

Thus the STB has ordered railbanking where no conceivable future rail use has been suggested. The STB has refused to review a trail use order where the trail sponsor is really an arm of a salvage company that is selling ballast and bridge components, rendering trail use impractical. The STB has approved a "trail sponsor's" control of land while the railroad with which it has contracted negotiated sales of quitclaim deeds to the real landowners, deeds that have value only because the railroad can tie up the land through the STB's trail use authorization.

"The Bingham Township Board is very concerned with the purposes behind [an attempt to qualify for abandonment under the Trails Act]. No developer should have the ability to develop privately owned property while evading all state, county, and local zoning ordinances."
— Bingham Township, Leelanau County, Michigan, 1995

Finally, the STB has asserted that its limited budget and resources do not permit it to monitor abuses where trail sponsors or railroads do not comply with the STB's orders. Indeed, the STB's predicament is understandable, because it has been put in the position of replacing planning, zoning and building department functions for hundreds of counties and municipalities nationwide with an available enforcement staff that is probably smaller than that of a large town or small city. Thus, under present law and administrative procedures, irresponsible trail sponsors, even those created as a sham by a railroad or a salvage company, can operate in a lawless state, accountable to no one for much of their conduct.

KANSAS LIVESTOCK ASSOCIATION

Since 1894

Testimony

To: Senate Judiciary Committee
Senator Tim Emert, Chairman

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

Re: Support of **Senate Bill No. 538** – Rails to Trails Safety and Protection Act

Date: March 7, 2000

I'm Mike Beam and I'm appearing this morning on behalf of the Kansas Livestock Association (KLA). KLA supports this legislation.

Our members have expressed much concern and frustration over the 1983 federal act authorizing private groups and public entities to take over an abandoned railroad corridor for the development of a recreational trail. We have and will continue to seek federal relief from this act.

Regardless of the federal act, states clearly have the authority to impose reasonable requirements on rail trail sponsors. In 1998, the Surface Transportation Board (STB) issued decisions claiming states, counties, and municipal governments may regulate trails and such governing agencies may assure rail trails do not become a public nuisance.

It's the state's authority that brings us before this committee this morning. The primary problem our members are experiencing today is the inability or unwillingness of rail trail sponsors to act as responsible neighbors and adhere to state law. I'm referring to a 1996 state act encompassed in KSA 58-3211 to 58-3216. KLA supported the legislation and believed trail sponsors would make an attempt to abide by the legislature's wishes and consider their newly defined responsibilities before filing for interim trail use with the STB.

According to my research, several private entities have been granted "interim trail" use by STB on abandoned railroad corridors in Kansas. These entities, by way of STB orders, have agreed they would take on the responsibility for nine trails, along 330 plus miles, and located in at least 17 counties.

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Several of these entities were granted interim trail use four years ago. Very little, if any, of these trail miles have been developed. In addition, our members operating adjacent to these undeveloped trails continue to have problems with a neighbor that fails to monitor trespassing, treat noxious weeds and excessive brush, and abide by state laws regarding fence repairs and maintenance.

This legislation, SB 538, repeals the 1996 state rail trail law. It seems to address most of the issues we suggested and supported in 1996. I'm most supportive of the enforcement changes outlined in Section 8, pages 5-6. The current law is silent regarding local or state officials duties to enforce the act. The penalties prescribed in this legislation should improve existing law and encourage trail sponsors to be more responsible.

Thank you for allowing us to submit comments in support of SB 538. I would be most willing to respond to any questions or comments.

Written att 18

From: Noble Carter
1096 Virginia Rd.
Lane, Ks 66042

To the Senate Committee,

I, Noble Carter, support Senate Bill No. 538 for the following reasons:

1. It eliminates quickdeed claims as the only proof of ownership of railroad right-aways.
2. It removes the responsibility of personal injury and property liability insurance from the local government and property owners to the "responsible party".
3. It transfers trail maintenance from local counties to the "responsible party".
4. It will help property owners by forcing the responsible party to pay property taxes on land used for the Prairie Spirit Rail-Trail.

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