

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
August 2, 2012
Part of

Public Record

MISSOURI PACIFIC RAILROAD COMPANY – ABANDONMENT EXEMPTION – IN MORRIS & DICKINSON COUNTIES, KANSAS))))	Docket No. AB-3 (Sub-No. 121X)
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**KANZA RAIL TRAILS CONSERVANCY, INC.’S REPLY IN OPPOSITION TO
ADVERSE PETITION TO PARTIALLY VACATE NOTICE OF INTERIM TRAIL USE**

COMES NOW Kanza Rail-Trails Conservancy, Inc. (“Kanza”) and for its Reply in Opposition to Petitioners, Bonnie and Jim Bowman’s (“Petitioners”) Petition to Partially Vacate Notice of Interim Trail Use states:

Question Presented: Should the STB partially vacate a NITU establishing Kanza as the interim trail user, based upon a disputed sale of two tracts of land which Petitioners contend transferred full-width right-of-ways; and pursuant to Petitioners’ request should the STB, after vacating the NITU, condition that the disputed tracts be subject to reactivation of rail service?

Introduction

This Petition to Partially Vacate is based upon a disputed land transaction, in which Petitioners claim that the Kansas Horseman Foundation, Inc. (“KHF”), which changed its name to Kanza, transferred certain real property to Bowman Livestock Equipment, Inc. (“Bowman Livestock”).¹ Kanza is the responsible party for approximately 117 miles of railbanked trail known as the Flint Hills Nature Trail and approximately 38 miles of trail known as the Landon

¹ KHF is n/k/a Kanza. Therefore, references to Kanza and KHF are interchangeable. However, Kanza has attempted to refer to KHF for actions prior to the name change, and Kanza for actions subsequent to the name change.

Nature Trail. The NITU for the section of trail which is currently in dispute was served July 25, 1997.²

The STB explained the procedural history of this proceeding in the Decision and NITU served July 25, 1997, as follows:

In Docket No. AB-3 (Sub-No. 121X), MP filed a notice under 49 CFR 1152, Subpart F—*Exempt Abandonments* to abandon an approximately 26.57-mile portion of its Hoisington Subdivision between the end of the line at milepost 425.0 near Council Grove and milepost 451.57 near Herington, in Morris and Dickinson Counties, KS. A notice of the exemption was served March 2, 1995, and published in the *Federal Register* on March 3, 1995 (60 FR 11995-96). On March 31, 1995, a decision and notice of interim trail use or abandonment (NITU) was served that reopened the proceeding to implement interim trail use/rail banking under 49 CFR 1152.29 and provided for a 180-day period for MP to negotiate an agreement with Rails-to-Trails Conservancy (RTC). Qualified entities other than RTC were also invited to file requests for interim trail use/rail banking. FN3 [Noting a public use condition has expired] By decision served October 20, 1995, the NITU negotiation period was extended for an additional 180 days, through March 27, 1996. By decision and notice of interim trail use or abandonment served April 22, 1996, the proceeding was reopened and the NITU served March 31, 1995, was vacated, and Seranata was substituted as the new trail user. FN4 [noting a historic condition remains in effect]. By decision served October 20, 1995, the negotiation period was extended to March 27, 1996.

In the Decision and NITU served July 25, 1997, KHF was substituted for Seranata as the new trail user.

Although not entirely clear from the Petition, it appears that Petitioners are claiming that the quit claim deed which was purportedly from KHF to Bowman Livestock conveyed a full-width right-of-way, thus severing the trail and terminating trail use. The quit claim deed is referred to as the “Bowman Livestock Deed.” Petitioners, who claim to have received title to the

² Petitioners fail to identify the NITU they are seeking to vacate, and Kanza is left to guess that Petitioners are seeking to vacate the NITU served in this matter on July 25, 1997. This NITU was consolidated with the NITU issued in Missouri Pacific R.R. Co.— Abandonment Exemption – In Osage, Lyon and Morris Counties, KS, AB-3 (Sub-No. 111X) and the CITU issued in Missouri Pacific R.R. Co. – Abandonment – In Miami, Franklin, and Osage Counties, KS, AB-3 (Sub-No. 115).

right-of-way from Bowman Livestock, also by quit claim deed, are now seeking to have the NITU vacated with respect to two parcels of land. The two parcels of land are referred to as “the Disputed Tracts.” However, Petitioners admit that it is possible for rail service to be restored and are also asking that the STB impose a condition on the proposed order vacating the NITU that Petitioners and/or their successors in interest be prohibited from constructing buildings on the right-of-way, and that the right-of-way be subject to reactivation of rail service.

There are numerous issues regarding the validity of the purported quit claim deed from KHF to Bowman Livestock, which Petitioners attach as Exhibit D (“Bowman Livestock Deed”). Petitioners claim to have received title to the Disputed Tracts also by quit claim deed from Bowman Livestock to Petitioners.³

The issues in this case concern whether Charles Benjamin, the person whom Petitioners claim signed the Real Estate Contract and Bowman Livestock Deed on behalf of the KHF, had the authority to and actually transferred a full-width right-of-way to Bowman Livestock on behalf of KHF. Because Mr. Benjamin and the KHF did not have authority to transfer full-width right-of-way under Kansas law, the Bowman deed is void, and the STB should not vacate the NITU.

Argument and Authorities

Although Petitioner’s fail to articulate the regulatory basis for their request to vacate the NITU, it appears that Petitioners claim that rail service cannot be restored on the Disputed Tracts. It is Petitioners’ burden to prove that active rail service cannot be restored. Central Kansas Railway, LLC – Abandonment Exemption – In Marion & McPherson Counties, KS,

³ There are also questions as to the validity of this deed. Kansas law requires consideration for contracts to be valid. K.S.A. § 16-1701. The Joint Tenancy Corporation Deed between Bowman Livestock and Petitioners, states “There is no consideration for this conveyance.” Such deed is also attached to the Petition as Exhibit D. Thus, there is a question whether Petitioners have standing or sufficient interest to bring this Petition.

AB406 (Sub No. 6X) (Served May 8, 2001) at *5. As explained below, Petitioners do not meet this burden. In fact, Petitioners are asking that the STB impose a condition on them that allows reactivation of rail service. Therefore, it is clear that Petitioners accept the fact that rail service can be restored on the Disputed Tracts.

Furthermore, Mr. Benjamin was not an officer or director of KHF, and did not have authority to transfer a full-width right-of-way to Bowman Livestock. In addition, the Bowman Livestock deed is invalid pursuant to Kansas law, and the property rights provided to the KHF placed restrictions on transferring a full length right-of-way and terminating trail use. Thus, the KHF could not transfer a right it did not possess. For those and the other reasons explained below, Petitioners fail to meet their burden to demonstrate that the trail cannot be restored to rail service.

A. No statute, regulation, rule, case or STB decision provides the STB with the authority to enter the order being sought by Petitioners.

Petitioners fail to cite any statute, regulation, rule, case or decision of the STB upon which they are relying for the relief they are seeking. Because Petitioners fail to cite any authority upon which they are relying, Kanza and the STB are left to guess the source of their claimed relief.

In their claim for relief in their Petition, Petitioners “request that the STB vacate the Notice of Interim Trail Use for that portion of the trail described above in Dickinson County, Kansas, consistent with the restrictions set out in the above paragraph.” The “restrictions set out in the above paragraph” are: “the Bowmans will agree not to build any structures within a minimum width corridor on the railroad right of way. Such restriction shall become part of any deed the Bowmans may give to a purchaser of the tracts. Therefore, should MP ever decide to reactivate its rail line on the tracts, there would be no impediment to subsequent construction.”

Thus, Petitioners acknowledge that the tracts in question in this case may be subject to reactivation, and Petitioners agree not to build any structure that would act as an impediment to reactivation of the line. Petitioners merely want the trail use condition lifted, so Petitioners can utilize the tracts as they see fit. Essentially what Petitioners are asking is that they be substituted as interim users on the right-of-way, but without any obligation for public use as a trail or assumption of financial responsibility on their part. No law provides for such relief.

The closest law is 49 C.F.R. 1152.29(f) which allows substitution of interim trail users, if the current and future trail users jointly file the NITU, statement to assume financial responsibility, and state the date responsibility for the right-of-way will transfer. Petitioners have not followed those conditions because Petitioners are not seeking substitution as an interim trail user; they are seeking substitution as interim user, who does not intend to provide a trail. Such a substitution is simply not permitted.

B. Petitioners have failed to clearly establish that the line can no longer be restored to rail service.

This Petition to Partially Vacate an NITU is based upon a purported sale of full-width right-of-ways, which is disputed by Kanza. “It is well settled that the interpretation of deeds and the determination of who owns good title are issues of State law that are outside the expertise of this Board.” See Central Kan. Railway, LLC – Abandonment Exemption – In Marion & McPherson Counties, KS, STB Docket No. AB-406 (Sub. No. 6X) (Service Date December 8, 1999) (declining to reopen or revoke “the NITU, until it can be clearly established that the line can no longer be railbanked.”). Furthermore, issues relating to real property rights are within the *exclusive jurisdiction* of the state. Kansas City Pub. Ser. Frgt. Operation – Exemption – Abandonment in Jackson County, Missouri, 7 I.C.C.2d 216, 225-26 (1990) (emphasis added).

No Kansas state court has determined title to the disputed tracts. Therefore this Petition is premature, and the STB should dismiss this Petition.

Additionally, Petitioners fail to identify the location, by milepost, legal description, survey or otherwise, of the right-of-way it is seeking to have vacated. Therefore, Petitioners' Petition fails to provide specific information to allow Kanza to respond, and the Petition should be dismissed.

The specific location of the right-of-way Petitioners are seeking to have vacated in this case is of utmost importance. The issues raised by Petitioners allege that KHF n/k/a Kanza sold tracts of land to Bowman Livestock. Those purported sales are identified by legal description, and Petitioners attach what purports to be a picture of the tracts. From the legal description and pictures it is evident that the tracts include property which is in excess of the minimum allowable right-of-way for reactivation of rail service. Because sale of excess right-of-way is irrelevant to whether rail service can be restored, whether excess right-of-way was transferred is irrelevant to these proceedings. See Central Kan. Railway, LLC – Abandonment Exemption – In Marion & McPherson Counties, KS, STB Docket No. AB-406 (Sub. No. 6X) FN 8 (Service Date December 8, 1999) (“partial width land sales do not show an intent to abandon or constitute a de facto abandonment of the line”). Because Petitioners fail to identify the location of the right-of-way, it is impossible to determine whether the purported sale included only excess property or whether it purports to be a full-width sale.

In addition, as explained in Section A above, Petitioners admit that the line can be restored to rail service. Petitioners merely want to be the interim user.

Petitioners have not clearly established that the line can no longer be railbanked. Therefore, the STB should dismiss Petitioners' Petition.

C. The deed to Bowman Livestock was invalid under Kansas law (K.S.A. § 17-6003) because Mr. Benjamin was not an authorized officer of KHF nor was he acting as an agent under a power of attorney.

Under Kansas law, a corporation can only transfer property by an authorized officer of the corporation or by an agent acting under a power of attorney. K.S.A. § 17-6003(g). Mr. Benjamin was not an officer of KHF nor was he acting as an agent of KHF under a power of attorney. Mr. Benjamin was a consultant working with KHF to develop the trail. It should also be noted that Mr. Benjamin resigned his position with KHF the day after the purported sale to Bowman Livestock. Kanza is attempting to locate accounting records relating to this purported sale to determine whether Mr. Benjamin kept the \$180.00 from this purported sale.

The annual reports of KHF which were filed August 21, 2000 and September 12, 2001 are attached hereto as Exhibits 1 and 2. These annual reports list the officers of KHF and are the annual reports filed immediately before and after the purported sale to Bowman Livestock. Mr. Benjamin is not listed as an officer.

An examination of the purported real estate contract and the Bowman Livestock Deed, which are attached to the Petition, indicate that Mr. Benjamin was purportedly acting on authority as an officer of KHF. Because Mr. Benjamin was not a corporate officer of KHF he had no authority to take acts as an officer, and the real estate contract and the Bowman Livestock Deed are null and void pursuant to K.S.A. 17-6003(g). As the Bowman Livestock Deed was null and void, it transferred nothing to Bowman Livestock. Consequently, there are no grounds to vacate the NITU.

D. The Bowman Livestock deed is void pursuant to K.S.A. § 66-525 because the deed was not made with the intent that Bowman Livestock maintain railroad operations on the right-of-way.

Under Kansas law, an owner or user of a railroad line cannot transfer ownership of such railroad line other than to the owner of the servient estate unless the “conveyance is made with a manifestation or intent that the railroad company’s successor shall maintain railroad operations on such right-of-way.” K.S.A. § 66-525(f). Because there is no indication that both Bowman Livestock and Petitioners are owners of a servient estate and the Bowman Livestock Deed did not contain any manifestation or intent that Bowman Livestock and Petitioners maintain railroad operations, the Bowman Livestock Deed is “null and void.” K.S.A. § 66-525(f). As the Bowman Livestock Deed is null and void, there are no grounds to vacate the NITU.

E. Neither Bowman Livestock nor Petitioners were bona fide purchasers under Kansas law.

In their Petition, Petitioners claim that they are bona fide purchasers of the right-of-way. However, under Kansas law one who receives property by quit claim deed is not a bona fide purchaser with respect to adverse equities discoverable by reasonable diligence. See Schwalm v. Deanhardt, 21 Kan. App.2d 667, 906 P.2d 167 (Kan. App. 1995). Reasonable diligence in this case would have included searching the title records, which clearly indicate that title is subject to the conditions of the NITU and 16 U.S.C. § 1247, which require notice to the STB before trail use can be terminated. Furthermore, reasonable diligence would have required Bowman Livestock to inquire as to Mr. Benjamin’s authority to sell any property and especially a full-width right-of-way. Such diligence includes requiring agency contracts, powers of attorney, corporate resolutions and the use of a corporate seal. In fact, a brief review of the annual report attached as Exhibit 1, would have indicated that Mr. Benjamin was not a corporate officer of KHF. Therefore, reasonable diligence would have shown that Mr. Benjamin had no authority to

transfer property of KHF as a corporate officer. Furthermore, there is a location on the Bowman Livestock Deed form, which indicates where the corporate seal should be placed; yet no corporate seal was used. This lack of a corporate seal on a deed that provided for a corporate seal put Bowman Livestock on notice that Mr. Benjamin was not acting with corporate authority from KHF. As such, Petitioners are precluded from asserting that they are bona fide purchasers.

F. There is no evidence that KHF intended or had the right to transfer a full-width right-of-way.

There is no evidence that KHF purported to sell a full-width right-of-way, which would necessarily include an intention of the KHF to terminate trail use. As required by the NITU and 42 C.F.R. § 1152.29(d)(2), in order for any trail user to terminate trail use, such user “must send the Board a copy of the NITU and request that it be vacated on a certain date.” KHF did not follow this procedure in connection with the purported sale to Bowman Livestock. Therefore, it is evident that KHF did not intend or have the right to terminate trail use by a full-width right-of-way sale.

Moreover, KHF was established for the purpose of developing and operating the trail, including the Disputed Tracts. It is simply illogical that KHF would sever the trail and terminate trail use potentially jeopardizing the NITU for two small tracts of land, along approximately 117 miles of trail for the unconscionable purchase price of \$180.00.

Furthermore, Petitioners have not clearly established that the purported sale was intended to sell a full-width right-of-way as opposed to excess right-of-way. Petitioners have failed to provide the most basic description of the property which they are claiming should be vacated. The only description they have provided is that the property lies between milepost 425 near Council Grove and milepost 451.57 near Herington in Morris and Dickinson Counties, Kansas. Without a survey and description of the property, it is impossible to tell whether the Bowman

Livestock deed purported to transfer excess right-of-way or full-width right of way. Unless there is a full-width right-of-way abandonment or reactivation, the regulations regarding vacation of NITUs set forth in 49 C.F.R. 1152.29 do not apply. See Mo. Pac. R.R. Co. – Abandonment Exemption – In Red River and Bowie Counties, Tex., AB3 (Sub No. 137X) (Service Date October 6, 2011) (holding that it was unnecessary to modify a NITU where a portion of the railbanked line was being transferred and the right-of-way remaining was sufficient for reactivation of rail service).

In addition, Petitioners have failed to establish what right or title KHF even had in the Disputed Tracts. Kanza received the property rights authorized by 16 U.S.C. § 1247(d) and the regulations which were adopted as authorized by that section. Petitioners have failed to provide a complete title abstract and opinion of title which could permit a factfinder to determine the rights acquired by KHF and subsequently Petitioners, if any. Petitioners have even failed to supply the deed granted by the Missouri Pacific Railroad to the Rail Trails Conservancy. Furthermore, the deed Petitioners did attach between Serenata Farm School of Equestrian Arts and the KHF is incomplete. Petitioners only attached pages 169, 174 and 181 from the Deed Book. Thus, it is evident that Petitioners have not provided the complete deed. Therefore, it is impossible for Petitioners to clearly establish that KHF even had a right to transfer a full-width right-of-way. Consequently, the Petition fails.

G. Petitioners' statements regarding development of the trail, taxes and insurance are irrelevant, immaterial and impertinent to this proceeding and should be stricken pursuant to 49 C.F.R. § 1104.8.

Throughout their Petition, Petitioners make statements and attach exhibits that are inaccurate, irrelevant, immaterial and impertinent to these proceedings and appear to be nothing more than an attempt to criticize and disparage Kanza. These statements relate to the payment of

taxes, trail development and insurance. Because these statements and exhibits are irrelevant, immaterial and impertinent, they should be stricken pursuant to 49 C.F.R. 1104.8, which permits the STB to strike from any document irrelevant, immaterial and impertinent matter.

i. Statements regarding taxes should be stricken because Kansas law does not require Kanza to pay taxes.

Throughout their Petition, Petitioners make claims regarding the payment of taxes regarding the right-of-way, which are not relevant to any matter because Kanza is not required to pay taxes under Kansas law. *See* Board of Tax Appeals Order attached as Exhibit 3. These statements include: “KHF had never paid any taxes on the tracts since becoming the trail user in 1997;” and that Bowman Livestock and/or the Bowmans “have paid KHF’s back taxes.” What Petitioners fail to acknowledge is that under Kansas law, Kanza was not required to pay taxes. Therefore, any statements regarding non-payment of taxes by Kanza or the KHF are misleading and irrelevant. As such, they should be stricken from Petitioners’ Petition.

ii. Statements regarding the status of development of the trail and exhibits purporting to show the trail should be stricken because they are inaccurate and irrelevant to this proceeding.

Petitioners also make claims regarding development of the right-of-way into a trail. The STB does not have a time frame for development nor does it supply guidelines for trail use. As the D.C. Circuit Court recognized in Jost v. STB, 194 F.3d 79 (D.C. Cir. 1999), “the Trails Act does not require a trail to be ‘developed’ in any particular way’ and ‘there is no absolute time limit for how quickly a trail must be developed to its intended level of use.’” Id. at 90 (citation omitted). Furthermore, the STB has determined that “[t]here can be differing types or levels of trail use, and this agency has never become involved in determining the type or level of trail for a specific right-of-way.” Central Kansas Railway, LLC – Abandonment Exemption – In Marion & McPherson Counties, KS, AB406 (Sub No. 6X) (Served May 8, 2001) FN 10.

Consequently, any statements made regarding development or condition of the right-of-way are irrelevant, immaterial and impertinent and should be stricken. Additionally, it should be noted that Kanza disagrees with these statements and controverts their accuracy. However, the STB should not spend time and resources making factual determinations that are unnecessary, and should strike these irrelevant statements. These statements are:

- “There has never been any trail activity on the parcels and prior to the Bowmans’ acquisition, the right-of-way was overgrown and not maintained in any way.”
- “Shortly before arriving at the station yard, there is an extremely overgrown portion of the trail containing an old bridge. The lack of upkeep on the bridge with trees growing through it, constitutes a severe liability.”
- The photographs attached as Exhibit E to the Petition are irrelevant to the Bowman tracts which are in issue. Therefore, they are irrelevant and should be stricken.

Kanza further disputes the statement that “[v]acating the Notice of Interim Trail Use for this section of the right of way will not disrupt any adjoining trails because no trails have been developed on either side of the Bowman parcels.” At the outset, it should be noted that the question is not whether adjoining trails will be disrupted, but whether rail service can be reactivated across the trail. It is true that there are connections to the national rail system on either side of the Disputed Tracts. However, severing the Disputed Tracts will create a break in the trail, which should not be permitted. Furthermore, the statement that “no trails have been developed on either side of the Bowman parcels” is inaccurate. Although Kanza has decided to open approximately 75 of the 117 miles of trail to the general public, there are different levels of development across the entire trail. *See also* Michael Pearce, *A Trail Built for Traversing the*

Flint Hills, The Wichita Eagle, June 2, 2012 (describing development of the trail), attached as Exhibit 4. As the STB does not become involved in types and levels of development of trails, Petitioners inaccurate comments regarding the state of development are irrelevant, immaterial and impertinent and should be stricken.

iii. Kanza maintains liability insurance. Therefore, statements that imply Kanza does not maintain liability insurance should be stricken.

Petitioners also make a claim regarding insurance which inaccurately implies that Kanza does not maintain liability insurance. Petitioners state: “Kanza Rail is mandated to carry liability insurance for such conditions and if it does not, the railroad may be liable for any injury there.” This statement leaves the impression that Kanza does not carry liability insurance which is inaccurate. See Certificate of Liability Insurance attached as Exhibit 5.

iv. References to other litigation are misleading and irrelevant because such litigation has been dismissed with prejudice.

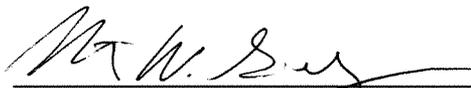
Additionally, Petitioners make inaccurate and irrelevant comments regarding a wholly separate case involving Kanza and Miami County, Kansas. Petitioners state: “Miami County, Kansas was suing Kanza regarding lack of maintenance on its trail within that county.” This statement is inaccurate. The issue in *Miami County Bd. of Com’rs v. Kanza Rail Trails Conservancy, Inc.* 292 Kan. 285, 255 P.3d 1186 (Kan. 2011), did not involve trail maintenance, but involved a bona fide dispute whether a Kansas state law requiring a trail operator to post a bond was preempted by federal law. *Id.* at 286, 255 P.3d at 1992. Once the Kansas Supreme Court decided the issue, Kanza and Miami County quickly came to an agreement, and Miami County filed a dismissal with prejudice and satisfaction of judgment a copy of which is attached as Exhibit 6.

Conclusion

Because Petitioners have not clearly established that the rail line on the Disputed Tracts cannot be reactivated in rail service, and there is no legal basis for the relief being sought by Petitioners, the STB should dismiss the Petition and decline to vacate the NITU.

Respectfully submitted,

DYSART TAYLOR COTTER
McMONIGLE & MONTEMORE, P.C.

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ATTORNEYS FOR KANZA RAIL-
TRAILS CONSERVANCY, INC.

CERTIFICATE OF MAILING

I certify that a copy of the above and foregoing was served via electronic mail or deposited in the United States Mail, postage prepaid and properly addressed if no electronic mail address was available, on the 2nd day of August 2012, to:

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ATTORNEY FOR KANZA RAIL-TRAILS
CONSERVANCY

2384030

State of Kansas/Not For Profit Corporate Annual Report Form NP

Note: Please type or complete in ink.

- 1. Tax Closing Date 12/31/1999
Month/Day/Year
- 2. Due Date 06/15/2000
- 3. State of Incorporation Kansas

If the information is not preprinted in the box, enter the corporation ID number, the exact corporation name and mailing address. If the mailing address given on the preprinted form has changed, correct the address in the box.

Corporation ID No. 48-1191515

Kansas Horseman Foundation
P. O. Box 1642
Lawrence, KS 66044-8642

Do not write in this space.

(Complete all items or make corrections to existing information in the space provided below.)

4. Officers	Name	Residential Address	City, State, Zip Code	Director Y/N
Pres.	Bud Newell	1895 E. 56 Road	Lecompton, Kansas 66050	
Sec.	Denise Waddle	1971 Texas Road	Rantoul, Kansas 66079	
Treas.	Mike Adams	214 SW Jewell	Topeka, Kansas 66606	

5. Board of Directors	Name (if not listed above)	Residential Address	City, State, Zip Code
	Olivia Huddleson	2926 HiWay 9	Vernon, Kansas 66544
	Rurf Waddle	1971 Texas Road	Rantoul, Kansas 66079
	Steve Lindsey	217 West Nyrtle	Independence, Kansas 67301
	Frank Burkdahl	21748 S Hoch Rd	Osage City, Kansas 66523

(If additional space is needed, attach a separate sheet.)

Please answer either 6. or 7. below.

Shares Issued (Common or Preferred)	Stock Paid Up
N/A	N/A

Number of Members -0-

FEIN No. 48-1191515
(Federal Employer Identification Number)

Phone No. 785-841-5902

E-mail cmb@cjnetworks.com

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2384030	DD



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10. Does the corporation own or lease land in Kansas that is suitable for use in agriculture?

This question does not apply to: 1). Tracts of land of less than 10 acres; 2). Contiguous tracts of land that in the aggregate are less than 10 acres; 3). State-assessed railroad operating property.

YES _____ If yes, complete the section below. NO X If no, skip the section below and go to section 11.

		Value	Where Located
Within Kansas	Agricultural	\$	
	Nonagricultural	\$	
Outside Kansas	Agricultural	\$	
	Nonagricultural	\$	

a. Provide information on each lot, tract or parcel of agricultural land in Kansas that is owned or leased by the corporation. If extra space is needed, attach additional pages.

Location of tract or lot					Was this tract acquired after July 1, 1987?		Purpose for which land is owned or leased	Indicate for each tract or parcel if the tract is ...		
County	Section	Township	Range	Number of acres in tract or lot	Yes	No		OWNED BY the corporation	LEASED TO the corporation	LEASED BY the corporation

b. Provide total agricultural acres for:

- 1. Total acres owned and operated
- 2. Total acres owned and operated and irrigated
- 3. Total acres leased by the corporation
- 4. Total acres leased by the corporation and irrigated
- 5. Total acres leased to the corporation
- 6. Total acres leased to the corporation and irrigated

Perjury is intentionally, knowingly and falsely subscribing as true and correct under penalty of perjury any statements given in this report. Perjury is a severity level 9, nonperson felony, which carries a sentence of six months imprisonment and a fine not exceeding \$100,000.

11. I declare (or verify, certify or state) under penalty of perjury that the annual report is true and correct.

Executed on this 14th day of September, 2000 Year


Authorized Signature

A. E. BUD Newell
Name of Signer (printed or typed)

President, Board of Directors
Title/Position

A corporation is required to file this form every year. Do you want an annual report form sent to you next year? (Check one)

Yes, please send me an annual report form next year

No, I already receive an annual report form from another source.

Please include a \$20 privilege fee. Do not send cash. Make check payable to Secretary of State.

Kansas Secretary of State
Not for Profit Corporate Annual Report

NP

1. Tax Closing Date 12/31/00
 2. Due Date 6/15/01
 3. State of Incorporation Kansas

Corporation ID No. <u>2384030</u>
Corporation Name <u>Kansas Horseman Foundation, Inc.</u>
Mailing Address <u>c/o Rock of Life Church</u> <u>1300 C of E Drive, Suite 2</u> <u>Emporia, KS 66801</u>

09-12-2001 050 5308 2384030	12:31:00 \$. 01 DD
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4. Name	Residential Address	Officers	City, State, Zip Code	Director Y/N
Pres. Michael Mingenback	1853 Road P5		Emporia, KS 66801	Y
Sec. William H. Boirst	705 Washington Park		Emporia, KS 66801	Y
Treas. Ida Denise Waddle	1971 Texas Road		Rantoul, KS 66079	Y

Board of Directors		
5. Name (if not listed above)	Residential Address	City, State, Zip Code
Clark H. Coan	307 Park Hill Terr.	Lawrence, KS 66046
Darrell Jones	820 Union	Emporia, KS 66801
Dan Pickert	1022 W. 4th	Ottawa, KS 66067
Larry Rhodes	5319 SW Lancaster	Topeka, KS 66604

Please answer either 6. or 7.

6. Shares Issued (Common or Preferred) Stock Paid Up

	\$
	\$
	\$
	\$

7. Number of Members 11

8. F.E.I.N. 48-1191515
(Federal Employer Identification Number)

9. Telephone No. 785/842-3458 or 316/343-1154

KANSAS SECRETARY OF STATE
 NON-CERTIFIED WEB COPY
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10. Does the corporation own or lease land in Kansas that is suitable for use in agriculture? YES _____ Complete the section below NO X
 This question does not apply to: 1). Tracts of land of less than 10 acres; 2). Contiguous tracts of land that in the aggregate are less than 10 acres; 3). State-assessed railroad operating property.

		Value	Where Located
Within Kansas	Agricultural	\$	
	Nonagricultural	\$	
Outside Kansas	Agricultural	\$	
	Nonagricultural	\$	

a. Provide information on each lot, tract or parcel of agricultural land in Kansas that is owned or leased by the corporation. If extra space is needed, attach additional pages.

Location of tract or lot					Was this tract acquired after July 1, 1981?		Purpose for which land is owned or leased	Indicate for each tract or parcel if the tract is...		
County	Section	Township	Range	Number of acres in tract or lot	Yes	No		OWNED BY the corporation	LEASED TO the corporation	LEASED BY the corporation

- b. Provide total agricultural acres for:
- Total acres owned and operated
 - Total acres owned and operated *and* irrigated
 - Total acres leased *by* the corporation
 - Total acres leased *by* the corporation *and* irrigated
 - Total acres leased *to* the corporation
 - Total acres leased *to* the corporation *and* irrigated

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct.

Executed on the 10th of September, 2001.
 Day Month Year


 Authorized Signature

Michael Mingenback
 Name of Signer (printed or typed)
President
 Title/Position

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. 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.

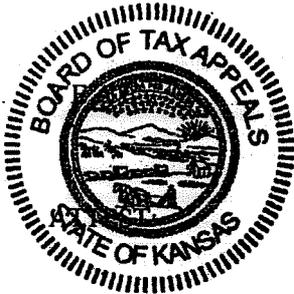
16. Under the National Trails System Act, a trail sponsor must assume responsibility for, among other things, "the payment of any and all taxes that may be levied or assessed" against a railroad right-of-way that has been converted to interim trail use/rail banking. 16 U.S.C. § 1247(d). While the previous 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.

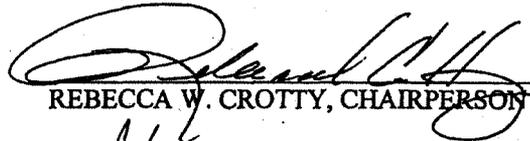
IT IS FURTHER ORDERED that all ad valorem real property taxes paid by Kanza for the 2004 to 2006 tax years to commence the instant protests are hereby void and shall be refunded to Kanza in their entirety pursuant to the provisions of K.S.A. 79-2005.

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



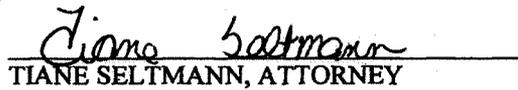
THE BOARD OF TAX APPEALS


REBECCA W. CROTTY, CHAIRPERSON


J. FRED KUBIK, MEMBER


BRUCE F. LARKIN, MEMBER


JOELENE R. ALLEN, SECRETARY


TIANE SELTMANN, ATTORNEY



Posted on Sat, Jun. 02, 2012

A trail built for traversing the Flint Hills

By Michael Pearce
The Wichita Eagle

From the edge of town, Scott Allen can ride his bicycle east for about 60 miles.

The smooth trail splits lush farm fields and passes beneath long, leafy tunnels of over-hanging trees.

It goes over bridges that split the tops of some ancient elms that grow along the banks of a clear stream far below.

Allen's favorite sections, though, are where the Flint Hills Nature Trail lives up to its name.

"This is one of the hidden gems of the Flint Hills," said Allen, as he passed a wide vista of waving prairie grass and vibrant wild flowers. "You can go 6½ miles without crossing a road."

Someday, he'll be able to ride much farther on the trail.

Allen is a member of the Kanza Rail-Trails Conservancy, a private group that's been working on the 117-mile trail for about 10 years.

According to Doug Walker, conservancy president, it's the sixth-longest rail trail in the nation and the largest in private hands.

The route got its start in the 1870s, when railroads pushed westward to serve a spreading civilization.

By the mid-1990s, the line had been abandoned because of low profits and rail trails were permitted.

When complete, the Flint Hills Nature Trail will run from Herington, which is 25 miles west of Council Grove, to Osawatomie, which is about 12 miles from the Missouri border.

The section from Council Grove eastward 60 miles to Quenemo is the longest stretch of the about 80 miles that are currently open.

Funding from private foundations, corporations and individuals has been fairly consistent.

"We've raised over \$800,000 in about 10 years," Walker said. "People who have given money in the past are usually willing to give again once they see what we've accomplished with the initial gift."

Allen said volunteers are usually found in and around the towns the trail crosses. Some donate a lot.

Allen, a Council Grove manufacturer, has his pickup loaded with tools so he can work on the trail over his lunch hours.

Frank Meyer, of Herington, purchased an old road grader so he could work and level many miles of trail.

On a Wednesday tour, Allen showed how original railroad bridges were covered for easy crossing by hikers, bikers and horseback riders.

In most places, the trail is covered with crushed and packed limestone.

Walker and Allen look forward to the days when people can make multi-day biking, hiking or horseback riding trips along the trail.

The diversity of the surrounding geography and topography should be a good draw.

"It's kind of amazing how much the trail changes from season to season," Walker said. "It's not the same trail in the fall as in the spring or in the winter. It seems like there's always something new to see. It never gets old."

There's hope the trail could lead to other trails.

The Flint Hills Nature Trail already intersects the Prairie Spirit Rail Trail, a 50-mile state park trail that goes south from Ottawa. It also meets the Landon Nature Trail, another conservancy project of about 40 miles near Topeka.

Allen hopes for even more.

"It's kind of a goal to connect our trail to Kansas City, and people in Kansas City are trying to find a way to connect with the (237-mile) Katy Trail," Allen said. "When that happens, you could bike all the way to St. Louis. That would be fun."

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/1/2012

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: Terri Van Ryswyk PHONE (A/C No. Ext): (641) 842-2135 FAX (A/C No.): (641) 828-2013 E-MAIL ADDRESS: tvanryswyk@mckayinsagency.com													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A Nationwide Mutual Insurance Co</td> <td>23787</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A Nationwide Mutual Insurance Co	23787	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER D:														
INSURER E:														
INSURER F:														
INSURED Kanza Rail-Trails Conservancy, Inc. PO Box 3863 Topeka KS 66604-6863														

COVERAGES **CERTIFICATE NUMBER:** CL128128390 **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 SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		ACP7143290664	5/9/2012	5/9/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ NO COVERAG PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER Proof of Insurance	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 Dan McKay/TERRI

IN THE DISTRICT COURT OF MIAMI COUNTY, KANSAS

FILED
MIAMI COUNTY KANSAS
2011 SEP 12 AM 11:56
SUSAN M. JONES
CLERK OF THE DISTRICT COURT

MIAMI COUNTY BOARD OF)
COUNTY COMMISSIONERS,)

Plaintiff,)

v.)

KANZA RAIL-TRAILS)
CONSERVANCY, INC., et al.,)

Defendants.)

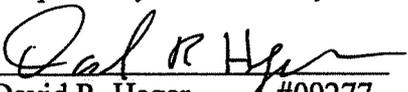
Case No. 06-CV-01

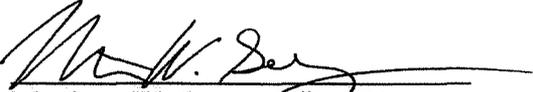
SATISFACTION OF JUDGMENT AND
STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Plaintiff Miami County Board of County Commissioners and Defendants Kanza Rail-Trails Conservancy, Inc., Douglas Walker and Frank Meyer by and through counsel and hereby state that the Journal Entry of Judgment and the Mandate of the Kansas Supreme Court have been satisfied.

The parties further stipulate that this action is to be dismissed with prejudice.

Respectfully Submitted by:


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Miami County Counselor
201 S. Pearl St., Ste. 200
Paola, Kansas 66071
Phone: (913) 294-2914
Fax: (913)294-9163
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Trails Conservancy, Inc., Douglas
Walker & Frank Meyer