

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 8:30 a.m. on February 5, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Mike Corrigan, Office of the Revisor of Statutes
Hank Avila, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Cindy Shepard, Committee Assistant

Conferees appearing before the committee:

Pat Hubbell, Kyle Railroad
John Giles, President, Rail America
Bob Alderson, General Counsel, Mid-States Port Authority (MSPA)
Tom Tunnell, President & CEO, Kansas Grain & Feed Association
Deb Miller, Secretary of Transportation, State of Kansas

Others attending:

See attached list.

The Chairman opened the hearing on **SB 46 - Procedures for sale of certain property by port authorities.**

Pat Hubbell, proponent, representing Kyle Railroad, gave background information on the bill. Twenty-five years ago the Kyle entered into an agreement with the Mid-States Port Authority (MSPA) to lease-purchase the former Rock Island rail lines. MSPA, with a \$18 million loan from the Federal Railroad Administration, had acquired more than 500 miles of rail lines from the Rock Island's bankruptcy. The loan was repaid in monthly rental installments by the Kyle Railroad, and at the end of their lease agreement with MSPA, June 1, 2009, the Kyle can exercise their right to purchase the property for one dollar. **SB 46** is needed to clarify a 1987 change to the Kansas Port Authorities Act that limits a port authority's power to negotiate the sale of property. The 1987 amendment was never intended to apply to lease-purchase arrangements. If the lease-purchase agreement is dishonored by MSPA, based on a misapplication of the 1987 law, Kyle could, theoretically, be found to pay for the line twice.

John Giles, President & CEO, Rail America, appeared as a proponent. Mr. Giles presented an overview of the Kyle Railroad (Attachment 1). Rail America became Kyle's owner in 2002 and has invested close to \$20 million in bridges, crossings, signals, track, equipment, and structures. Passage of **SB 46** would allow the lease-purchase agreement to proceed as the parties intended. Three letters of support were provided to the committee.

Bob Alderson, General Counsel, on behalf of Mid-States Port Authority (MSPA), spoke in support of the bill. He indicated that MSPA is a joint port authority that was formed in 1980 by the Joint Cooperative Agreement of 14 Kansas Counties in north central and northwest Kansas. These counties were adversely affected by the loss of rail service by reason of the bankruptcy and proposed liquidation of the Chicago, Rock Island and Pacific Railroad Company. The MSPA was created to serve the public purpose of restoring rail service in the affected counties. MSPA requested amending **SB 46** to protect the shippers/lessees on the Kyle's line, clarifying that all shippers' leases in effect at the time of transfer will remain valid (Attachment 2).

Tom Tunnell, President & CEO, Kansas Grain & Feed Association, testified as a proponent of the bill. **SB 46** facilitates the orderly transfer of railroad assets from MSPA to Rail America. Mr. Tunnell also requested the approval of MSPA's amendment (Attachment 3).

Written testimony in support of **SB 46** was submitted by:

Leslie Kaufman, Executive Director, Kansas Cooperative Council (Attachment 4)

There being no further conferees, the hearing on **SB 46** was closed.

CONTINUATION SHEET

Minutes of the Senate Transportation Committee at 8:30 a.m. on February 5, 2009, in Room 136-N of the Capitol.

The Chairman indicated his desire to work **SB 46** after MSPA, Rail America/Kyle, and the affected shippers have reached an agreement in regard to their leases.

Presentation on the Transportation Leveraging Investments in Kansas (T-LINK) Report by Secretary Miller
Continued from February 4, 2009

Secretary Miller continued her overview of the *New Approaches for Transportation Final Recommendations of the T-LINK Task Force* January 2009 (See Attachments 1, 2, & 3 in February 4, 2009 minutes).

Secretary Miller's presentation on the T-LINK report will continue at the next regularly scheduled meeting.

The meeting was adjourned at 9:27 a.m. The next meeting is scheduled for February 6, 2009.

SENATE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2/5/09

NAME	REPRESENTING
Patrick Hurley	Economic Excellence
John Maddox	KDOT
JOE ERSKINE	KDOT
Brad Stauffer	Carter Group
Tom Bruno	Kyle RR
Pat Hukhell	Kyle RR
BOB ANDERSON	MSPA
Terry Heidner	KDOT
Kyle Schneewis	KDOT
Amy Link	KDOT
Travis Love	Pinegar, Smith & Assoc
Ty Drago	UTU
Scott Williams	Kyle RR
Pete Heaven	Lathrop & Gage (Kyle)
KEVIN GREGG	KMCA
Tom Palace	AMCA of KS.
Scott Heidner	ACEC of Kansas
John Peterson	Capital Strategies



KYLE Railroad Presentation to Senate Transportation Committee Topeka, Kansas

February 5, 2009



The Kyle Railroad is essential to the transportation system in Kansas



1-2

- A short-line railroad that runs from North Central Kansas into eastern Colorado with:
 - 500 miles of track
 - Interchanges to the Class I carriers, BNSF and UP
 - With these two interchanges the KYLE can serve customers all over North America in providing an integral corridor in the Midwest for customer's products

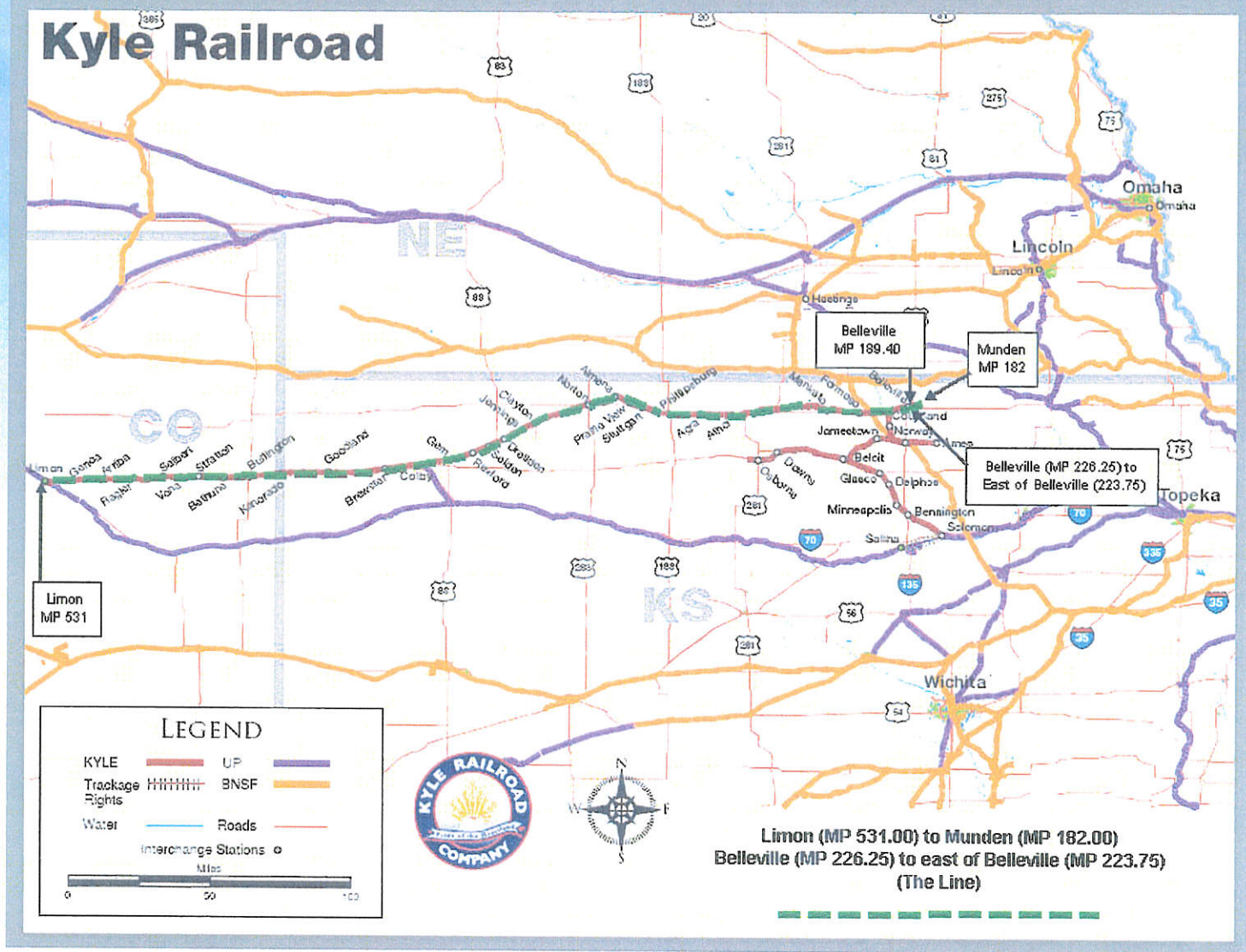
- KYLE facts include:
 - Major commodities like wheat, soybeans, milo maize, ethanol, siding asphalt and roofing granules
 - Moved over 20,000 cars in 2008
 - Operated INJURY FREE in 2008
 - Received the "JAKE" award in 2006, 2007 and 2008, which is awarded to only the top 7 of the more than 500 shortline and regional railroads
 - Providing customers with a dependable and safe transportation solution for the movement of their commodities
 - Recently signed new long-term labor agreement with UTU that allows employees to cross crafts to help with job stability.
 - Relationship with employees and Union leadership is strong and effective.



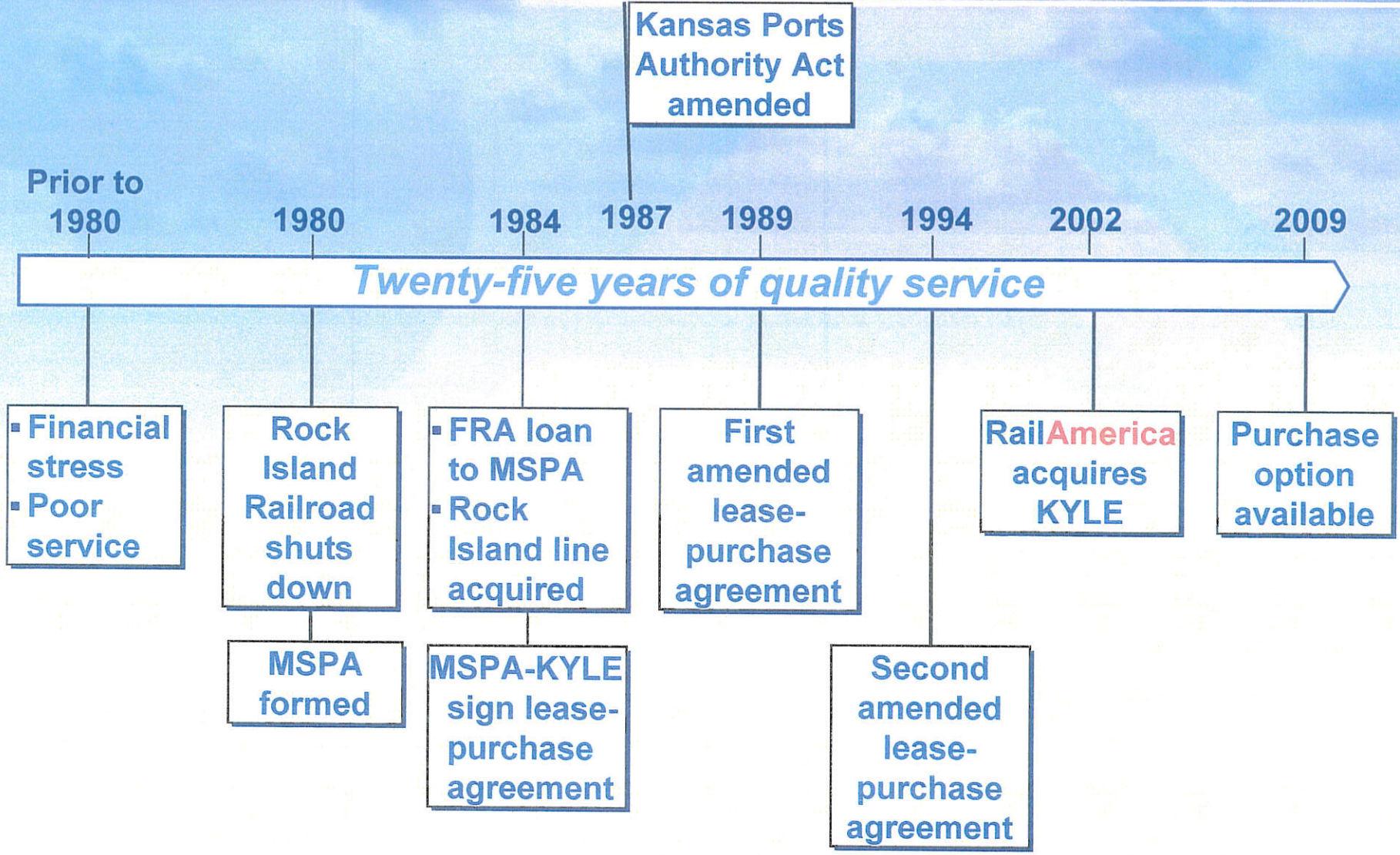
KYLE Railroad is based in Phillipsburg, KS and is a safety- and-service leader in the railroads owned by RailAmerica



1-2



KYLE's Kansas Roots



29-years ago Kansas lost a railroad and the KYLE stepped up to acquire and perform its operations



- March 1980: Bankrupt Rock Island Railroad shut down
- May 1980: Mid-States Port Authority (MSPA) was created
- During 1983 and 1984, MSPA worked with KYLE Railroad to bring rail service back to Kansas
- In May 1984, KYLE Railroad acquired and began operating the former Rock Island lines
- RailAmerica became KYLE's owner in 2002
 - RailAmerica saw good opportunity to build a strong and sustainable railroad that it could own
 - Year 1: RailAmerica invested \$2 million in capital-spending projects
 - Between 2002 and 2009, close to \$20 million has been invested in bridges, crossings, signals, track, equipment, and structures

Over the years, KYLE Railroad and its customers benefited



Lease-Purchase financing structure facilitated rail's return to Central Kansas



- Kansas legislature agreed in 1983 to guarantee part of a prospective \$18 million Federal Railroad Administration (FRA) loan to MSPA
- On April 30, 1984, FRA loaned MSPA \$18 million to acquire pieces of Rock Island Railroad
- Also on April 30, 1984 –
 - MSPA and KYLE Railroad Company signed a lease-purchase agreement
 - Term: 22 years, three months
 - Initial payment of \$51,250/mo rising to \$67,250/mo
 - Payment stream designed to amortize and extinguish MSPA's debt
 - At the end of the term, when KYLE's rental payments had extinguished the debt, KYLE could purchase the property for "\$1.00"
 - Each party to the agreement had the "right, power, legal capacity, and authority to enter into and perform its obligations"
 - KYLE has paid off MSDA's loan by making all of its payments over 25 years



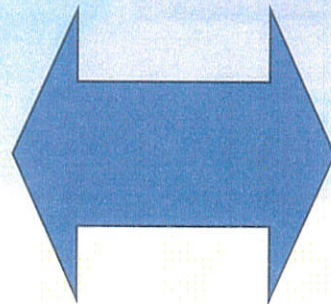
1984 lease-purchase agreement codified each party's role



1-7

MSPA's Responsibilities

- To preserve right-of-way for rail service to eastern Colorado and northern Kansas rail shippers/receivers
- Facilitate funding for right-of-way capital improvements
- Manage non-operating real estate



KYLE's Responsibilities

- Pay rents to MSPA
- Provide rail service along former Rock Island
- Maintain mainline, sidings, and industry tracks
- Manage operating assets and track leases with KYLE customers

KYLE has met all of its responsibilities and more by becoming a reliable rail provider and important member of the Kansas transportation community



The parties twice modified the original lease-purchase agreement



- First amended lease-purchase agreement signed April 21, 1989
 - Part of MSPA refinance of debt through Bank IV
 - Revised term to 15 years and increased rent to \$67,250 (to be adjusted annually, matched repayment schedule of debt)
 - KYLE purchase option remained intact. Option exercise date adjusted to match repayment of debt
- Second amended lease-purchase agreement signed May 26, 1994
 - Part of MSPA's issuance of revenue funding bonds to refinance Bank IV loan
 - Term and rental payments amended to coincide with MSPA's bond repayment obligations
 - KYLE purchase option remained intact. Option exercise date adjusted to match bond repayment
 - MSPA represents power and legal authority to perform amended lease-purchase agreements

Agreement set to expire in June 2009 at which time KYLE intends to exercise its purchase option



Some think changes to the Kansas Ports law appeared to “rewrite” the KYLE lease-purchase agreement

- A 1987 change to Kansas Port Authorities Act limits a port authority’s power to negotiate the sale of property
 - Requires competitive bidding in the event of a sale
 - Gives current lessee the first right to purchase the property
- 1987 amendment never intended to apply to lease-purchase arrangements and option grant already negotiated and agreed to
- KYLE continues to perform on its lease and to make all rental payments in good faith

Unlikely that legislators intended to cancel the KYLE-MSPA contract



- Supplemental legislation (SB 46) has now been drafted
- Clarifies that 1987 law not intended to apply to 1984 lease-purchase agreement, as subsequently amended
- Lease-purchase agreement should proceed as the parties intended and fully-performed
- If lease-purchase agreement is dishonored by MSPA, based upon a misapplication of the 1987 law, KYLE could, theoretically, be found to pay for the line twice and MSPA would receive a windfall that neither party intended

What is a fair result?

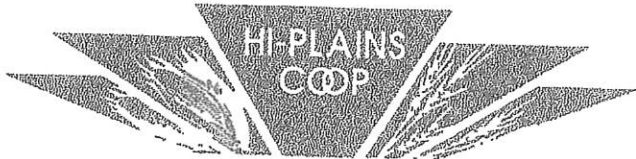


KYLE's Future - We plan to continue to serve shippers and customers in Kansas



- In anticipation of lease expense savings, KYLE plans for increased short and long range capital infrastructure investment to the benefit of customers
- KYLE recently relocated RailAmerica's Central Region customer service headquarters to Phillipsburg, KS; added some 20 employee positions and has future regional expansion plans
- When KYLE exercises its option and acquires the right-of-way, KYLE will become a property taxpayer
- MSPA extended 90% of Customer leases more than 3 years past June 2009 (more than 50% past June 2019)
- KYLE has prepared a list of all known MSPA lease extensions; KYLE will honor all of these lease extensions

Bottom line: We are here for the long haul; 25-year partnership should go forward as parties intended



THE HI-PLAINS COOPERATIVE ASSOC.

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Letter of Support Prepared for the
Senate Committee on Transportation
February 5, 2009

Letter in Support of SB 46

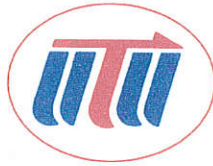
Mr. Chairman and members of the Committee:

I appreciate the opportunity to present this letter to the Transportation Committee in support of Senate Bill 46. I am the President of Hi-Plains Coop and we use the Kyle Railroad for our shipping needs.

Our relationship with the Kyle is excellent, and we are impressed with the enormous commitment they have made to improve their rail line. We understand that Senate Bill 46 will allow the Kyle to complete its purchase of the line in 2009, as agreed in 1984.

We support SB 46. The Kyle stepped up and helped us when the Rock Island went bankrupt, and it is only fair to allow the Kyle to complete the purchase of the line it has been paying for and improving for the past 20 years.

Thank you for your consideration.



united transportation union

**Testimony Prepared for the
Senate Committee on Transportation
February 05, 2009**

Testimony in Support of SB 46

Mr. Chairman and members of the Committee:

I appreciate the opportunity to offer this letter of support for Senate Bill 46. I am the Local Chairman for UTU Local #44 and have many years of experience working with the KYLE Railroad. I represent 45 union employees that work for the KYLE Railroad in the state of Kansas.

Our union serves over 125,000 railroad workers in the United States, and we are active in ensuring our members safe and productive work environments. The KYLE is an excellent example of a railroad interested in creating those environments and maintaining a partnership between management and the workforce. We are very fortunate to have the KYLE in Kansas and I hope that you will support Senate Bill 46, as we do, to allow the KYLE to own its rail line and continue its high level of service.

Thank You for your support is important measure.

Bill Strickland, Local Chairman UTU #44





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LARRY STANLEY, Chairperson • LYNN D. COOPER, Secretary • DELL C. PRINC, General Manager
ARNIE LONG, Ass't General Manager

Letter of Support Prepared for the
Senate Committee on Transportation
February 5, 2009

Letter in Support of SB 46

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present this letter to the Transportation Committee in support of Senate Bill 46. I am the General Manager of Midway Coop and we use the Kyle Railroad for our shipping needs.

Our relationship with the Kyle is excellent, and we are impressed with the enormous commitment they have made to improve their rail line. We understand that Senate Bill 46 will allow the Kyle to complete its purchase of the line in 2009, as agreed in 1984.

We support SB 46. The Kyle stepped up and helped us when the Rock Island went bankrupt, and it is only fair to allow the Kyle to complete the purchase of the line it has been paying for and improving for the past 20 years.

Thank you for your consideration.

MIDWAY CO-OP, INC.

Dell C. Princ
General Manager

- ELEVATORS
ALTON
BELLAIRE
BLOOMINGTON
BURR OAK
CORINTH
DOWNS
LEBANON
LURAY
MANKATO
OSBORNE
PORTIS
WALDO
- FEED MILL
OSBORNE
- BULK FUEL PLANTS
LEBANON
LURAY
MANKATO
OSBORNE
- SERVICE STATIONS
LEBANON
LURAY
MANKATO
OSBORNE
- L.P. GAS
LEBANON
LURAY
MANKATO
OSBORNE
- SEED CLEANING PLANT
LEBANON
PORTIS

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**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

**TESTIMONY OF BOB ALDERSON
ON BEHALF OF MID-STATES PORT AUTHORITY
BEFORE THE SENATE COMMITTEE ON TRANSPORTATION**

February 4, 2009

Chairman Umbarger and Members of the Committee:

My name is Bob Alderson, and I am appearing before the Committee on behalf of Mid-States Port Authority (MSPA) in support of Senate Bill No. 46 (SB 46). However, with the belief that many members of the Committee may not be familiar with MSPA, I initially want to provide the Committee with some background information regarding MSPA. To that end, I have attached a Memorandum which provides an overview of MSPA's formation, its purposes and objectives, its organization and operation, including the financing thereof, and its relationship with Kyle.

Suffice it to state here that MSPA is a joint port authority that was formed in 1980 pursuant to the Kansas port authority statutes, K.S.A. 12-3401 *et seq.*, by the Joint Cooperative Agreement of 14 Kansas counties in north central and northwest Kansas. It was formed in the wake of the bankruptcy and proposed liquidation of the Chicago, Rock Island and Pacific Railroad Company (Rock Island), which would leave these 14 Kansas counties without rail service. Thus, the purpose for creating MSPA was to serve the public purpose of restoring the rail service previously provided by Rock Island and insuring the continued availability of rail service in this region of the state into the future.

Accordingly, in May of 1984, MSPA acquired from the Rock Island's Trustee in Bankruptcy approximately 465 miles of Rock Island's main line track and right-of-way, plus approximately 40 miles of spur and siding track, 288 acres of real estate, depots, repair shops and bridges. The line acquired extended from Limon, Colorado in the west to Belleville, Kansas, with lines running from that point to Clay Center, Kansas and to Hallam, Nebraska, the eastern termination point at that time.

Today, MSPA has right-of-way in service only in the states of Kansas and Colorado, and the operating portion of that right-of-way is leased to Kyle Railroad Company (Kyle). The attached Memorandum explains the transactions which have occurred since 1984 that have brought us to this point.

Senate Transportation
2-5-09
Attachment 2

From its inception and through two amendments and restatements, the lease agreement between MSPA and Kyle has provided Kyle with an option to acquire MSPA's right-of-way and other real property at the termination of the lease, which is June 1, 2009. The lease terminates on that date because it is the date when MSPA makes its last payment of principal and interest on its revenue refunding bonds which were initially issued in 1994.

Although this lease has served to circumscribe the legal relationship between MSPA and Kyle, it is fair to say that the relationship between MSPA and Kyle has been more like a partnership rather than a landlord-tenant relationship. It has been premised on mutual cooperation and respect in promoting MSPA's mission to preserve rail traffic in the MSPA counties. While MSPA was formed to ensure that the shippers in these counties have continued access to efficient, reliable rail service, the MSPA Board of Directors has viewed this objective as being met, in part, by its financial support of Kyle, designed to improve Kyle's rail operations. In that regard, MSPA has expended more than \$2,000,000 on infrastructure and other real property improvements benefiting Kyle since I became General Counsel in 1990.

Recently, however, two areas of disagreement have arisen under the lease. First, there has been some uncertainty as to the validity of Kyle's option to purchase MSPA's property; and second, there has been an unresolved question of whether the leases which MSPA has entered into with shippers and other lessees will be assumed intact by Kyle upon the transfer of MSPA's property to Kyle. Both of these issues have the potential for litigation, if they cannot be resolved legislatively or by agreement.

The first of these issues is addressed by SB 46 as it now stands, but MSPA firmly believes that the second issue also must be resolved in this bill. As noted at the outset, MSPA is appearing in support of SB 46, but it cannot give unequivocal support unless the bill is amended to protect the shippers/lessees on Kyle's line. Many of these shippers made it possible for Kyle to operate as a rail common carrier in Kansas and Colorado by providing the shipping commitments required by the Federal Railroad Administration as a condition to loaning MSPA the money necessary to purchase the Rock Island line out of bankruptcy.

It is fair to say that MSPA and RailAmerica, Inc., Kyle's parent company, have had different views regarding whether MSPA's leases with shippers/lessees continue intact and uninterrupted upon transfer of MSPA's property to Kyle on June 1 of this year. If it should appear that the leases will not transfer intact and continue uninterrupted during their respective terms, I am fearful that litigation will result, and I am concerned that the litigation will not prove beneficial to anyone, regardless of the outcome.

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

**ALDERSON, ALDERSON, WEILER,
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**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

MEMORANDUM

TO : Senate Committee on Transportation

FROM : Bob Alderson, General Counsel, Mid-States Port Authority

RE : Background Information on Mid-States Port Authority

DATE : February 4, 2009

The Mid-States Port Authority (MSPA) is the owner of railroad right-of-way in the States of Kansas and Colorado. The operating portion of the right-of-way is leased to Kyle Railroad Company (Kyle). Kyle is a Kansas corporation that is wholly owned by RailAmerica, Inc. and it operates as a Class III (short-line) railroad. The purpose of this Memorandum is to acquaint the members of the Committee with the MSPA, by providing a brief summary of MSPA's formation, its purposes and objectives and its organization and operation, including the financing thereof.

Formation

The MSPA is a public body corporate and politic, organized and existing under the authority of the Kansas port authority statutes, K.S.A. 12-3401 *et seq.* The MSPA was created by a Joint Cooperative Agreement entered into on May 29, 1980, by the following 14 Kansas counties: Clay, Cloud, Decatur, Jewell, Norton, Phillips, Republic, Riley, Sheridan, Sherman, Smith, Thomas, Wabaunsee and Washington. The formation of MSPA was approved by the Attorney General of Kansas in Attorney General Opinion 80-95, issued April 23, 1980.

The counties creating MSPA are in northwest and north central Kansas. These counties were adversely affected by the loss of rail service by reason of the bankruptcy and proposed liquidation of the Chicago, Rock Island and Pacific Railroad Company (Rock Island). The board of county commissioners of each of these counties determined there was a need for a joint port authority to function in the counties and region affected, in order to restore rail service and to insure the continued availability of rail service in the future. Therefore, consistent with the statutory requirement that the powers exercised by a port authority be for the benefit of the people of the

February 4, 2009

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state, the MSPA was created to serve the public purpose of restoring rail service in the affected counties.

In 1983, the Kansas Legislature agreed to guarantee a portion of a loan of \$18 million from the Federal Railroad Administration (FRA) to the MSPA, through the establishment of the Railroad Rehabilitation Loan Guarantee Fund (K.S.A. 75-5029) and by the authorization for payments from that fund to the FRA of not to exceed fifty percent (50%) of any loss resulting from default by the MSPA on any loan it obtained from FRA.

The rail line was acquired from the Rock Island's Trustee in Bankruptcy on May 15, 1984. The Trustee executed two Quitclaim Deeds which were identical, except for the descriptions of the property being conveyed. One of these deeds conveyed the Trustee's interest (with certain exceptions) in and to the rail line in Clay County, Kansas and the other conveyed the Trustee's interest (with certain exceptions) in and to the remainder of the line.

By virtue of these transactions, MSPA acquired a portion of Rock Island's right-of-way and track which extended from Limon, Colorado in the west to Belleville, Kansas, with lines running from that point to Clay Center, Kansas and to Hallam, Nebraska, which was the eastern termination of MSPA's original rail line. A map of the rail line acquired by MSPA is attached as Appendix A. Also acquired were various depots, switching and communication equipment, tools and other items useful to the provision of rail service.

The property acquired included approximately 465 miles of main line track and right-of-way, approximately 40 miles of spur and siding track, 288 acres of real estate, depots, repair shops and bridges.

Organization and Operation

MSPA is governed by a Board of Directors comprised of one individual appointed by the board of county commissioners of each member county and eight individuals elected "at large" collectively by the boards of county commissioners of the member counties. Shortly after MSPA acquired its rail line from Rock Island's Trustee, Riley and Wabaunsee Counties withdrew from the MSPA, because none of that rail line was situated in those counties, as had originally been anticipated. Subsequently, as a result of abandonments of all of MSPA's rail line in Clay, Washington and Cloud Counties, those counties also withdrew. Thus, with 9 participating counties remaining, there currently are 17 members of MSPA's Board of Directors. A list of the current members of the Board of Directors is attached as Appendix B. The MSPA does not have any employees, but the MSPA's Rules and Regulations provide for the Board's appointment of two special officers, a Deputy Treasurer and a General Counsel.

The rail line acquired by MSPA from Rock Island's Trustee in Bankruptcy was operated initially pursuant to two, separate leases with rail carriers. As noted previously, MSPA has a lease with Kyle to provide rail service on the MSPA's line in Kansas and Colorado. The facilities initially leased to Kyle actually included the segment of the line from the Kansas-Nebraska line to Fairbury, Nebraska. However, there never was any traffic over this segment of the line from the time it was

February 4, 2009

Page 3 of 5

acquired by MSPA. Thus, in two, separate transactions this segment of MSPA's Nebraska line has been abandoned. The last of these transactions was completed in January, 2006, and it also effected the abandonment of the right-of-way segment from the Kansas-Nebraska line to Munden, Kansas.

MSPA's other operating lease was with Union Pacific Railroad Company (Union Pacific), and it was for the line segment from Fairbury, Nebraska to Hallam, Nebraska. That lease continued for 20 years, until the Spring of 2004, when Union Pacific exercised the option contained in its lease to acquire this segment of MSPA's rail line.

Kyle is responsible under its lease agreement with MSPA for providing freight service along the leased rail line, and the interstate operating authority necessary to provide such service has been obtained by Kyle. MSPA does not have any authority to operate as a rail carrier itself, although MSPA is considered a railroad under various Kansas statutes, because of its ownership of railroad right-of-way.

Pursuant to its lease agreement with Kyle, MSPA has retained control over the right-of-way and other property along the rail line that is not directly required for railroad operations, and a substantial portion of this "ancillary property" has been leased by MSPA to various shippers and other lessees.

1989 Refinancing

Pursuant to Public Law 100-457 (the Federal Government's Deficit Reduction Program), the FRA was instructed to dispose of \$99 million of its assets. Among the assets FRA identified for disposal were the Notes issued by MSPA and guaranteed by the State of Kansas. As part of the effort to sell its assets, the FRA agreed to sell the MSPA's Notes back to MSPA for \$11 million. At that time, the face amount of the Notes plus accrued interest had a value of approximately \$20 million.

During the first five years of its operations, MSPA was able to accumulate nearly \$5,000,000.00 in cash. Thus, in 1989, after providing for reserves and closing costs, MSPA was able to apply a sizable portion of the cash on hand to the repurchase of its Notes from FRA, thereby reducing its need for refinancing to less than \$7 million.

However, because MSPA is a unique entity, as far as public bodies are concerned, ordinary bank financing of the balance of the monies necessary to repurchase the Notes from FRA was not available without the continued guarantee of the State of Kansas. Accordingly, the 1989 Kansas Legislature made the statutory changes necessary to perpetuate the State's guarantee of MSPA's indebtedness. Section 1 of that act (now codified as K.S.A. 75-5031) authorized the Secretary of Transportation to guarantee the repayment of any amounts which may be in default on any loan obtained by MSPA for the refinancing of its obligations to FRA. Attorney General Opinion No. 89-45 clarified the Kansas Secretary of Transportation's authority under that law to guarantee the MSPA's obligation upon refinancing.

With the enactment of this legislation, the requisite financing was then provided by BANK IV Kansas, N.A. The financing arrangements with BANK IV included the bank's loan of \$6,575,000

February 4, 2009

Page 4 of 5

to MSPA for the purpose of repurchasing its Notes from FRA. The loan was made pursuant to a Term Loan Agreement among MSPA, BANK IV and the Kansas Secretary of Transportation and various other "loan documents," including Mortgage, Security Agreement, and Assignment of Leases between MSPA and BANK IV.

Revenue Refunding Bonds

In 1993, MSPA's Board of Directors began exploring the possibility of re-financing its obligation to BANK IV. A re-financing proposal was submitted to BANK IV, and at the suggestion of then Secretary of Transportation Mike Johnston, the Board of Directors also considered the issuance of bonds pursuant to K.S.A. 12-3420, which authorizes a port authority to issue revenue bonds for the purpose of refunding any bonds or "other obligations" of the port authority. On the basis of the comparative funding analysis prepared by KDOT personnel and a comparison of the respective terms, provisions and conditions attending the BANK IV's re-financing proposal and the issuance of revenue refunding bonds pursuant to K.S.A. 12-3420, the MSPA Board of Directors concluded that it was advisable and in the best interests of the MSPA to proceed with the issuance of said bonds.

In compliance with statutory requirements, each of the original 14 counties which formed the MSPA (even those counties which had subsequently withdrawn from MSPA) adopted a resolution authorizing MSPA's Board of Directors to proceed with the revenue refunding bond issue. Pursuant to such authorization, MSPA's Board of Directors issued Federally Taxable Revenue Refunding Bonds, Series 1994, dated May 1, 1994. On May 26, 1994, a single bond in the face amount of \$4,975,000 was issued to the Kansas Pooled Money Investment Board on behalf of the Kansas Department of Transportation. The bond proceeds were used to satisfy MSPA's obligations to BANK IV.

In connection with the refunding bond issue, the Secretary of Transportation has continued to provide an Unconditional Guarantee of Payment, and in consideration thereof, MSPA executed a Mortgage, Security Agreement and Conditional Assignment of Leases in favor of the Secretary of Transportation. The terms and conditions of the revenue refunding bond issue are governed by an Indenture of Trust by and between the MSPA and the First National Bank and Trust, Phillipsburg, Kansas, as Trustee. Clarification of the "Reserve Requirement" under the Indenture was accomplished by the First Supplemental Indenture of Trust executed by the parties as of February 1, 1996.

On December 1, 1995, a partial redemption of the revenue refunding bonds was accomplished in connection with MSPA's abandonment of its rail lines between Belleville and Clay Center, Kansas, and between Fairbury and Thompson, Nebraska. The rails, ties, ballast and other track materials were salvaged on these segments of MSPA's rail line, and the net salvage proceeds of approximately \$1,400,000 were paid over to the bondholder (KDOT) pursuant to the Indenture's redemption provisions.

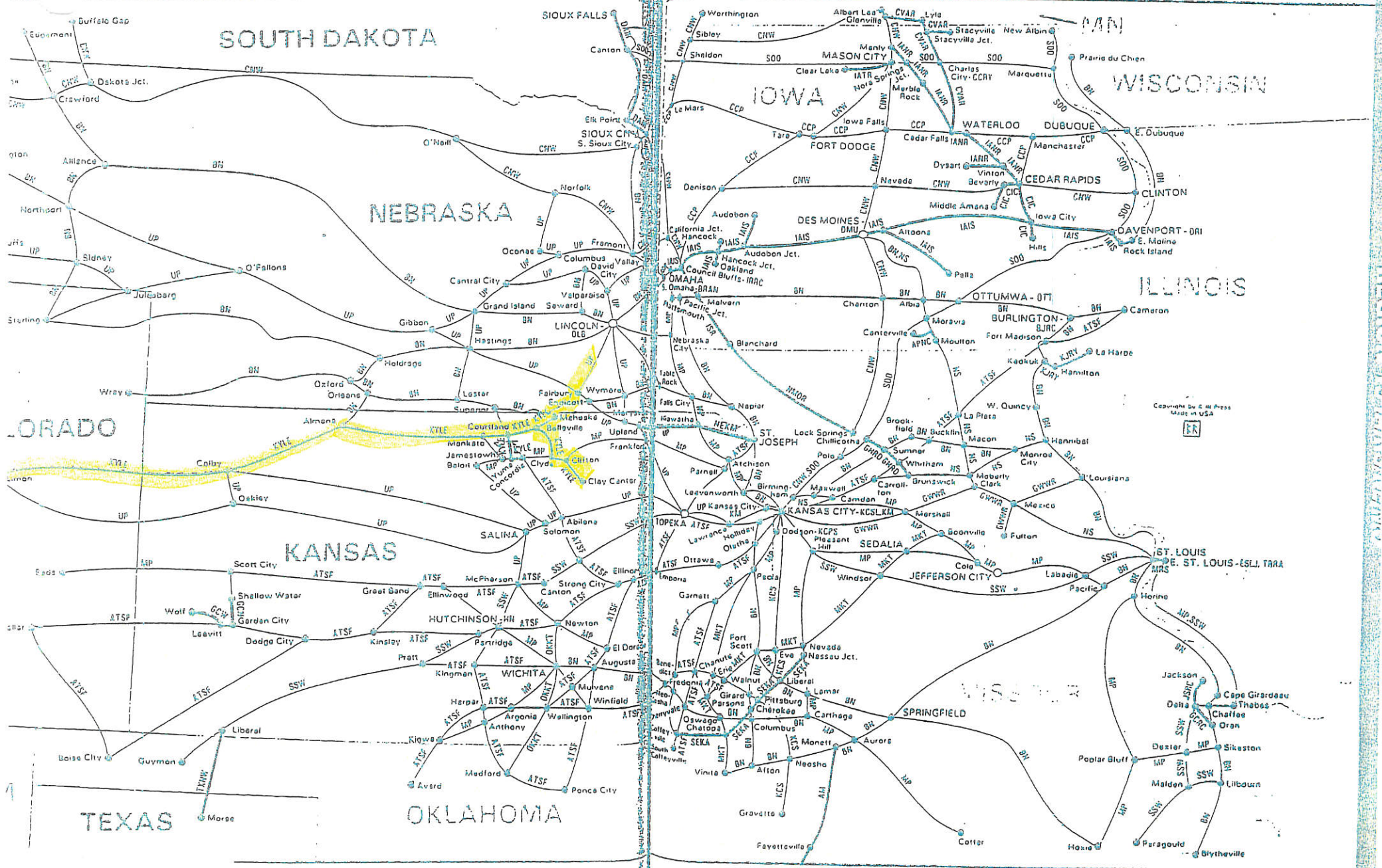
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A second Supplemental Indenture of Trust was executed on September 1, 2003. Among other things, this transaction eliminated the right of redemption. Thus, these bonds will extend to June of 2009. The current balance (including principal and interest) is \$390,202.50.

When the last payment of principal and interest is made on these bonds on June 1, 2009, the lease agreement between MSPA and Kyle affords Kyle the option to acquire all of MSPA's real property. The time for Kyle to advise MSPA as to whether it will exercise this option, as provided in their lease agreement, has not yet occurred. Thus, it is not known whether Kyle will seek to acquire MSPA's property or to enter into another lease agreement. Regardless, MSPA's Board of Directors believes MSPA has fulfilled its mission of preserving rail traffic in north and northwest Kansas, following the Rock Island's bankruptcy.

WRA:bjb



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APPENDIX B

MSPA BOARD MEMBERS MAILING LIST

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Statement of the Kansas Grain and Feed Association in Support of Senate Bill 46

**Presented to the Senate Transportation Committee on February 6, 2009
Senator Dwayne Umbarger, Chair**

Chairman Umbarger and members of the Senate Transportation Committee, I am Tom Tunnell, and I am President and CEO of the Kansas Grain and Feed Association.

KGFA is a 113 year old trade association which has as members those Kansas agribusinesses engaged in the business of receiving, storing and marketing of grain grown by Kansas farmers.

I appear before you today as a proponent of Senate Bill 46. As you are aware this legislation facilitates to orderly transfer of railroad assets from Mid States Port Authority (MSPA) to Rail America as previously agreed to by the aforementioned parties.

I also respectfully request the approval of the amendment offered by MSPA's attorney Bob Alderson. This amendment clarifies that all shipper leases in effect at the time of the transfer will remain valid.

Thank you for this opportunity to testify on this important legislation.



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Senate Transportation Committee

February 5, 2009

Topeka, Kansas

SB 46 - Sale of certain property by a port authority.

Chairman Umbarger and members of the Senate Transportation Committee, thank you for the opportunity to comment on SB 46 and an amendment that will be offered by Mid-States Port Authority (MSPA). I am Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director.

The Kansas Cooperative Council represents all forms of cooperative businesses across the state -- agricultural, utility, credit, financial and consumer cooperatives. Approximately half of our members are grain elevator/farm supply cooperatives. Some of these members are shippers along rail lines within the territory of Mid-State Port Authority and thus, can be impacted by the passage 46.

As we understand it, SB 46 seeks to provide clarification regarding the treatment of existing leases and how they will be treated once certain MSPA interests are transferred to Rail America. Certainly, legislative action is one means of reaching clarity on the issues.

From that perspective, we see benefit in the SB 46 legislation, but we believe the amendment proposed by MSPA is essential to ensuring our members interests are protected during the negotiations and transfers of holdings from MSPA to Rail America. As such, we respectfully request that this committee ensure the requested amendment is included in SB 46 before taking any action to forward the bill favorably out of your committee.

If you have any questions regarding our testimony, please feel free to call me. Thank you.

Leslie Kaufman, Executive Director
Kansas Cooperative Council
785-220-4068

The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

Senate Transportation

2-5-09

Attachment 4