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TESTIMONY IN OPPOSITION TO HB 2062

My name is Doug Walker and I am president of the Kanza Rail Trails Conservancy Inc. We own 157 miles of railbanked corridors which include the 119-mile Flint Hill Trail, which we are in the process of transferring to the State. As you know, last year became the newest Kansas State Park, and the Landon Trail which runs from Topeka south 38 miles and intersects the Flint Hills Trail at Lomax Junction.

We are unsure of the intent of the language addition to the Kansas Recreational Trails Act. We believe the intent is an attempt to bring the Central Kansas Conservancy's trails under the trails act. Their trails were railbanked prior to passage of this act and theoretically are exempt from its requirements.

If it is for "clarification" we ask what is it clarifying and for what reason and who would it apply to and who specifically is requesting this change. These questions need to be answered before you proceed.

As you have heard (or will hear) Central Kansas Conservancy has been in litigation with trail opponents for quite some time. Those opponents have lost in every court decision. We believe this change is an attempt to improve their chances in court.

I was in the Senate in 1996, on the Energy & Natural Resource committee when the Kansas Farm Bureau in cooperation with the Kansas Livestock Association proposed the Kansas Recreational Trails Act.

At that time there were no rail trails in Kansas. We had no experience with them and did not know what to expect. The concerns at the time were that trails would bring vandalism, drugs, litter and other crime along the trail. At that time there was only one trail proponent and they too had no experience in trails.

As a long time opponent of trails, the Farm Bureau drafted a bill which would make it as difficult as possible to develop rail trails without overtly defying the federal, National Trails Act. If in fact, if the Act had been strictly adhered to, the only rail trail in Kansas would be a short Prairie Spirit Trail from Richmond, through Garnett, south to Welda. Nothing more. All other rail trails would have violated 58-3213 (c) the two year time limit.

The statute has been litigated in Miami County, Shawnee County, Lyon county and the entire law nullified in southwest Kansas district court. It is a very flawed law. Each time in an attempt to stop trail development.

23 years later, we now have a history of rail trails. We do not need to rely on what we “think” will happen on these trails. We KNOW what to expect. We KNOW what happens. We can document the positives and the negatives.

It's time to take a serious look at the entire statute.

It may come as no surprise, but I have provided a “balloon” of suggested changes to the statute.

Among other things these changes provide for a safe, maintained trail which requires noxious weed control, litter control, prevents hunting & trapping from the trail, easements for adjacent property owners to cross the trail. It requires that all governing bodies with trails going through their jurisdictions be informed of the plans, progress of trail development and maintenance. It protects adjacent landowners from liability and removes property tax liability to adjacent property owners who may own property under the existing right of way.

These changes are extensive enough that if the Committee desires to proceed, a separate hearing may be useful to fully discuss and understand. We are willing at any time to discuss these changes with the Farm Bureau and other trail opponents.

In any event, KRTC opposes HB 2062 in its current form and request it be tabled or used as a vehicle to rework the entire Kansas Recreational Trails Act.

KANSAS RECREATIONAL TRAILS ACT

58-3211: Definitions. As used in this act: (a) "Adjacent property owner" means a person or entity, other than a responsible party, who owns property or facilities on or adjacent to a recreational trail. (b) "Recreational trail" means a trail created pursuant to subsection (d) of 16 U.S.C. 1247 (1983). (c) "Responsible party" means any person, for-profit entity, not-for-profit entity or governmental entity that is responsible for developing, operating or maintaining a recreational trail. History: L. 1996, ch. 223, § 1; July 1.

58-3212: Duties of responsible party. (a) The responsible party, at all times after transfer of the deed to the responsible party, shall: KS Statutes: Ch 58 Article 32: Land and Water Recreational Areas Page 3 of 9 http://kansasstatutes.lesterama.org/Chapter_58/Article_32/ 9/14/2009

- (1) Perform the duties imposed by K.S.A. 2-1314 and amendments thereto along the recreational trail; (*Noxious weed control*)
 - (2) provide for the safety, use and accessibility of existing easements, utility facilities and access licenses along the recreational trail;
 - (3) provide for trail-user education and signs regarding trespassing laws and safety along the recreational trail;
 - (4) ~~provide for litter control and the enforcement of laws prohibiting littering along the recreational trail, including but not limited to trail user education and signs about laws prohibiting littering and the provision of trash receptacles and the cleanup of trash and litter;~~
 - (5) ~~develop and maintain the recreational trail in a condition that does not create a fire hazard;~~ (6) designate the recreational trail for nonmotorized vehicle use with exceptions only for motorized wheelchairs, ~~and~~ maintenance, law enforcement and emergency vehicles;
 - (7) prohibit hunting or trapping on or from the recreational trail;
 - (8) ~~provide for law enforcement along the recreational trail;~~
 - (9) grant easements to adjacent property owners to permit such owners to cross the recreational trail in a reasonable manner ~~consistent with the use of the adjacent property~~ and with K.S.A. 66-301 through 66-303, and amendments thereto;
 - (10) ~~(A) maintain any existing fencing between the trail and adjacent property;~~
~~(B) maintain any future fencing installed between the trail and adjacent property;~~
~~(C) install between the trail and adjacent property fencing corresponding in class to that maintained on the remaining sides of such adjacent property; and~~
~~(D) on request of an adjacent property owner, pay one half the cost of installing fencing between the trail and such property owner's adjacent property with a fence of the class requested by such property owner, if not all remaining sides of such property are fenced; and~~
 - (11) (A) maintain the trail;
(B) maintain all bridges, culverts, roadway intersections and crossings on the trail, essential to the reasonable and prudent operation of the trail or needed for drainage, flood control or the use of easements for crossing the trail between adjacent properties, or cause maintenance thereof by other parties that have assumed contractual responsibility therefor; and
(C) install and maintain any warranted traffic signs on the trail.
(b) If the responsible party is not a governmental entity, the responsible party shall

(b) If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located a bond or proof of an escrow account in a Kansas financial institution, as

1 defined by K.S.A. 16-117 and amendments thereto, payable to the county. The bond or
2 proof of an escrow account shall be filed at the time of transfer of the deed to the
3 responsible party and annually thereafter. The bond or escrow account shall be conditioned
4 on the responsible party's performance, and shall be in an amount agreed upon between the
5 responsible party and the county commission as sufficient to fully cover the annual costs,
6 of:

- 7 (1) Weed control along the trail, as required by subsection (a)(1);
8 (2) litter control along the trail, as required by subsection (a)(4); KS Statutes: Ch 58
9 Article 32: Land And Water Recreational Areas Page 4 of 9
10 http://kansasstatutes.lesterrama.org/Chapter_58/Article_32/9/14/2009
11 (3) maintenance of the trail in a condition that does not create a fire hazard, as
12 required by subsection (a)(5);
13 (4) installation and maintenance of fencing between the trail and adjacent property
14 within the county, as required by subsection (a)(10); and
15 (5) installation and maintenance of signs along the trail, as required by subsections
16 (a)(3), (a)(4) and (a)(11)(C).

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

23 (c) If the responsible party is not a governmental entity, the responsible party shall
24 file with the county clerk of each county where a portion of the recreational trail is or will
25 be located, proof of liability insurance in an amount agreed upon between the responsible
26 party and the county commission as sufficient. Such proof shall be filed at the time of
27 transfer of the deed to the responsible party and annually thereafter.

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

31 (e) The provisions of this section may be modified or supplemented by any city
32 governing body for recreational trails within the corporate limits of such city in the manner
33 provided by K.S.A. 12-137 et seq. and amendments thereto. If a city governing body
34 adopts requirements in addition to those provided by this section, the city shall pay all
35 costs of compliance with such additional requirements. History: L. 1996, ch. 223, § 2; July
36 1.

37 **58-3213: Procedures for development.** (a) Upon receipt of permission from the
38 appropriate federal agency to enter into negotiations for interim trail use, the responsible
39 party shall give written notice to each adjacent property owner that the responsible party
40 intends to build a recreational trail adjacent to the property owner's property. The
41 responsible party may utilize the addresses to which real estate tax statements are sent, as
42 maintained by county officials, for such notices. Such notice shall be given by first-class
43 mail unless the notice is returned undelivered, in which case a further notice shall be given
44 by certified mail. Further notice shall be published once each week for three consecutive
45 weeks in the official newspaper of the county in which such trail is proposed to be located.

46 (b) Before commencing development or operation of a recreational trail, the
47 responsible party shall:

48 (1) Prepare a project plan that includes: (A) The name and address of the
49 responsible party, (B) an itemized estimate of the costs of the project and sources of
50 funding for the project, and (C) maps of the recreational trail;

1 (2) submit by certified mail, not later than 180 days after receiving approval of
2 interim trail use from the appropriate federal agency, the initial project plan to the county
3 commission of each county where a KS Statutes: Ch 58 Article 32: Land And Water
4 Recreational Areas Page 5 of 9 http://kansasstatutes.lesterama.org/Chapter_58/Article_32/
5 9/14/2009 portion of the trail is to be located outside of city limits and to the governing
6 body of each city where a portion of the trail is to be located inside the city limits;

7 (3) submit the final project plan to the county commission of each county where a
8 portion of the trail is to be located outside of city limits and make subsequent reports to
9 such county commission as to the status of trail development or operation, or both, at
10 intervals determined by the commission and consider all recommendations the commission
11 has regarding the trail; and

12 (4) submit the final project plan to the governing body of each city where a portion
13 of the trail is to be located inside the city limits and make subsequent reports to such city
14 governing body as to the status of trail development or operation, ~~or both~~, at intervals
15 determined by the governing body and consider all recommendations the governing body
16 has regarding the trail.

17 (c) ~~The responsible party shall complete development of a recreational trail within a~~
18 ~~period of time equal to two years times the number of counties in which the recreational~~
19 ~~trail is located. Such period of time shall begin only when the appeal period pursuant to~~
20 ~~subsection (d) of 16 U.S.C. 1247 (1983) has expired. Any time during which there is~~
21 ~~pending any court action challenging the development or use of the trail shall not be~~
22 ~~computed as part of the time limitation imposed by this subsection.~~ (d) The provisions of
23 ~~this section shall apply to only recreational trails for which approval to enter into~~
24 ~~negotiations for interim trail use is received from the appropriate federal agency on or after~~
25 ~~the effective date of this act.~~ History: L. 1996, ch. 223, § 3; L. 1996, ch. 252, § 1; July 1.

26 **58-3214:** Adjacent property owners; duty of care. An adjacent property owner has
27 no duty of care to: (a) Any person using a recreational trail, except that this subsection
28 shall not relieve an adjacent property owner from liability for injury to another that is a
29 direct result of such property owner's gross negligence or willful or wanton misconduct; or
30 (b) any person entering such adjacent property owner's land by way of the recreational trail
31 without implied or expressed permission or consent of the adjacent property owner, except
32 that this subsection shall not relieve an adjacent property owner from liability for injury to
33 another that is a direct result of an intentional or unlawful act of the adjacent property
34 owner. History: L. 1996, ch. 223, § 4; L. 2006, ch. 178, § 1; May 25.

35 **58-3215:** Actions to enforce act; orders of court. If the responsible party fails to
36 comply with the provisions of this act, any adjacent property owner, city or county
37 aggrieved by the noncompliance may bring an action in the district court to enforce the
38 provisions of this act. Upon a finding that the responsible party has failed to comply with
39 the provisions of this act, the court may enter an order requiring the responsible party to
40 comply with the provisions of this act. History: L. 1996, ch. 223, § 5; L. 2006, ch. 178, § 2;
41 May 25.

42 **58-3216:** Severability. If any provision of this act or the application thereof to any
43 person or circumstances is held invalid, the invalidity does not affect other provisions or
44 applications of this act which can be given effect without the invalid provisions or
45 application. To this end the provisions of this KS Statutes: Ch 58 Article 32: Land And
46 Water Recreational Areas Page 6 of 9 http://kansasstatutes.lesterama.org/Chapter_58/Art

47
48 NEW SECTION;

50 Right of ways railbanked according to the National Trails Act, and property
51 under those right of ways shall be exempt from property taxation.

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2 NEW SECTION;

3 (a) If an easement to cross the trail is granted to an adjacent property owner and
4 damage is incurred to the trail in the process of crossing the trail by the adjacent property
5 owner, the adjacent property owner shall repair the damage to the satisfaction of the
6 responsible party within 10 days of a request by the responsible party.

7 (b) The responsible party shall notify adjacent property owners to remove any
8 items blocking or impeding passage of the trail or any item, including fences placed on the
9 responsible party's property by the adjacent property owner within 30 days. If items are
10 not removed the responsible party shall remove items at adjacent property owners'
11 expense.

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