

COUNTY OF PHILLIPS

241446

STATE OF KANSAS

Phillipsburg, Kansas 67661

ENTERED
Office of Proceedings
September 7, 2016
Part of
Public Record

September 1, 2016

Ms. Cynthia T. Brown, Chief
Administration Section
Office of Proceedings
Surface Transportation Board
395 E Street, S.W. Washington, DC 20423
Cynthia.T.Brown@stb.dot.gov

Re: Proposed Stipulations - Interim Railbanking Use Agreement - Sunflower Rails-to-Trail Conservancy, STB Docket No. AB 1032 O X: *Nebraska, Kansas & Colorado Railway*.

The Phillips County, Kansas Board of County Commissioners (PBCC) has reviewed the proposed *Sunflower Rails-to-Trails Conservancy (SRTC) Prairie Sunrise* project, noting that on October 22, 2015 the Surface Transportation Board (STB) issued a Notice of Interim Trail Use (NITU).

We believe the NITU was issued based upon incorrect, misleading or even errant information, and through this correspondence are requesting STB to impose Stipulations in the Interim Trail Use Agreement (ITUA) that specify the party responsible for the tax liabilities.

In its April 4, 2016 correspondence SRTC took the position that as a Kansas non-profit corporation they are exempt from taxation on the proposed trail alignment across Phillips County (Exhibit 1). In support of that position, SRTC cites a December 21, 2007 opinion from the Kansas Board of Tax Appeals (KBTA) that County governments cannot legitimately impose taxes on railroad right-of-way *easements* because such easements do not constitute real property. Secondly, KBTA opined that non-profit Kanza was not liable for the Utility portion of the taxes because they were not "*Public Utility*" as defined in K.S.A 79-5a01.

This board believes SRTC has erred in its application of the Kanza ruling, and it has not demonstrated a burden-of-proof sufficient to be considered exempt from taxation of the rail alignment across Phillips, Decatur and Norton Counties. We base this conclusion on two facts:

- 1) The NKCR alignment across Phillips County is owned (and taxed) as fee-simple, real-property, and does contain a right-of-way easement that may be used for trail purposes. It simply is property that has been improved for rail purposes, and is taxed as other real properties.
- 2) The annual tax burden imposed by Phillips County across the alignment is apportioned as \$5,085.06 for real property and \$370.56 for utility.

Because the NKCR alignment across Phillips County is real property that does not contain a right-of-way easement, and the apportionment for utility purposes is only a fraction of the tax liability, the KBTA ruling cannot be legitimately applied for purposes of exempting SRTC (or NKCR) from taxation.

When promulgating the National Trails System Act (NTSA) the Congress was specific in its intent to safeguard taxing prerogatives for local governments and in assigning STB the oversight responsibility to ensure such safeguards are applied through policies and procedures.

(b) "If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Commission shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this Act, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use."¹

SRTC has a policy that they are not liable for taxation on their projects, and they exhibit a pattern of not paying taxes in other Kansas counties even though they have committed to do so as part of the railbanking process. (Exhibits 2 and 3)

We believe minimum standards exempting an entity from taxation have not been met. Taking SRTC at their word and absent imposition of outside requirements such as stipulations on the ITUA, we believe SRTC will continue to believe - and act - as though they are exempt from taxation on their trail projects.

Through the Interim Trail Use Agreement process STB has the authority to impose Stipulations on SRTC, NKCR, or both. As a result PBCC is requesting the STB to specify who retains the long-term liability for real-property taxation for those NKCR alignments for which railbanking has been requested.

Respectfully,



PBCC Chair



PBCC Member



PBCC Member

Cc:

Gabriel S. Meyer - STB

L. Ross - SRTC

C. Coen - SRTC

S. O'Neal - SRTC

K. Morell, Esq.

T.F. McFarland, PC

Allen County - Comm. J. Daniels, T.R. Williams & J. Talkington

Anderson County - Comm. L. McGhee, J. Howarter and E. Highberger

Barton County - Comm. K. Schremmer, H. Kruckenberg, D. Davis, A. Straub & J. Schartz

Butler County - Comm. J. Masterson, P. Palmer, E. Myers, M. Wheeler & D. Woydziak

Clark County - Comm. J. Daily, C. McKinney & H. Wideman

Comanche County - Comm. H. Haas, R. Unruh & L. Harvey

Norton County - Comm. R. Thompson, R. Peterson, C. Posson

Sedgwick County - Comm. D. Unruh, T. Norton, K. Peterjohn, R. Ranzau & J. Howell

Hodgeman County - Comm. M. MacNair, J. Rydquist, M. Ewy, E. Aistrup & D. Craighead

KNRC Steering Committee

¹ 16 USC§1247 Sec. 8(d)

EXHIBIT 1

Sunflower Rails Trails Conservancy, Inc
April 4, 2016 - Response

to

Phillips County, Kansas
Board of County Commissioners



Sunflower Rail-Trails Conservancy, Inc.

PO Box 44-2043

Lawrence, Kansas 66044

www.sunflowertrails.org

info@sunflowertrails.org

785-842-3458

April 4, 2016

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 201423
Cynthia.T.Brown@stb.dot.gov

Re: Docket No. AB_1032_O_X: Nebraska, Kansas & Colorado Railway, LLC, --Abandonment
Exemption--in Decatur, Norton and Phillips Counties, Kansas and Harland County, Nebraska

Dear Ms. Brown:

This is response to the March 28, 2016, letter from the Phillips County, Kansas Board of County Commissioners filed with the U.S. Surface Transportation Board.

The Surface Transportation Board has already issued a Notice of Interim Trail Use (Service Date: October 22, 2105) for the aforementioned lines and Sunflower Rail-Trails Conservancy (SRTC) and the railroad are continuing with negotiations on finalizing an Interim Trail Use Agreement

In 1990, the U.S. Supreme Court unanimously ruled, in the case of *Preseault v. United States* [*Preseault v ICC*, 110 S.Ct. 914 (1990)], that preserving a corridor for future rail use through railbanking is a legitimate exercise of governmental power under the Commerce Clause of the U.S. Constitution. This decision protects both a railroad's legal right to transfer all forms of its ownership, including easements, to a trail manager for interim trail use and to reactivate a railbanked line for railroad use in the future. To date, more than 20 railbanked rail lines in the United States have been reactivated for railroad use.

The Kansas Board (now Court) of Tax Appeals ruled in a December 21, 2007, decision, that railbanked railroad rights-of-way are not taxed under the Kansas Constitution (see Exhibit A). That is why Kansas counties do not levy real estate taxes on the transportation easements lying within railbanked rail corridors.

1. SRTC will submit a Project Plan containing the provisions required under the Kansas Recreational Trails Act (K.S.A. 58-3211 *et seq*) to the appropriate governmental bodies after railbanking is consummated.
2. SRTC will place a public notice in the county newspapers of record notifying the public including adjacent landowners that a trail will be built within the rail rights-of-way after railbanking is consummated. The Conservancy has done this previously for its other railbanked lines. The STB has previously ruled that requiring individual notice is unnecessary as the railroad already places notices in county newspapers of

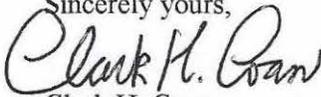
record. Further, such a requirement would place an unreasonable burden on trail managers and would, thus, be pre-empted under the U.S. Constitution by the National Trails System Act [16 U.S.C. 1247 (d)].

3. There is no requirement under the Kansas Recreational Trails Act (KRTA) that a detailed map and legal description be prepared by a licensed Kansas professional land surveyor for submission to appropriate governmental bodies. A standard map which depicts the trails will be provided with the project plans. The County's demand is an attempt to place an unreasonable financial burden upon a trail manager and is, thus, pre-empted by the Trails Act.
4. The amount of any performance bond required under KRTA must be agreed to by both parties. Only a handful of Kansas counties have imposed this burden on trail managers. Many counties, such as Allen and Franklin counties, recognize the value of rail-trails and that a public benefit is being provided free of charge to county residents: Failure by a county to negotiate in good faith on a reasonable amount would constitute an unreasonable burden upon a trail manager and would be pre-empted by the Trails Act.
5. The Conservancy will add the three lines to its general liability policy after the consummation of railbanking (see Exhibit B for Certificate of Insurance). Further, K.S.A. 58-3214 limits liability for adjacent landowners and K.S.A. 58-3203 limits liability for trail managers.

It is the position of SRTC that railbanking is not a "taking" because the original landowners were compensated by the railroads and the transportation easements are merely being maintained under railbanking. Whenever railbanking is revoked, the easements and the underlying real estate will revert under Kansas law to the adjoining landowners. Essentially, this reversionary process is merely being postponed, so there is no real taking.

The Conservancy has shown that it is a responsible organization. SRTC has submitted to the STB a Statement of Willingness to Assume Financial Responsibility in which it agrees to assume "full responsibility for management of, for any legal liability arising out of the transfer or use of, and for payment of any taxes that may be levied or assessed on the right-of-way." Its Southwind Rail Trail division and Allen County have completed and successfully maintained the Southwind Rail-Trail which stretches between Iola and Humboldt in Allen County, Kansas. It should be pointed out that the residents of Norton and Oberlin are excited about these trail projects in Northwest Kansas and are already making plans to build these trails. Thank you for paying attention to our comments.

Sincerely yours,



Clark H. Coan
Corporate Secretary

cc: Sen. Pat Roberts, Sen. Jerry Moran, Rep. Tim Huelskamp, Craig Snider, Chair, Phillips County Commission, Karl Morell, Esq., SRTC President Larry Ross, and Tom McFarland, J.D.

Exhibit A

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE PROTESTS OF
KANZA RAIL-TRAILS CONSERVANCY, INC.
FOR TAXES PAID FOR VARIOUS TAX YEARS IN
VARIOUS COUNTIES IN KANSAS

Docket Nos. 2005-498-PR et seq
December 21, 2007

Docket Nos. See Attachment

ORDER

Now the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

After considering all of the evidence presented, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties as tax protests have been filed pursuant to K.S.A. 79-2005, and amendments thereto.
2. The subject matter of these tax protests is described as follows:

See Exhibit "A" – Pages 6 through 33 – for a complete list of counties, tax years at issue and parcel identification numbers.
3. In lieu of having a hearing, the parties agreed to submit the above-described matters on briefs and a joint stipulation of facts. On September 5, 2006, the Board received the stipulation of facts and Brief and Memo from Kanza Rails-Trails Conservancy, Inc., hereafter referred to as "Kanza". On October 5, 2006, the Board received a Response Brief from Dickinson, Franklin, Lyon, Miami, Morris, and Osage Counties. The Board received an Amicus Curiae brief from the Kansas Farm Bureau in support of the Counties on October 10, 2006. On October 23, 2006, the Board received Kanza's Reply Brief. On August 3, 2007, Shawnee County notified the Board of its adoption and incorporation of briefs filed jointly by the other counties and the Kansas Farm Bureau.
4. The Board hereby incorporates the parties Stipulation of Facts (SOF) into the instant order.
5. Kanza is a Kansas not-for-profit corporation, formerly known as Kansas Horseman's Foundation. SOF No. 1.
6. Kanza is the grantee of a railroad right-of-way that was formerly owned by Missouri Pacific Railroad Company under the Rails to Trails Act (National Trails System Act), 16 U.S.C. § 1247(d). SOF No. 3.

7. Kanza does not own the servient estate of the parcels at issue in these appeals. The servient estate is the fee ownership of the real estate burdened with the railroad right-of-way. SOF Nos. 10 and 11.
8. Kanza does not claim ownership of the servient estate of the parcels at issue. The fee simple landowners are totally excluded from the possession, benefits, and enjoyment of the land burdened by the right-of-way. SOF Nos. 12 and 13.
9. Kanza contends that the railroad right-of-way easement under the Rails to Trails Act are neither real nor tangible personal property and are therefore not subject to ad valorem taxation pursuant to Article 11, Section 1 of the Kansas Constitution.
10. The Counties contend that Kanza assumed the obligation to pay the tax burden on the property it received under the National Trails System Act. The Counties further contend that all property is taxable unless the use of the property is of a nature specifically exempted in Article 11, Section 1(b) of the Kansas Constitution. Additionally, the Counties indicate that Kanza's use of the property has not been shown to be a tax-exempt use.
11. K.S.A. 79-1460 provides, in pertinent part, that, "[f]or the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of deeds or county clerk . . ."
12. K.S.A. 79-1439 provides, in pertinent part, as follows:

All real and tangible personal property which is subject to general ad valorem taxation shall be appraised uniformly and equally as to class and, unless otherwise specified herein, shall be appraised at its fair market value, as defined in K.S.A. 79-503a, and amendments thereto. . . .
13. Regarding the payment of taxes, the National Trails System Act, 16 U.S.C. § 1247(d) states, in pertinent part, as follows:

The Secretary of Transportation, the Chairman of the Interstate Commerce Commission, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.), shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to

encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. **If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Commission shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use. (Emphasis added.)**

14. The Board finds that Kanza, pursuant to the National Trails System Act, is the interim owner of various railroad right-of-way easements that were originally acquired for railroad purposes. The Board finds no evidence in the record to indicate that either the railways, as prior owner, or Kanza, as interim use owner, owns any of the subject real estate. In *Swisher v. Central Kansas Conservancy*, the U.S. District Court of Kansas made a similar finding regarding the property at issue in *In re Protests of Central Kansas Conservancy, Inc.*, Docket Nos. 2002-4998-PR, et al. stating:

"The Union Pacific Railroad Company could not grant, deed or convey by its Donative Quit Claim Deed dated April 16, 1996 to Central Kansas Conservancy, Inc. any greater interest in the real estate described in said deed than was owned by the Union Pacific Railroad Company at the time of its conveyance, with the qualifications that under federal law . . . [CKC] could use the rail-banked right-of-way as a recreational trail subject to a future railroad reactivation."

Swisher v. Central Kansas Conservancy, United States District Court (KS), No. 97-1488-WEB, September 13, 1999, Memorandum and Order, page 5.

15. The tax assessments protested herein consists of property classified as real property which is owned and operated by a not-for-profit organization. No other property or other tax assessments are before the Board at present. The

evidence presented indicates that Kanza owns various right-of-way easements yet no real estate. Consequently, the Board finds that various Counties' actions in listing Kanza as owner of the instant taxable real property and issuance of tax assessments to Kanza were in error.

16. Under the National Trails System Act, a trail sponsor must assume responsibility for, among other things, "the payment of any and all taxes that may be levied or assessed" against a railroad right-of-way that has been converted to interim trail use/rail banking. 16 U.S.C. § 1247(d). While the previous owners of the instant right-of-way easement may have been liable for taxes as a public utility, the Board finds that Kanza is not a K.S.A. 79-5a01 public utility. In response to the above quoted language from the National Trails System Act, the Board finds that instant tax assessments have been levied against real estate and not Kanza's right-of-way easements.
17. Based on the foregoing, the Board finds that the instant assessments are in error. Therefore, the Board concludes that all ad valorem real property taxes paid by Kanza to commence the instant protests are hereby void and shall be refunded to Kanza in their entirety pursuant to the provisions of K.S.A. 79-2005.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that, for the reasons stated above, the above findings and conclusions shall be, and the same are hereby made orders of the Board.

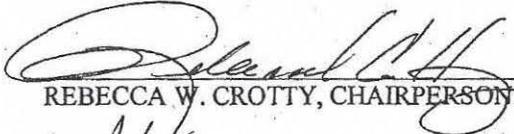
IT IS FURTHER ORDERED that all ad valorem real property taxes paid by Kanza for the 2004 to 2006 tax years to commence the instant protests are hereby void and shall be refunded to Kanza in their entirety pursuant to the provisions of K.S.A. 79-2005.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

IT IS SO ORDERED



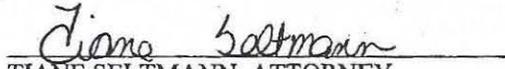
THE BOARD OF TAX APPEALS


REBECCA W. CROTTY, CHAIRPERSON


J. FRED KUBIK, MEMBER


BRUCE F. LARKIN, MEMBER


JOELENE R. ALLEN, SECRETARY


TIANE SELTMANN, ATTORNEY



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/23/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McKay Insurance Agency, Inc. 106 East Main Street P O Box 151 Knoxville IA 50138	CONTACT NAME: Lacie Lambert PHONE (A/C, No, Ext): (641) 842-2135 E-MAIL ADDRESS: llambert@mckayinsagency.com	FAX (A/C, No): (641) 828-2013
	INSURER(S) AFFORDING COVERAGE	
INSURED SUNFLOWER RAIL-TRAILS CONSERVANCY INC PO BOX 442043 LAWRENCE KS 66044-2043	INSURER A Nationwide Mutual Insurance Co NAIC # 23787	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER: CL15102344443** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS			
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			ACPGLO7126344918	10/7/2015	10/7/2016	EACH OCCURRENCE \$ 1,000,000			
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000			
	GEN'L AGGREGATE LIMIT APPLIES PER:									MED EXP (Any one person) \$
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC									PERSONAL & ADV INJURY \$ 1,000,000
	OTHER:									GENERAL AGGREGATE \$ 2,000,000
										PRODUCTS - COMPI/OP AGG \$ 2,000,000
										\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$			
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$			
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/>	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$			
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/>	<input type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$			
							\$			
	UMBRELLA LIAB						EACH OCCURRENCE \$			
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/>	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$			
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						\$			
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER			
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N				E.L. EACH ACCIDENT \$			
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$			
							E.L. DISEASE - POLICY LIMIT \$			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Proof of Insurance. Southwind Rail Trail

CERTIFICATE HOLDER Allen County Clerk 1 N. Washington lola, KS 66749	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Scott Ziller/TANYA 

EXHIBIT 2

MINUTES

July 26, 2014
and
February 22, 2014

Sunflower Rail-Trails Conservancy
Board of Directors

Sunflower Rail-Trails Conservancy

Board of Directors

July 26, 2014

Directors in Attendance: Clark Coan, Jean Kuzubowski, Carol O'Neal, Steve O'Neal, Fred Peterson, Larry Ross, and Richard Stein. Also present were ex officio member Peggy Stein and guests Michel Cullen, Eric Johnson and Hoyt Hillman.

The meeting was called to order at 11:00 a.m. by President Ross in Lindsborg.

I. Meadowlark Trail Update

- a. Michele Cullen, President of Central Kansas Conservancy, gave an update on the Meadowlark and Sunflower SF Trails. Screenings are down for the first mile going south from Lindsborg on the Meadowlark Trail and it is expected that by Labor Day there will be 2.5 miles down. From 10-15 volunteers turn out for volunteer work days. There is an overlook and a 105' bridge. They raised a total of \$80,000 from the Sunflower Foundation and Mingenback Foundation. KDWPT provided a wood chipper and there have been a total of 852 volunteer hours since Good Friday of 2013. Screenings are costing \$25,000/mile which S. O'Neal said is high. He was able to get them for \$15,000/mile. There are four miles done going North from McPherson from Moccasin Rd. to Pawnee Rd. The Sunflower SF Trail is completed from .75 mile from the center of Galva going east and west for a total of 1.5 miles.

II. Western Sky Trail

- a. Coan reported that Radiant Electric Co-op paid \$16,400 for an easement for a five-mile powerline along the trail within the ROW. He is waiting for a recorded copy of the easement. Ross reported that Enbridge gave \$5,000 for a grant plus the \$10,000 for the easement for the pipeline near Chanute. Coan said that he is communicating with an attorney with Atmos Energy about another pipeline which crosses the trail. Hillman said we should talk to the WRATS watershed manager to see if he would be the project manager.

III. Quivira Trail

- a. Coan reported that the Barton County attorney sent a letter asking for \$18,000 for past weed control, and \$46,000 for back taxes. Coan stated that the weed bill was contracted by the Iowa Trails Council and not SRTC. Mike Mills doesn't think we should have to pay the real estate tax bill because easements are not taxed in Kansas. Cullen suggested that a trail in or near Lyons might be possible because they already have a popular trail in town.
- b. C. O'Neal stated there are two options for the parcels in Holyrood. We could grant the City the whole tract between Frank St. and Penn Ave. or a smaller tract surrounding the buildings. It was suggested that we ask the City to mow the whole ROW in town in exchange for the land. Coan will check to see who owns the small tract north of the ROW and see if they want to buy it.
- c. A motion by C. O'Neal/Stein to deed the land south of the trail ROW from Frank St. to Penn Ave. to the City if the City is agreeable to a maintenance agreement, passed unanimously.

IV. Built Environment Conference

- a. Ross said he and Weiner would staff a booth at the Built Environment Conference in Sept. in Wichita. C. O'Neal will print up 200 copies of the updated brochure and she and Coan will work on another one that might appeal to city/park officials. She'll be reimbursed for the card stock.

V. Great Osage Trail/Iola Trails

- a. Ross reported that he talked to Brad Snow with WATCO about securing the Oxford-Wellington Trail deed (after a three-year delay). Snow didn't promise anything. Hillman said Ross should work with one of his assistants. Coan reported that Iola is becoming a trails capital and the Conservancy will hold easements on three trails, including the Southwind Rail Trail and Lehigh Portland Rail Trail. Construction on the latter is slated for this October.

VI. Railbanking Initiative

- a. S. O'Neal gave a report on his survey of the Northwest Kansas rail lines.

VII. Allocation of funds received

- a. Coan stated that the \$5,000 grant from Enbridge has to be reserved for the Western Sky Trail and Barton County has yet to demand a performance bond. A motion by C. O'Neal/Stein to immediately pay McFarland and authorize payment of insurance premium when it comes due, passed unanimously.

VIII. Treasurer's Report

- a. C. O'Neal gave the Treasurer's Report. Due to the easement payments and grant received, there is a record high balance of \$31,878.18. There have been no donations or members in 2014.

IX. Grants/Fundraising

- a. Coan reported he hadn't heard the results of the Kansas Health Foundation Recognition Grant request. Cullen said she thinks trail projects don't qualify for this round. Ross still hasn't met with Doug Brehm at the INTRUST Bank to see about a match. Hillman said the Greenways Alliance would consider our request, but they have recently made some rather large allocations.

X. Trail Reports

- a. **Short Grass Prairie Trail**—Stein reported that he is getting absolutely no support in Coldwater and doesn't know where to go from here. It's only one mile from the town to the lake. Coan suggested hiring Doug Walker to be a Project Manager and get that section done. Then momentum will build.
- b. **Smoky Hill Recreation Trail**—Peterson reported that he'll hear in October if Scenic Byways funding will be available for the trail. He would like CKC to be the project manager, but has not discussed this with them.
- c. **Blue River Rail Trail**—S. O'Neal said that Marshall County Connections has the funds to finish the trail in Kansas this year.
- d. **Flint Hills Nature Trail**—Coan reported that \$1.9 million in federal Transportation Alternatives funds were approved for Phase II of the trail project. This will fund the trail from US 75 to Admire. Phase I construction starts in early fall between Osawatomie to US

75. Once both are completed, the trail will be open between Osawatomie and Council Grove, a distance of 90 miles.

- e. **Prairie Sunset Trail**—Ross reported that Prairie Travelers is trying to get deeds to extend the trail east into Wichita. The trail was railbanked, but the deeds were apparently never recorded.

The next meeting will be held October 11 in Topeka. There being no further business, the meeting was adjourned at 2:00 p.m.

Respectfully submitted by,

Clark H. Coan
Corporate Secretary

Sunflower Rail-Trails Conservancy

Board of Directors

February 22, 2014

Persons in Attendance: Clark Coan, Carol O'Neal, Diane Novak, Fred Peterson, Richard Stein, and Chris Weiner. Also present was ex officio member Peggy Stein.

The meeting was called to order at 11:00 p.m. by Vice President Stein in Council Grove.

I. GreenWays Alliance

- a. The president of the organization would like to see the board in action before recommending that a grant be given to the organization.

II. Railbanking Possibilities

- a. **Crestline-Waco, MO.** Weiner surveyed part of the trail. He described its isolation and that part has been converted to cropland. Coan said that the ORLT has been paying taxes on it and that also presents a problem. It was agreed that there are too many negatives associated with this rail line including it being isolated, portions being converted to farmland, and a Superfund site. A motion made by Weiner/Peterson to not accept the line from the Ozark Regional Land Trust passed unanimously.
- b. **Oberlin-Norton-Almena.** It was agreed that this line has possibilities. C. O'Neal said that there is a convention center in Oberlin and Norton has a prison, so the towns are economically viable and their populations are fairly stable. Coan stated it would go by the Prairie Dog State Park. Coan will ask McFarland to provide a set amount for railbanking and when it will have to be done.

III. Southwind Rail Trail Update

- a. Weiner read a report from Dave and Lisa Fontaine about the trail. Efforts are underway to build a side trail to a park at Lake Bassola and to extend the trail from the southern trailhead in Humboldt to the river park. Coan said that the county attorney could not provide any benefits for SRTC or the landowners by annexation. A motion by Novak/Weiner to not approve annexation by the City of Bassett was unanimously approved. The Monarch quarry shouldn't affect the trail as a buffer with trees will be left.

IV. Kansas Sampler

- a. C. O'Neal said that the booth really needs six people to staff it properly and so we should pass on having a booth this year. It was agreed to put out brochures at the Prairie Spirit Trail and possibly the City of Iola or Southeast Kansas tourism tables. It was mentioned that a Q code for apps could be put on the next brochure.

V. Website

- a. Weiner said that we need a current website that is updated regularly. It would be best to put it on a cloud with a new domain name such as *www.sunflowerrailtrails.org*. Weiner will explore transferring the files (if they are in HMTL) so we won't have to start from scratch in building a new website. For time being he will send updates to the webmaster and have her add them. C. O'Neal said we should continue the domain name for one more year.

VI. Holyrood Buildings

- a. Sunflower does not have the deed to the parcel with the two buildings. C. O'Neal said it's possible the Iowa Trails Council has the deed as we haven't been billed for taxes. Coan will check into this. C. O'Neal stated that we could probably avoid having a land survey if each party paid one-half of title insurance.

VII. Flanagan South Pipeline Crossing

- a. Coan read a report from Randy Rasa about the pipeline crossing and a statement from an article in Planet Kansas that described the number of oil spills associated with the company. Enbridge hasn't restored the railroad bed and drainage to its original condition. They apparently built the pipeline without buying an easement from SRTC. Coan will pursue payment and restoration of the trail. A volunteer reported that a company put a power line right down the middle of the railroad bed. Coan will check into this as well.

VIII. Trail Reports

- a. **Short Grass Prairie Trail**—Stein reported that anyone who supports the trail is shunned. Some local residents would help once it gets going, but they don't want to initiate it. Local people on the ground are necessary for the trail to be built.
- b. **Western Sky Trail**—Weiner reported that he emailed various people including college and high school teachers trying to gauge support for the trail but didn't get a single response. Neosho County illegally sold some parcels to adjacents in a tax sale, so opposition is strong.
- c. **Smoky Hill Recreation Trail**—Peterson reported that there will be a Heartland Byways Conference in Manhattan in April. He'll attend the day which features marketing. The byways plan consultants will survey the byways this spring as part of the planning process for the new Byways Plan. They are looking for trail linkages.
- d. **Blue River Rail Trail**—C. O'Neal reported that the Sunflower Foundation will provide a \$30,000 grant to finish the trail to the Nebraska line once the match is found. Purchase of the old depot from the railroad and surrounding land makes it easier to build a trail from the Blue River Rail Trail trailhead to the downtown and the recreational path in the park where a new swimming pool is being built.

The next meeting will be held June 14 in Augusta. There being no further business, the meeting was adjourned at 1:45 p.m.

Respectfully submitted by,

Clark H. Coan
Corporate Secretary

EXHIBIT 3

September 2, 2015

Sunflower Rails-to-Trails Conservancy, Inc.

STATEMENT OF
WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

LAW OFFICE
THOMAS F MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

239126

ENTERED
Office of Proceedings
September 2, 2015
Part of
Public Record

THOMAS F MCFARLAND

September 2, 2015

By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: *Docket No. AB-1032X, Nebraska, Kansas & Colorado Railway, LLC --
Abandonment Exemption -- in Decatur, Norton, and Phillips Counties, Kansas
and Harlan County, Nebraska*

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

Dear Ms. Brown:

In order to establish interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 with respect to the right-of-way owned and operated by Nebraska, Kansas & Colorado Railway, LLC (NKCR), Sunflower Rails-to-Trails Conservancy, Inc. (Sunflower) is willing to assume full responsibility for (1) managing the right-of-way; (2) any legal liability arising out of the transfer or use of the right-of-way; and (3) the payment of any and all taxes that may be levied or assessed against the right-of-way.

The property extends (1) between Milepost 3.35 at or near Orleans, NE and Milepost 29.84 at or near Alma, KS; (2) between Milepost 47.23 at or near Reager, KS and Milepost 78.05 at or near Oberlin, KS; and (3) the Norton Spur located in Norton, KS (The Rail Line). The Rail Line was the subject of a Notice of Exemption of abandonment filed by NKCR on June 12, 2015 in STB Docket No. AB-1032X, *Nebraska, Kansas & Colorado Railway, LLC -- Abandonment Exemption -- in Decatur, Norton and Phillips Counties, KS and Harlan County, NE*. A map of the property depicting the right-of-way is attached.

Sunflower acknowledges that use of the right-of-way is subject to its continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

FEE RECEIVED
September 2, 2015
SURFACE

FILED
September 2, 2015
SURFACE

THOMAS F. McFARLAND

Ms. Cynthia T. Brown, Chief
September 2, 2015
Page 2

A copy of this Statement is being served on the attorney for NKCR on the same day that it is being served on the Board.

A check is attached in the amount of \$300 to cover the filing fee.

Respectfully submitted,

Tom McFarland

THOMAS F. McFARLAND
*Attorney for Sunflower Rails-to-Trails
Conservancy, Inc.*

TMcF.mg 1627 e/STB1

cc: Karl Morell, Esq., by e-mail to kmorell@bjllp.com
Mr. Larry Ross, by e-mail to larryross7133@yahoo.com

*Larry Brown
Sunflower Rails To Trails*