

RAILS-TO-TRAILS CONVERSIONS IN  
OKLAHOMA: POLITICS, PRACTICES  
AND FUTURE

By

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## CHAPTER I

### INTRODUCTION

This study was designed to review the historical issues associated with the State of Oklahoma and the development of a long distance rail-to-trail during the years of 1988-1991. Rail-to-trails is the utilization of abandoned railroad lines by carriers who decide to abandon a section of rail due to the line being unprofitable (Nevel & Harnik, 1990). The abandoned railroad segment is still used as a transportation corridor, but instead of moving freight or passengers on the rail, participants move themselves in various outdoor activities (Ferster, 2006).

#### **Trail Location**

The proposed trail of interest to be examined in this study is the Union Pacific's holding of the railroad segment that extended from mile post 174 at the town of Dewar, OK to mile post 297.6 at the town of Durant. The rail line crossed through the towns of: Henryetta, Dustin, Lamar, Calvin, Atwood, Allen, Stears, Steedman, Lula, Tupelo, Clarita, Wapanucka, Kenefic, and Durant (Oklahoma Department of Transportation, 1989). This abandonment would have created an instate long distance trail of 123 miles, giving Oklahoma the fifth longest rails-to-trail conversion in the United States (Rails-to-Trails Conservancy, 2008).

#### **Why are trails important?**

According to Steve Winkelman of the Center for Clean Air Policy, increased use of combustion vehicles will counteract enhancements in fuel efficiency and alternative fuel use (2007). The previous statement in conjunction with the Federal Highway Administrations findings that short trips under three miles represent nearly half of all trips that people take utilizing automobiles shows a possible need for connecting trails with localized resources (Federal Highway Administration, 2006).

Beyond the development of trails for environmental improvement due to a reduction in carbon emission from automobiles, trails create better places to live by “preserving and creating open spaces, encouraging physical fitness and healthy lifestyles, strengthening local economies, and protecting the environment” (Rails-to-Trails Conservancy, N.D., p. 1). Trails provide an economical method for regular exercise for those who live in any area in close proximity to a trail (Rails-to-Trails Conservancy). Trails can also support the local economies by increasing revenue to local shops for supplies and other items involved with recreational activities. Trails also help reduce pollution by getting people engaged in methods of travel that reduce air pollution (Rails-to-Trails Conservancy).

Trails are important in preserving history and culture. An example of this is the Lewis and Clark trail. The Lewis and Clark trail has an eastern terminus on the Mississippi River (Illinois/Missouri) at Camp Wood/Camp River Dubois and a western terminus at Cape Disappointment (National Park Service, 2006). The trail passes through 11 states and more than 100 historic sites (National Park Service, 2007). This type of preservation of the past allows future generations to understand by “providing an



opportunity to actually experience the places where these historical events occurred” (Rails-to-Trails Conservancy, N.D., p. 1).

### **Why are rails-to-trails important?**

For approximately one hundred years the railroad was the driving force that moved both people and supplies. This movement of materials also helped in the development of communities along the rail lines (Rails-to-Trails Conservancy, N.D.). The transportation corridors that canals and railroads created to move people and goods from one town to another can now be utilized for various recreational purposes while still preserving the historical corridors. An example of this preservation can be seen along the Blackwater Canyon Rail-Trail in West Virginia: “The U.S. Forest Service dug out 30 beehive-shaped coke ovens along the trail. The ovens baked coal at high temperatures for shipment to Pittsburgh steel mills and other industrial sites at the beginning of the last century” (Rails-to-Trails Conservancy, p. 3). The coke ovens now have interpretive signs explaining their use to those who utilize the trail. This project now provides users of the trail with a glimpse of West Virginia’s history with coal mining (Rails-to-Trails Conservancy).

The West Virginia Blackwater Canyon Rail-Trail is just one example of how history can be presented in an experiential method. Other examples are the 58 trestles built to move lumber from the mountains on the Alamogordo and Sacramento Mountain Railway, 1.7 mile Taft Tunnel between the Montana/Idaho border, or the Stone Arch Bridge in Minneapolis (Rails-to-Trails Conservancy, N.D.).

The historical component of rail-to-trails is just one aspect to examine. Another aspect was the development and creation of the transportation corridor. The development

of the corridors were completed by either eminent domain (U.S. Constitution, 2008), purchasing of the land (fee-simple) (Garner, 2000), or purchasing a right to utilize an area of property from the owner to operate the rail line (easement) (Garner). The development of these transportation corridors had allowed the railroads to come within twenty-five miles of the homes of most Americans (Stover, 1970). These corridors connected America.

### **Statement of Problem**

This study is based on the premise that a rail-to-trail conversion is a greater benefit than hindrance to the communities and management agencies involved (Moore, Gitelson, & Graefe, 1994). The study will also examine how the rail-to-trails process was developed and how it unfolded during the years in question.

Objectives for the research

- Identify problems or indicators through a review of literature for landowners or land managers associated with a rails-to-trails conversion.
- Collect data from courthouses and landowners on proposed land use segments (fee simple vs. easement) along the proposed abandoned rail line (Henryetta to Durant).
- Identify possible economic impacts related to the rails-to-trails development.

### **Significance of Study**

This study will add to the development of a green infrastructure when establishing trails or greenways through the abandonment of a railroad segment. The study will also

assist land managers in establishing who shall have oversight on rails-to-trails conversions and established rail-to-trails.

### **List of Abbreviations Found in Study**

AHPA - Archeological and Historical Preservation Act

CITU - Certificate of Interim Trail Use

EA - Environmental Assessment

EIS - Environmental Impact Statement

HB - House Bill

HCR - House Concurrent Resolution

ICC - Interstate Commerce Commission

LULU - Locally Unwanted Land Use

MO&G - Missouri, Oklahoma and Gulf Railway Company

MPRR - Missouri Pacific Rail Road

NEPA - National Environmental Policy Act

NHPA - National Historical Preservation Act

NIMBY - Not In My Back Yard

OFB - Oklahoma Farm Bureau

OTRD - Oklahoma Tourism and Recreation Department

OTS - Oklahoma Trails System Act

RTC - Rails to Trails Conservancy

SJR - Senate Joint Resolution

UP - Union Pacific

## CHAPTER II

### REVIEW OF LITERATURE

#### **Outdoor recreation**

Outdoor recreation has been discussed in various venues with regard to how resources are utilized and how visitors behave. In 1962, the Outdoor Recreation Resources Review Commission (ORRRC) report defined outdoor recreation as: “recreation that takes place away from the residence of the person” (USDA, N.D.). A narrower definition is offered by Ibrahim and Cordes in a two component definition: The natural environment is an important focus of the recreation experience; and a relationship between the participant and the natural environment must be either interaction or appreciative in nature (Ibrahim & Cordes, 2002). Outdoor recreation has also been defined as “using many mediums and has an outcome of personal and spiritual growth” (Prouty, Panicucci, & Collinson, 2007, p. 13). Virden defines outdoor recreation as “the array of recreation behaviors, activities, and experience that occur in or depend on the natural environment for their fulfillment” (Virden, 2006, p. 309).

As one of the first efforts to inventory recreation resources and describe outdoor activity, outdoor recreation participation surveys were conducted by ORRRC in the 1960s (Cordell K. , 2004). Demographic information provided by the surveys showed that those over the age of twelve who were not institutionalized were described by the following demographics: 40 percent of the respondents were living in rural areas, 90

percent were non-Hispanic white, 56 percent were not high school graduates, and 45 million families had just one car (Outdoor Recreation Resources Review Commission, 1962). This provided information about the most popular outdoor activities of the time: Picnicking, driving for pleasure, and swimming (Outdoor Recreation Resources Review Commission, 1962). ORRRC was charged with completing 27 reports that focused on various topics related to outdoor recreation. Report 19 of the National Survey on Recreation (NRS) provided the baseline information regarding participation trends in outdoor activities and the environment (Cordell K. , 2004).

Since the inception of the ORRRC there have been five NSR surveys (1962, 1965, 1972, 1977, and 1982-83) and two National Surveys on Recreation and the Environment (NSRE) (1994-95, and 2000) (Cordell, et al., 1999; Cordell K. , 2004). The surveys were almost identical with the key differences being interest tied to management of the public lands or the environment (Cordell K. , 2004). The development and purpose of the NSRE is to survey people sixteen years of age and older in the United States and to estimate activity levels in various outdoor activities. The fundamental use of this survey is to allow the United States Forest Service (USFS) to examine trends in participation data. The participation information is then utilized for the National Assessment of Outdoor Recreation and Wilderness which is completed every ten years (Cordell, et al., 1999). The assessment is required by the 1974 Forest and Rangeland Renewable Resources Planning Act (RPA) (USDA Forest Service, 2001). The NSRE is also important in assisting with planning and managing of recreational services and facilities on the local, state, federal, and private levels (Cordell K. , 2004).

Analyzing trends utilizing the NSRE from 1982 to 2001, the agencies found that the five activities with the greatest increase from 1982 to 2001 were viewing/photographing birds (22 million to 72.9 million: 231.4 percent increase); day hiking (26 million to 76.3 million: 193.5 percent increase); backpacking (9 million to 25.4 million: 182.2 percent increase); snowmobiling (6 million to 13.5 million: 125.0 percent increase); and primitive camping (18 million to 38 million: 111.1 percent increase) (Cordell K. , 2004). The survey defined participation as engaging in the activity at least one time in the past twelve months. Each of the previous activities increased in frequency regardless of sex, age, race, or geographical location (Cordell K. , 2004). A reduction in participation was found in backpacking, primitive camping and day camping in the one to two days per year category from 1982 and 2001. The same activities (backpacking, primitive camping and day camping) were found to increase in all the other categorical time ranges: Three to ten days; eleven to twenty-five days; and twenty-five or more days (Cordell K. , 2004).

Regional differences were also taken into account with the NSRE survey. Cordell noted that, even though nine different regions in the United States were identified by the NSRE, the differences between regions were minor regarding which activities were chosen as the most popular outdoor activities (Cordell K. , 2004). The most popular activity or the activity of most frequent engagement, across all nine areas was walking for pleasure. The author suggests that this is based on the concept that “walking is a low-cost, low skill activity in which almost anyone can – in fact, almost everyone does – participate” (Cordell K. , 2004, p. 56). Other activities of interest for a majority of the regions were: outdoor family gatherings, nature centers, picnicking and sightseeing, and

viewing wildlife (Cordell K.). The aforementioned items were identified across all levels of education (less than high school to post graduate), income (below fifteen thousand annually to over one hundred thousand annually), and age (16-24 years old to 65 and over) (Cordell K.). When these factors were accounted for individually, walking was the number one choice of activities engaged in most frequently, followed by either family gatherings or sightseeing as the number two choice (Cordell K.). Another popular activity of interest to those responding was visiting historic sites. Visiting historical sites was listed in all categorical levels except that of the age group of 16-24 and among those respondents having less than a high school education.

Oklahoma is included in the west south central division. The other states in this division are Arkansas, Texas and Louisiana. The four most popular activities within this region at the time of the NSRE were: walking, family gatherings, visiting nature centers, and sightseeing, respectively. The three areas activities that showed the greatest increase for popular land-based activities for the west south central area were:

viewing/photographing wildlife (54.9 percent growth); backpacking (69.9 percent growth); and day-hiking (79.6 percent growth) (Cordell K.). As a result of the popularity of walking in outdoor settings, it is apparent that Americans need outdoor places in which to walk.

### **Significance of Trail Expansion**

As previously noted, the expansion of activities to the out of doors has been growing since the 1960s. Trails have been a functional aspect of this growth by providing greater opportunities for participants to be engaged in activities, especially when living in close proximity to a trail. As expansion of urban areas has increased over the past 100

years, the availability of green space has become more necessary. The industrial revolution created a population shift in the United States. In the early 1800s, six percent of the population lived in urban areas. By 1850 the proportion went up to fifteen percent; and by 1900, forty percent of Americans were living in urban areas. This growth trend has continued; in 2004 seventy-nine percent of the population lived within an urban area (Nadakavukaren, 2006). The U.S. Census defined an urbanized area in the United States as an urban area of 50,000 or more people. Urban areas with a population under 50,000 but greater than 2,500 are identified as urban clusters (U.S. Census Bureau, n.d.). The US Census Bureau defines an urban area as “a core census block group or blocks that have a population density of at least 1,000 people per square mile, and surrounding census blocks that have an overall density of at least 500 people per square mile” (U.S. Census Bureau, 2007, p. 3). Urban clusters prior to the 2000 census were identified as urban areas which were identified as places outside of urbanized areas that had a population greater than 2,500 people (U.S. Census Bureau, n.d.; Nadakavukaren, 2006).

As urban sprawl connects suburbs together to create larger mega-cities, this development of urbanization and population growth has led to the need for more public green spaces (Cunningham, Cunningham, & Saigo, 2005). Sustainable development through several of our faster growing U.S. cities (Austin, TX; Denver, CO; Portland, OR; and Los Angeles, CA) includes the “construction of greenways of protected trails for recreational activities” (Hilgenkamp, 2006, p. 366).

Natural corridors along marshes, wetlands, lakes, coastal beaches, and rivers are some of the locations that have been developed for trail use. Natural waterways that occur in urban areas have become viable locations for parks due to the zoning restrictions



placed on construction in a flood zone (Bentryn & Hay, 1976). Constructed corridors for urban necessity have been recycled for recreational corridors. Dams, levees, causeways, street rights-of-way, power and pipe line rights-of-way and abandoned railroads are all examples of reusable constructed land corridors (Bentryn & Hay).

When the populace defines a trail, that definition can carry several different connotations of what is expected (i.e., paved versus unpaved; accessible versus inaccessible; interpretive versus non interpretive; and so on). For this study's purpose, a trail will be defined by the Transportation Equality Act for the 21<sup>st</sup> Century (TEA-21) "as a thoroughfare or track across land or snow, used for recreational purposes in various pedestrian activities" (U.S. DOT, 2002, p. 151). According to the National Park Service there is not an overall definition of what a trail is in the United States. The National Park Service stated that:

"(O)ne of the best [definitions], used for national recreational trails is:... a travel way established either through construction or use which is passable by at least one or more of the following, including but not limited to: foot traffic, stock, watercraft, bicycles, in-line skates, wheelchairs, cross country skis, off-road recreation vehicles such as motorcycles, snowmobiles, ATV's and 4-wheel drive vehicles" (National Park Service, 2008, p. 1).

Although there is not a single definition for a trail, the previous definitions encompass the idea that it is a pathway established via construction or other means that allows passage by users in various methods.

### **Recreational Impacts Based in Environmental Perspectives**

During the 1960s, one means of engaging in outdoor recreation or outdoor pursuits was under the guise of conquering the land. While not necessarily outdoor recreation in a literal fashion, these efforts were a testament of man vs. nature. This helped to establish the idea of man being superior over the land. It can be seen as a

perceptual frame related to Manifest Destiny as the need of the participants to triumph over the land. This was not the only focus of recreational users, however. Many recreational users viewed the land from a conservationist framework, including those who participated in consumptive activities such as hunting or fishing. The societal framing of conservation was essential in the philosophy that the environment should be used for the greatest good for the greatest amount of people over the longest period of time (Brulle, 1996). At the other end of the spectrum, a preservationist framework was utilized by those participating in appreciative recreational activities such as hiking, photography, and camping in a natural environment without alterations (Dunlap & Hefferman, 1975).

The general public's actions while exploring nature resulted in extreme impacts within public use areas in both the front and back country areas. These impacts of public use created a need for change before users would essentially 'love the land to death'. In 1963, a research committee was charged with finding human problems related to the forest and natural resources. On the list were five critical issues; two of those issues were resource removal and recreational usage of public lands (Dunlap & Catton, 2002). The results of the impacts of public use were displaced wildlife, crowding on trails, and cultural site damage. The impact issues were directly related to a three-fold increase of visitors to public lands. Users could not continue previously accepted practices established by the conservation framework due to the increased number of visitors. The framework of preservation was not a feasible alternative either due to the amount of users that had a public right to access the designated areas (Hendee, Stankey, & Lucas, 1990). Dunlap's study had revealed that there was a greater association between those that

participated in appreciative activities with nature than those that participated in consumptive activities (Dunlap & Hefferman, 1975). Essentially, the mass number of visitors took its toll on the natural resources. The principal problem that land managers had to address was how to ‘preserve’ the land while allowing people to ‘use’ it.

The understanding of land managers to have a conservation approach to managing the outdoors can be seen in the United States Code (USC). Title sixteen of the USC addresses conservation issues in various areas within the environment. Chapter twenty seven of title sixteen of the USC addresses specifically the area of National Trails System (Cornell University, 2007).

### **National Trails System Act 1968**

The 1968 National Trails System Act (Trails Act) was created with the intent of developing a nationwide network of trails (Citizens Advisory Committee on Environmental Quality, 1975). This network of trails would be developed “(i) primarily, near the urban areas of the Nation, and (ii) secondarily, within scenic areas and along historical travel routes of the nation which are often more remotely located” (Iowa State University, n.d., p. 1). The Trails Act defined four categories of trails. The first category, National Scenic Trails (NST), provided recreational opportunities and enjoyment of significant qualities defined as scenic, historical, natural, or cultural attributes. One example of an NST is the Appalachian Trail (AT) which has a southern terminus at Springer Mountain, Georgia, and a northern terminus at Mount Katahdin, Maine. The second category is the National Historical Trails (NHT) which will travel along routes of historical importance. The third category is National Recreational Trails (NRT) intended to be those trails accessible to urban areas on federal, state, or private lands. The fourth

category is Connecting or Side Trails (CST); these trails provide access to other types of trails (Citizens Advisory Committee on Environmental Quality, 1975). For rails-to-trails conversions to occur under the legislative guise of the Trails Act, they must fall under the heading of an NRT since the land would be developed from private land.

### **Railroad Revitalization and Regulatory Reform Act 1976**

The grassroots movement of conversion of rails-to-trails was supported by Congress with the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act). The act sought to provide a financial platform so that the railroads could remain viable by selling abandoned rights-of-way for public good. The act did not provide railroad companies with the legal authority to convert abandoned corridors to public use. Essentially, the act imposed a 180-day disposition period that allowed interested agencies to purchase the rights-of-way (Rails-to-Trails Conservancy, 2006). The railroads also feared that they would lose the rights-of-way permanently to trail sponsors instead of being able to reclaim the easement if needed (Drumm, 1998). The issue of revisionary rights would be addressed in the National Trails System Act Amendment.

### **National Trails System Act Amendment 1983**

In 1983, Congress amended the 1968 National Trails System Act. This new piece of legislation, with the direction of ICC regulations, assisted both governmental and private agencies in converting railroad rights-of-way to recreational trail uses (Interstate Commerce Commission, 1993). Section 8(d) was the defining section that decreased the abandonment of rail lines and allowed for easier conversion to trails. This section stated that a railroad could release itself from an “unprofitable line by donating, selling, or leasing the right-of-way to a qualified private or public agency for interim use as a trail”

(Ferster, 2006, p. 3). The amendment became known as the Rails-to-Trails Act (R2T) (Rails-to-Trails Conservancy, 2006).

Prior to the 1983 R2T amendment of the 1968 Trails Act, an agency interested in converting the rail to a recreational trail was required to broker an agreement between the railroad and all adjacent landowners. Railroad easements would revert to the adjacent land owner if an agreement could not be reached (Interstate Commerce Commission, 1993). The 1983 amendment made this an easier process for those willing to do the conversion. The amendment removed the brokering of easement issues with the adjacent landowners; an agreement would only have to be reached between the railroad that was abandoning the railroad and the agency that would oversee the trail. One of the main objectives of the act was to preserve existing right-of-way corridors for future use and encourage energy efficient transportation uses via bicycle and walking. With the inception of the new amendment, the railroads could now restore or reactivate the rail service on the converted trail if it were deemed necessary (Drumm, 1998).

The combined effort of the ICC and the use of the R2T provided the involved agencies (whether private, state, or political subdivisions) the opportunity to communicate interest in voluntary agreements to use the railways for recreational uses rather than simply abandoning them (Drumm, 1998; Interstate Commerce Commission, 1993). This newly created act allowed easements and rights-of-way to stay intact rather than being dissolved into segments. This process is called rail banking. This use of rail banking prevents the line from being classified as abandoned since it is still a transportation corridor for pedestrians and is utilized for other recreational activities (Desaulniers, Ellis, Lamoreaux, Poling, & Richart, 1999).

The impact to an interested party willing to take over the rail banked railroad included the liability that came from inheriting the property. Identified issues were property taxes, management of the trail, and any other liability issues that would arise due to usage of the property (Rails-to-Trails Conservancy, 2007). The agencies that utilized this were able to rely on the provider of the land (railroads) to do a physical reclamation of the rails and discontinue service on the area covered by the agreement. This agreement would be enforced until a time in which a rail provider decided to resume rail service on the specified area (Interstate Commerce Commission, 1993). The trail advocate had to keep all bridges and trestles in place along the easement (Rails-to-Trails Conservancy, n.d.). Due to this last provision related to rail banking, an advocating trail agent could not construct any permanent structures on the right-of-way in the event that the trail reverted back to the railroad (Rails-to-Trails Conservancy, 2006).

### **Support of the Recreation Trails System**

In 1991, the Intermodal Surface Transportation Efficiency Act (ISTEA) (also known as the Symms National Recreational Act of 1991) was signed into law by President George Bush (Library of Congress, N.D.). The emphasis of ISTEA is found in section one within several declarations. ISTEA shall:

“...include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country”. (Library of Congress, N.D., p. 1).

“...consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nation's preeminent position in international commerce” (Library of Congress, N.D., p. 1).

“...consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nation's preeminent position in international commerce” (Library of Congress, N.D., p. 1).

ISTEA also helped with the financial development of the Recreation Trails System.

ISTEA was funded through the Federal-aid Highway Program. Section 1302 of ISTEA is titled “National Recreational Trails Funding Program” (RTP) (Library of Congress, N.D.). The intent of section 1302 is:

“Moneys made available under this part are to be used on trails and trail-related projects which have been planned and developed under the otherwise existing laws, policies and administrative procedures within each State, and which are identified in, or which further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor Recreation Plan required by the Land and Water Conservation Fund Act” (Library of Congress, N.D., p. 1).

The funding for the RTP from ISTEA for 1992 – 1997 was 180 million dollars (30 million dollars annually) (Library of Congress). Some of the uses for the monetary support of trail development are: “development of urban trail linkages near homes and workplaces; maintenance of existing recreational trails; restoration of areas from over usage; development of trail-side and trail-head facilities; accessibility of trails for all users; and acquisition of easements or trail corridors; acquisition of fee simple title properties” (Library of Congress, p. 1). Funding could not be utilized for condemnation of land or development of a motorized trail in areas where motorized vehicles were not allowed (Library of Congress).

ISTEA allocated the State of Oklahoma for RTP projects for the following amounts; 111,940 dollars in 1993; 250,229 dollars in 1996; and 247, 587 dollars in 1997. The total funding received in Oklahoma from ISTEA for RTP projects was 609,756 dollars (U.S. DOT, 2007).

To ensure that momentum was not lost in June of 1998 President Bill Clinton signed into law the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) (STPP, 2002). The TEA-21 increased overall funding by 40% from ISTEA. The monies allocated for the RTP for 1998-2003 was 270 million dollars; Thirty million for 1998, forty million for 1999, then fifty million annually for 2000-2003 (Dolesh, 2004). Oklahoma's total funding from ISTEA to TEA-21 increased by 55.6% (STPP, 2002). For the RTP program Oklahoma received: 497,309 dollars in 1998; 663,078 dollars in 1999; 963,176 dollars in 2000; 950,935 dollars in 2001; 903,527 dollars in 2002; 887,671 dollars in 2003; and 1.09 million dollars in 2004 (U.S. DOT, 2007). The State of Oklahoma was supported with 5.9 million dollars by TEA-21 funding for development of RTP trails.

As ISTEA successor was TEA-21, TEA-21 successor is the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU). For the focal point of this research the new act did not alter any of the previous acts in regard to the RTP developments, but did carry forth the verbiage of its predecessors.

For the RTP program under SAFETEA-LU Oklahoma has received: 1.05 million dollars in 2005; 1.23 million dollars in 2006; 1.32 million dollars in 2007; 1.41 million dollars in 2008; and will receive 1.5 million dollars in 2009 (U.S DOT, N.D.). The State of Oklahoma will be funded 6.51 million dollars by SAFETEA-LU funding for development of RTP trails. From 1993-2009 Oklahoma will have funded 13.08 million dollars for development of RTP trails.

### **Recreational Trails and Shared-Use Trails**

According to the U.S. Department of Transportation (U.S. DOT); "trails that are designed to provide a transportation function while supporting multiple users are called



shared-use paths” (U.S. DOT, 2001, pp. 12-4). The primary user on most shared-path are bicyclist, but other opportunities for walking, inline skating and others will exist (U.S. DOT, 2001, pp. 14-1). Due to the activities that occur on these trails, the surfacing of the trail will be “asphalt, concrete, or firmly packed crushed aggregate” (U.S. DOT, 2001, pp. 14-1). Rail-to-trails are an example of shared-use trails due to the crushed aggregate or ballast surface supports many different uses and users (U.S. DOT, 2001).

The U.S. DOT defines recreational trails as those trails “designed primarily for a recreational experience” (U.S. DOT, pp. 12-4). The U.S. DOT also states that recreational trails “should be designed to reach destinations or points of interest and travel through various environments” (U.S. DOT, 2001, pp. 15-1). Recreational trail surfaces “are most commonly composed of naturally occurring materials such as packed soil, grass, or rock” (U.S. DOT, 2001, pp. 15-8).

### **Railroads in the United States**

The Pacific Railway act of 1862 as enacted by the United States Congress provided the necessary catalyst to create a transcontinental railroad across the United States. President Lincoln believed that a transcontinental railroad would be an asset for connecting the Pacific Coast to the Union (National Park Service, 2002). The act authorized the Union Pacific Railroad to start construction from the Missouri river westward to the California border or until it met the Central Pacific (National Park Service). Government aid in the transcontinental project was done through land grants and subsidies. “The railroad was to have a 400 foot right-of-way through the public domain, plus 10 sections of land for every mile of track” (National Park Service, p. 1). The companies constructing the rail lines were to receive six percent, thirty year U.S.

Bonds with principal and interest repayable at maturity for each mile of track completed. The bond subsidy was fixed into the following categories: East of the Rockies and west of the Sierra mountains the construction company would receive 16,000 dollars per mile; between the Rockies and Sierra Mountains 32,000 dollars per mile; and 48,000 dollars per mile through the mountains (National Park Service).

Due to slow progress of the Union Pacific and the Central Pacific as a result of the Civil War and resistance in California, the two railroad companies were faced with bankruptcy and turned to Congress for assistance. This was the foundation for the Railroad Act of 1864 (National Park Service, 2002). The result of this act doubled the resources available to the companies from the previous act. The act reduced the right-of-way to 200 feet, but doubled the land grant portion (National Park Service, 2002). The companies would now receive 20 sections for every mile.

“The most immediate relief would be found in the Governmental relinquishment of the first lien on the railroad by authorizing the companies, as they received Government subsidy bonds, to issue equal amounts of their own six percent, thirty year bonds” (National Park Service, p. 1).

Essentially, the company bonds would now be the first mortgage on the railroad while the U.S. bonds would be a second mortgage on the road (National Park Service).

Railroads were instrumental in connecting the east and west coasts of the United States. The transcontinental line funded by the Railroad Act of 1862/1864 was completed in May 10<sup>th</sup> of 1869; it spanned 1800 miles of land between Omaha, NE and Sacramento, CA (Weisberger, Steel and Steam, 1975). The creation of a single transcontinental railroad would not be enough to transport goods and people from one side of the country to the other. By 1893 the United States had five transcontinental lines; railroad mileage jumped from 35,000 to just below 250,000 miles between 1865 and 1900 (Weisberger,

Steel and Steam, 1975). By 1871 the United States had granted more than 180 million public acres to 80 different railroads to stimulate the development of new lines (Weisberger, 1980).

“Although the functional purpose of the railroad was to move people and goods over long distances, some of the western lines were put into use for pure pleasure” (Wheeler, 1973, p. 166). The cars were used to assist in exploring the new western frontier, “where hunting, fishing, picnicking and even mountain climbing could be enjoyed with ease and comfort” (p. 166). A similar trend could be found in California when the short lines were being built so that riders would be able to ride to the fringe of the redwoods and picnic for the day (Wheeler).

Railroads have had a dramatic role in our history in the United States. World War I contributed to America’s highest railroad mileage in 1916; it is estimated that there were approximately 254,037 miles of rail routes that moved passengers and wartime cargo (Citizens Advisory Committee on Environmental Quality, 1975; Stover, 1970). During the First World War, the use of railroads was vital to the movement of necessary goods. Environmental conditions and excessive freight due to the war meant that the railroad industry was unable to keep up with demand. The inability for the railroad to maintain service created a revitalization of river traffic to move goods. This culminated with the appropriation of funds in 1922 to create canals on the Ohio and Upper Mississippi rivers which slowed the use of railroads, and thereby started the abandonment of rail segments (Stover, 1970). An abandonment of a railroad segment was done when service was discontinued or severely reduced on a segment of railroad making the line not

profitable to own. The abandonment process allows the railroad owner to reduce the financial liability for the company (Hey, 1997).

The railroads incurred a revival of traffic during World War II due to gasoline rationing, rubber shortages, and military usage of tankers. The increase of governmental usage to move goods, commercial freight, and passengers during wartime slowed the abandonment process (Stover, 1970). It should also be noted that, in 1942, the War Production Board, in cooperation with the Office of Defense Transportation, requested “that all railroads apply to the Commission for permission to abandon all tracks that was [sic] not being used so that the steel rails could be used abroad or at camp sites and war plants here or for scrap” (Interstate Commerce Commission, 1945, p. 5).

In 1968 the total railroad mileage in the United States was 209,000 miles (Stover, 1970). On average, no American was more than twenty five miles away from a railroad. The areas not fulfilling this distance average were sparsely populated (Stover, 1970). The changing landscape of interstate commerce would take its toll on the railroad system. With the increased development of the national highway system, the introduction of air freight, and the 1980’s Staggar Act, railroad companies once again increased the rate of abandoning unused or unprofitable lines (Ferster, 2006; Rails-to-Trails Conservancy, 2006).

### **Railroads in Oklahoma**

Railroad tracks were not laid in Oklahoma until almost thirteen months after the first transcontinental railroad had been completed. New treaties were established on July 16, 1866, that required the tribes within Indian Territory (specifically the Cherokee, Creek, Chickasaw and Choctaw tribes) to permit the development of the railroads

(Hofsommer, 1977). Although the first railroad spike was not placed until 1870, the United States Government had already employed a treaty with the Choctaw and Chickasaw Nations in 1855 that had established right-of-way provisions for railroads. Article 18 of the 1855 treaty noted that the government “shall have the right-of-way for railroads, or lines of telegraphs through the Choctaw and Chickasaw country” (Kappler, 1904, p. article 18). To provide motivation to create a continuous rail line from Kansas to Preston, Texas, the Thirty-Ninth Congress incorporated a competition in section eleven of the act. The competition was between Leavenworth, Lawrence, and Fort Gibson Railroad; Kansas and Neosho Valley Railroad; and the Union Pacific, Southern Branch. The first company to cross the southern boarder of Kansas at a designated point would garner the contract to build and maintain a rail line to Preston, Texas (Thirty-Ninth Congress, n.d.). The Kansas and Neosho Valley Railroad would have acquired the contract but the company crossed the state line into Quapaw territory where a treaty had not been established for a railroad. Due to this error, the Union Pacific, Southern Branch, crossed first and was given the contract to build across Indian Territory (Truman Area Community Network, 2002).

The first piece of track to be laid in Oklahoma (at that time Indian Territory) was by the Union Pacific, Southern Branch (which would later become the Missouri, Kansas, and Texas Railway Company or MK&T prior to placing the first rail in June of 1870) (Hofsommer, 1977). The MK&T would create a track that ran across Oklahoma from the northeast (outside of Chetopa, Kansas) to the southwest (Denison, Texas). A secondary railroad company, the Atlantic and Pacific Railroad (A&P), tied into the preexisting MK&T line at a northeastern point near Vinita in September 1871. The A&P ran in an

eastern fashion creating 'twin lines' (north to south and east to west) to cross Indian Territory (Hofsommer). The MK&T rail line crossed Indian Territory and into Denison, Texas, on December 25, 1872 (Hofsommer).

“Significantly, no Indian lands were to be sold to railroads in Indian Territory before 1907, and the tribes were successful in stopping the federal government from conveying to the companies lands granted them contingent upon Indian consent in 1866” (Hofsommer, 1977, p. 8). While land was retained by the natives prior to Oklahoma becoming a state, it was stated by C.J. Hillyer, an attorney for the Atlantic and Pacific, “that the need for commerce in the area and the obligation of the federal government to support national railroad growth should outweigh any treaty obligation” (Hofsommer, p. 9). C.J. Hillyer also stated that “...if they [the Indians] resisted settlement of the region by whites and the creation of industries to serve the railroad, they should be exterminated” (Hofsommer, p. 9). The Cherokee National Council, in 1866, provided the MK&T with one million acres of land to the west in return for one-half million dollars of stock related to the MK&T (Hofsommer). This option of selling land in return for stock was an acceptable means of negotiations within Article Six of the 1866 treaty (Kappler, Treaty with the Choctaw and Chickasaw, 1855, 1904).

As the use of interstate railroad lines declined across the country, Oklahoma's rail system was just beginning. Oklahoma saw a boom in railroad mileage during the 1930s oil era, running approximately 6,678 miles of track. This was approximately 2.7 percent of the entire track in the United States (Hofsommer, 1977; Interstate Commerce Commission, 1945). After the MK&T developed rail lines, other large railroads started developing rails in Oklahoma from 1870-1974. These included: Atchison, Topeka and

Santa Fe; Gulf Coast and Santa Fe; Panhandle and Santa Fe; Arkansas Western; Chicago, Rock Island and Pacific; Fort Smith and Van Buren; Fort Smith and Western; Hollis and Eastern; Kansas City Southern; Kansas, Oklahoma and Gulf; Missouri Pacific; Midland Valley; Oklahoma City, Ada, and Atoka; St. Louis-San Francisco; and Texas, Oklahoma and Eastern (Hofsommer, 1977).

In the mid 1970s, a surge of railroad companies abandoned their Oklahoma lines rather than paying tariffs and taxes on unused rails. During this time Oklahoma railroad mileage was down to approximately 5,447 miles, including the abandonment of 330 miles of track in western Oklahoma by the MK&T. To date, this was the largest single branch abandonment allowed by the regulatory agency (Hofsommer).

### **Rails-to-trails**

Railroads generally follow scenic pathways with gentle grades (generally less than three percent). Due to these conditions, rail corridors have the potential to make excellent trails. Often as rail corridors are converted into trails, what may have been derelict properties can be transformed into linear parks and fill an increasing public need for outdoor recreation areas (Ferster, 2006). Currently, there are over 15,346 miles of rail trails across the United States (Rails-to-Trails Conservancy, 2008).

The origin of rails-to-trails can be traced back to the 1960s. The movement was initiated without much public notice, and it was focused on the Midwestern part of the United States (Nevel & Harnik, 1990). Rails-to-trails is based on the premise that old railroad lines that are abandoned or no longer in use can be converted to public trails and serve the public good. According to Nevel and Harnik (1990), Mrs. T. Watts, a naturalist, proposed the idea when the local railroad reclaimed the rail-tracks and left the rail beds.

Due to the grade of the land on which the trains traveled, it was a sensible transition to use them for various activities during all seasons. This movement of utilizing an abandoned 35 mile railroad right-of-way as a resource was the beginning of an era (Nevel & Harnik).

It was realized by those involved during the early years (1960s - 1970s) that rails-to-trails would not be the key element to assisting the environmental movement; however, in later years it would become a viable issue in support of the movement. Rails-to-trails embodied many of the ideas and beliefs that were driving the environmental movement of the time (Nevel & Harnik, 1990). The idea of recycling railroad land and resources so that they could be used and enjoyed by many was a form of reuse, not natural resource procurement. Under the guise of recycling the land, proponents of rail conversion also embodied the land ethic of conservation: Wise use without waste. The chain reaction tied to conservation was habitat protection for wildlife within the rails-to-trails corridors. The corridors also provided a historical account of the rails that were used to connect the towns of our developing nation. Finally, development of the trails also assisted in providing the general populace with easy access to recreational opportunities regardless of urban or rural location. The concept of rail to trail conversion duplicated many of the ideals of the environmental movement (Nevel & Harnik).

During the early development of the movement some viewed the transition as a simple opportunistic action: “We’ve got an abandoned railroad track, so let’s use it” (Nevel & Harnik, p. 5). Eventually, the idea developed beyond the opportunistic mentality to a view of a national trail system based within historical rail corridors. Many have called these trail corridors a linear park system. William Whyte, an urban planner



for a Citizen's Advisory Committee on Environmental Quality, stated, "Broad expanses of open space tend to be underutilized, for it is the perimeter that is most readily available to the greatest number" (Citizens Advisory Committee on Environmental Quality, 1975, p. 5). The using and creating of linear parks would suggest that the land is being completely utilized and seen. Most transportation corridors are between 50 and 100 feet in width; therefore, the conversion could be seen as a perimeter trail that passes through historical and scenic areas (Citizens Advisory Committee on Environmental Quality)

### **Linear Park**

The term linear park may have been brought to the forefront in the 1960s and 1970s, but Frederick Law Olmstead utilized long narrow strips of greenways as transportation links in the 1800s. Olmstead used existing drainage systems to link a series of parks such as the Emerald Necklace in Boston (Smith & Hellmund, 1993). The intent was to create a system of parkways that connected open spaces for horses and carriages as well as pedestrians (Zaitzevsky, 1982). Because of the square or grid system of a city, the linear parks were not as popular in the early to middle 1900s (Cranz, 1982). The areas were perceived to be a means of transportation rather than a relaxing open space (Cranz, 1982; Smith & Hellmund, 1993).

With the development of Olmstead's linear parks was the development of urbanized greenways. Little defined greenway as

"A linear open space established along either a natural corridor, such as a riverfront, stream, valley, or ridgeline, or overland along a railroad right-of-way converted to recreational use, a canal, scenic road, or other route. It is any natural or landscape course for pedestrian or bicycle passage. An open-space connector linking parks, nature reserves, cultural features, or historic sites with each other and with populated areas" (Little, 1990).

Another author, Ahren, went on to expand the functional definition to include environmental concerns as well. Ahren defined greenways as “networks of land containing linear elements that are planned, designed and managed for multiple purposes including ecological, recreational, cultural, aesthetic or other purposes compatible with the concept of sustainable land use” (Ahren, 1995, p. 134). The author goes on to explain that “Greenways are based on the particular characteristics and opportunities inherent in linear systems, which offer distinct advantages in terms of movement and transport of materials, species, or nutrients” (Ahren, 1995, p. 134). Ahren also explained that linkage of greenways creates an integrated system across spatial areas so that “it may acquire the synergistic properties of a network” (p. 134). The synergistic development of an area can be found in the connecting factors of the linear parks. The linear parks may terminate or pass through neighborhoods, school, parks or other cultural areas (hubs or nodes). These areas of activity allow the parks to have areas of access or activities that serve as entry or exit point within the park/greenway. Development of greenways is also aligned with sustainable development, as they may provide an economic development while still being environmentally protected (Ahren, 1995). Greenways or linear parks provide a distinct spatial approach based on the traits of an incorporated linear system (Checkland, 1989). The approach of the linear park should be considered a complement to comprehensive landscape and physical planning (Ahren, 1995).

### **Interstate Commerce Commission**

The Interstate Commerce Commission (ICC) was given oversight of the United States based railroads by the U.S. Congress in 1887 (Rails to Trails Conservancy, 2007). Congress passed the Transportation Act of 1920 which required the railroads to obtain a

certificate from the ICC prior to abandoning the rail lines. Certificates were required to show that the public no longer had use for operation on the designated section of rail lines (Drumm, 1998). This allowed Congress a method by which to regulate railroad abandonment (Rails-to-Trails Conservancy, 2006). The ICC was required by law to “exempt most rail abandonment from regulation” (Rails-to-Trails Conservancy, 2006, p. 5). The cause for this exemption was due to the 1980 Staggers Rail Act, passed with the intent to assist the rail lines financially by allowing railroads to abandon unprofitable lines more easily than before (Rails-to-Trails Conservancy). With the abandonment of the rails came the discussion of easements and rights-of-way, as well as, ownership questions. Railroad carriers began abandoning lines at a rate of 4,000 to 8,000 miles per year (Rails-to-Trails Conservancy). The pace at which the railroads were abandoning rail lines and terminating easements along with rights-of-way became an issue for Congress. By 1990, the 270,000 mile system of railroads had been reduced to 141,000 miles (Rails-to-Trails Conservancy, 2007).

### **Who owns the right-of-way?**

Rail corridors (rights-of-way) that were to be abandoned were either owned (fee simple) by railroads or the companies had negotiated the right to use the land (easement) for railroad business purposes. When the railroad owned the land, it was generally acquired by a fee simple method (Rails-to-Trails Conservancy, n.d.). Fee simple is defined in legal terms as “absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance” (Garner, 2000, p. 648).

Another way a railroad could acquire access to a linear passageway was through an easement. The legal definition of an easement is “an interest in land owned by another

person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose” (Garner, 2000, p. 548). When the railroads originally decided to utilize the rights-of-way, the agencies had the choice of either purchasing the land or settling on an easement with the current owner.

With the purchasing of land a deed was granted to the railroad for the property. A deed is defined as “a written instrument by which land is conveyed” (Garner, 2000, p. 444). This provided the railroad company with a document of the sale and proof of ownership. In contrast, if an easement was granted it was possible that a lease agreement was utilized between the railroad company and the landowner. A lease is defined as “a contract by which a rightful possessor of real property conveys the right to use and occupy that property in exchange for consideration, usually rent” (Garner, p. 909).

Another method of land acquisition for the railroad was through eminent domain power. By definition eminent domain is “the inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking” (Garner, 2000, p. 562). This procedure occurred whenever private lands in a state were needed for a public purpose; the decision for eminent domain may have occurred within a state court or by a federal court, with or without the consent of the state involved (U.S. Constitution, 2008). The railroads were given power of eminent domain through the delegation of legislative power since it was considered a valid public purpose (U.S. Constitution, 2008).

An issue that had become apparent to trail advocacy agencies was determining how the right-of-way was defined: fee simple or easement (Rails to Trails Conservancy, n.d.). Another issue was determining who established the right-of-way for the railroads,

since many of the railroads have been transferred between railroad carriers (Rails-to-Trails Conservancy, n.d.).

Many trail advocacy agencies utilizing the abandoned rail corridors had to address reversionary interest. Reversionary interest was a legal agreement between the grantor of the easement (railroad) and the grantee (trails advocate) that allowed use but did not completely remove grantor interest from the property (Garner, 2000; Rails-to-Trails Conservancy, n.d.). This clause allowed the railroad to return the right-of-way to itself (railroad) for activation as a rail line on the agreed upon easement. To date only nine reversionary clauses have been utilized on rails-to-trails conversion agreements (Ciabotti, 2008).

The use of reversionary interest also applied when an easement was granted by a land owner to the railroad companies. Once the land was abandoned by the railroad companies, use of the land had been utilized to its extent and was being discarded. At this point the reversionary clause was enacted allowing landowners to utilize the land as they 'saw fit' (Ingram, 1996).

### **Current Rails-to-Trails**

Currently, there are approximately 1,534 rail-trails (for a total mileage of 15,346 miles) within the United States. There are also 789 projects that will add another 9,501 miles in the next few years (Rails-to-Trails Conservancy, 2008). Within every state there is at least one rail-to-trails conversion. The state of Michigan currently has the most with 128 rail-to-trail conversions that equate to 1,576 miles of converted rail (Rails-to-Trails Conservancy, 2008). The longest single rail-to-trail conversion was the Katy Trail in Missouri. The Katy Trail is 225 miles long, with an eastern terminus in St. Charles and a

western terminus in Clinton, Missouri (Rails-to-Trails Conservancy, 2008). The eleven longest rail to trail conversions are as follows: 1) Katy Trail, MO (225 miles); 2) Great Allegheny Passage, PA/MD (150 miles); 3) Soo Line-Northern, MN (148 miles); 4) John Wayne Pioneer Trail, WA (145 miles); 5) Remsen-Lake Placid Travel Corridor, NY (119 miles); 6) Soo Line Trail-Southern, MN (114 miles); 7) George Mickelson Trail, SD (110 miles); 8) Paul Bunyan Trail, MN (110 miles); 9) Blue Ox Trail, MN (107 miles); 10) State Line Trail, MI (102 miles); 11) OC&E Woods Line State Trail, OR (100 miles) (Rails-to-Trails Conservancy, 2008).

The management and oversight of the longest trails is handled by various agencies. 1) Katy Trail, MO (MO State Park System) (American Trails, 2007); 2) Great Allegheny Passage, PA/MD (Allegheny Trail Alliance) (National Recreation Trails, 2008); 3) Soo Line-Northern, MN (Minnesota Department of Natural Resources) (Minnesota DNR, 2008); 4) John Wayne Pioneer Trail, WA (Washington Department of Natural Resources) (Washington State Parks, 2008); 5) Remsen-Lake Placid Travel Corridor, NY (New York State Department of Transportation) (New York State DOT, 2000); 6) Soo Line Trail-Southern, MN (Minnesota Department of Natural Resources) (Minnesota DNR, 2008); 7) George Mickelson Trail, SD (South Dakota Game, Fish and Parks Department ) (South Dakota, N.D.); 8) Paul Bunyan Trail, MN (Minnesota Department of Natural Resources) (Minnesota DNR, 2008); 9) Blue Ox Trail, MN (Minnesota Department of Natural Resources) (Minnesota DNR, 2008); 10) State Line Trail, MI (Michigan Department of Natural Resources) (Michigan Trails & Greenways Alliance, 2008); 11) OC&E Woods Line State Trail, OR (Oregon Parks and Recreation Department) (Oregon State Parks, N.D.). As noted from the above list, the top eleven

rail-to-trails in length in the United States are managed by the state recreation or natural resources department for the respective state.

Currently, the state of Oklahoma has seven trails for a total of 51 miles and five more projects that will add another 64 miles in the future (Rails-to-Trails Conservancy, 2008). Each of the existing and projected trails is managed by the town in which it resides (Oklahoma Department of Tourism, 2004). The longest of the current trails is the Katy Trail, located in Tulsa, OK. The trail is approximately six and a half miles long (Oklahoma Department of Tourism, 2004).

An interview with Susan Henry (Oklahoma State Department of Tourism; Conservation and Planning) revealed that none of the rails-to-trails in Oklahoma are overseen by the Oklahoma Department of Tourism or Oklahoma Department of Transportation. This equates to no ownership of the trails or maintenance of the trails by the State. An item that was addressed in the interview is; if a rails-to-trails project was funded by the RTP that there was only oversight to ensure the developed trail remain open for twenty-five years. An inspection of the trail is done every five years by the state. The management of the trail to ensure that the trail stays open is transferred to the local municipality for repairs and maintenance. Some examples of this are the towns of Cleveland, Stigler, Tulsa, Muskogee, and Pawhuska (Henry, 2008). Each of these towns will have different resources and expertise on trail maintenance. Susan also explained that, if a trail falls outside the city limits of a town, volunteer groups will have to monitor and maintain the trail. An example of that is the Indian Nations Trail that stretches from Warner-Porum-Stigler. The distance of the rails-to-trails project is thirty-nine miles, currently only 4.9 miles have been completed (Rails-to-Trails Conservancy, 2007). Each

town has completed segments that are within their respective city limits: Stigler 1.9 miles; Porum 1.4 miles; and Warner 1.6 miles (Oklahoma Department of Tourism, 2004). The rail-to trail corridor between the towns is attempting to be completed by volunteer groups (Henry, 2008). Currently the rail-to-trail project is incomplete.

### **Abandonment Process**

When dealing with abandonment of the railroads, a value for the land must be established. The monetary value of the abandonment is established in varying methods depending on how the ownership of the land is defined. If the railroad parcel is owned (i.e. fee simple) the land would be valued; if the land was not owned (i.e. easement) it would not be valued. This non-valuation allowed for easements to be determined by corresponding state law (Miltenberger, 1992). When a line was to be abandoned by a national carrier it was possible for the national carrier to lease the use of the track to a regional carrier who might operate the identified section of rail more profitably. A policy of the United States Government is to provide rail service whenever possible. This policy prevents a carrier from abandoning a line without consent and approval from the Interstate Commerce Commission (Miltenberger). The reason for this is to allow the public to oppose the abandonment. If the abandonment is approved by the ICC the railroad carrier involved must offer the right-of-way to another carrier to maintain the integrity of the rail lines (Miltenberger).

With the abandonment process the railroads were required to provide notice in advance of possible lines to be abandoned. The railroad provides a “system diagram map” of the rail lines and the category of each line. Category one rails would be abandoned within three years. Category two lines were under review for abandonment



due to economic loss. Category three lines are currently in the abandonment process with the ICC. Category four lines were subcontracted out to another vendor. Category five lines are still in regular service use with the operating railroad (Interstate Commerce Commission, 1993). The utilization of the R2T had to be done in conjunction with the railroad provider and the ICC; otherwise, the legislation would not be applicable.

A formalized abandonment process of a rail line that was filed with the ICC still had several processes to undergo before becoming a trail. Once the request has been received by the ICC from an interested trail agency, the request would identify the line that was to be abandoned and the desire to invoke the R2T Act. The ICC would then determine if the information was in compliance with regulations. Upon acceptance of the request, the ICC would send a formalized decision to the trail advocate and all other agencies involved. The ICC decision was then published in the Federal Register. The railroad that was abandoning the property must then notify the ICC if they were willing to negotiate a trail use agreement. This was done in the event that multiple advocates attempted to invoke the R2T Act. The railroad then had the opportunity to decide which agency it would negotiate with. The railroad did not have to complete the conversion to a trail. If the railroad decided not to negotiate a trail conversion, the railroad company could abandon the rail (Interstate Commerce Commission, 1993).

Another option of the railroad was to negotiate a public use condition (PUC) with the trail advocate. Upon this agreement the ICC would issue a conditional certificate of interim trail use (CITU). The certificate provides three main objectives. First, it gave the advocate 180-days to secure a use agreement with the railroad (Interstate Commerce Commission, 1993; Rails-to-trails Conservancy, 2006). The time line could be extended

if both parties agreed on the extension. Second, the certificate allowed the railroad to terminate service and remove tariffs; the railroad would then salvage the track thirty days after the certificate was issued (Interstate Commerce Commission). Finally, it provided the railroad with the capacity of prospective restoration of rail service. Once the certificate was granted, the ICC did not provide mediation or negotiation between the railroad and the advocating agency. If an agreement was not reached, the conditional certificate was terminated and the rail lines returned to the status of abandonment (Interstate Commerce Commission).

In January of 1996, the ICC was abolished and the functions of the ICC were transferred to the Surface Transportation Board (STB) (U.S. DOT, n.d.). Due to the historical focus of this study, references related to ICC were utilized since this was the governing agency at the time of interest within this study.

### **Rail Banking Process and Easements**

The issue of rail banking was upheld by the Supreme Court in 1990 (Preseault v. ICC) as well as the provisional aspect that landowners may seek fair compensation if they believed that the land was taken without just and fair compensation based on rail banking (Desaulniers, Ellis, Lamoreaux, Poling, & Richart, 1999). The case of Preseault v. ICC established that Congress had utilized its authority appropriately under the Commerce Clause of the United States Constitution stating “Congress apparently believed that every line is a potentially valuable national asset that merits preservation even if no future rail use for it is currently foreseeable” (Ferster, 2006, p. 5). The 1990 ruling established that rail banking was within the power of Congress. Since this time legislation has been brought to courts regarding compensation for takings (eminent domain) (Ferster).

Although many new bills have been brought before Congress regarding the compensation issues regarding rail banking law, none of the amendment have passed (Ferster).

### **Property Values**

Several studies have been conducted that examined how trails affect adjacent property values. People that have held the view that property values will decline based on a recreational trail being built are displaying the NIMBY and LULU syndromes (Turco, Gallagher, & Lee, 1998). Not In My Back Yard (NIMBY) and Locally Unwanted Land Use (LULU) have also prevented the development of many other public services related to societal benefit (Brion, 1991). NIMBY describes the landowner's ideas on a personal level in regard to how the land is used. LULU is used to define a societal need, but may carry a perceived negative effect in the community in which a development is planned (O'Looney, 1995).

The anticipated decline in property value related to having a trail in close proximity to privately owned property is unsubstantiated. The issue of property value has been studied in various locations around the United States. The Burke-Gilman trail study conducted by the Seattle Engineering Department found that property adjacent to or near the trail sold with greater ease and for an increased six percent of value (Seattle Engineering Department, 1987). The study went on to conclude that those who owned property before the trail was constructed were less likely to view the trail as an asset, while those who purchased land along the trail after it was constructed viewed it as an economic asset related to property value.

Another example of increased property value and viability can be seen in Massachusetts near the rails-to-trails of Minuteman Bikeway and Nashua River Rail Trail

run. It was found that homes that were in close proximity to these trails sold for 99.3 percent of the listed price while houses farther from the trails sold for 98.1 percent of the listed price (Penna, 2006). Another issue the report documented was the time it took to sell the home. Homes near the trails sold in 29.3 days on average as compared to 50.4 days for those homes that were not close to the trails (Penna). A similar study was conducted on the Monon Trail in the Indianapolis, IN area. The authors found that the average selling price for homes in close proximity to the trail were 11 percent higher than all the other homes sold in the Indianapolis area in 1999 (Lindsey, Payton, Mann, & Ottensmann, 2003). There was an increase of over 140 million dollars in property values associated with the Indianapolis trail system (Lindsey, Payton, Mann, & Ottensmann).

It has become understood that green space had a positive impact on adjacent land values (Crompton, 2001). In Dallas, Texas, developers report that there was a 25 percent premium for properties along the Katy Trail, a rail to trail conversion (Rails-to-Trails Conservancy, 2007). In Austin, Texas, property values increased along a greenway that in turn resulted in 13.64 million dollars of revenue in new property taxes (Nichols & Crompton, 2005).

### **Community Revenues**

Other economic interest studies have been conducted to show the increase in tourism dollars brought to an area based upon having a trail close by. A study conducted by Moore, Graefe, Gitelson and Porter (1992) examined three trails and the impacts they had on local counties. The trails were located across various demographic and geographic segments of the United States. The Heritage Trail was located in eastern Iowa and traversed rural farms. The St. Mark Trail was located in Tallahassee, Florida, passing

through small communities. The final trail was the Lafayette/Moraga Trail located east of San Francisco (Moore, Graefe, Gitelson, & Porter, 1992). The annual economic impact attributed to the respective trails for each of the host counties was: \$630,000 (Heritage), \$400,000 (St Marks), and \$294,000 (Lafayette/Moraga) (Moore, Graefe, Gitelson, & Porter, 1992).

A more recent study was conducted in Pennsylvania on the Pine Creek, Heritage, and NCR trails. The categorical expenditures related to the trails were based on two types of purchases: The first is 'soft goods' related to food or a dining experience. The study found that on average the urban trails expenditures for soft goods ranged from \$2.47 to \$8.83 per user per visit, while destination trails for soft goods had an average expenditure of \$9.03 to \$15.61 per visitor hiking on the trail. The average expenditures for soft goods across all trails studied were \$8.84 per person per visit (Knoch & Tomes, 2006). The study also looked at the second category of expenditures, 'hard goods' which are defined as supplies and accessories (Knoch & Tomes, 2006). The average expenditures for hard goods were segmented into two user groups: Hikers/walkers and bicyclists. On average bikers spent \$269.77 annually for hard goods while hikers/walkers spent \$74.59 annually. While the hard goods purchases might not stimulate the immediate area in relation to the trail, it still fostered economic viability. The estimated number of annual visitors was calculated to be 342,619. Based on the expenditures per person per visit of \$8.84, the state of Pennsylvania expected 3 million dollars in soft goods revenue generation alone as it related to the these trails. The East Coast Greenway route through Maine generated \$530,000; this trail was primarily a rail-to-trail route (Rails-to-Trails Conservancy, 2007).

## **Legal obligation of land owners or adjacent land owners**

In 1956, the Council on State Government identified a need in the United States for more recreation land (Cotten & Wolohan, 2007). This allowed private owners to open access to their undeveloped property without liability to the owner. Typically, state recreation statutes protect landowners from liability. To be protected the land owner must adhere to the following: Do not charge a fee for accessing the property; do not do capital improvements on the property to enhance the activity; and provide a warning for any known concealed dangers (Cotten & Wolohan). If the previous provisions are followed, then any person that accesses the property would be considered a licensee. A licensee is someone who is known to utilize the designated area and is tolerated by the land owner. There is no economic benefit to the land owner (Cotten & Wolohan). By definition a landowner “owes no duty to inspect the premises or to make the licensee reasonably safe. The landowner is liable for harm created by conditions on the land if the landowner has knowledge of the condition and the licensee does not” (Cotten & Wolohan, 2007, p. 194). If a fee is charged for access onto the property, then the duty (responsibility) owed to the participant increases since an economic benefit is occurring for the landowner.

The state of Oklahoma Statutes in regard to recreational use has several components. The first component is the definition of ‘land’ in Title 76 Torts (Section 10.1 (A)(2)(a)):

“Land means real property, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty. The term “land” shall not include any land that is used primarily for farming or ranching activities or to any roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty which is used primarily for farming or ranching activities” (2004, p. 10).

The statute also defines owner as “the possessor of a fee interest, a tenant, lessee, occupant or person in control of the land” (Oklahoma Legislature, 2004, p. 10).

Outdoor recreational purposes are defined by Title 76 Torts (Section 10.1 (A)(2)(b)) as:

“any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, jogging, cycling, other sporting events and activities, nature study, water skiing, jet skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites,” (Oklahoma Legislature, 2004, p. 10)

The charging of admission or fee to utilize or to gain access to the land is defined as “Charge” (Oklahoma Legislature, 2004, p. 10). It should also be noted that in Oklahoma charge does not include the license or permit imposed by a governmental agency for the purpose of regulation (i.e. hunting or boating license or permit fees) (Oklahoma Legislature, 2004).

Within the state of Oklahoma, an owner of land does not owe a duty of care to keep the premises safe for those that utilize the land for recreational purposes, nor does the owner have to provide warning of hazards (University of Vermont, 2001). The owner who provides a user with public lands for outdoor recreational purposes does not assume liability or responsibility for any person that is injured while on his or her property. If at any time the land owner decides to charge for use of the land the standard of care is raised for the owner and the liability is increased to protect the user (Oklahoma Legislature, 2004).

### **Opposition to Rails-to-Trails**

Several national organizations actively opposed open rails-to-trails development on abandoned rail beds. These include The American Farm Bureau Federation and the National Association of Reversionary Property Owners (Doherty, 1998). The use of rail-

banking, the process by which abandoned rail lines were preserved, has come under attack in many states where trail development was planned (Illinois Department of Conservation, 1990).

The development of greenways raised concerns of adjacent land owners, including concern regarding reduced property values and a reduction in quality of life (Alexander, 1994; Moore, Gitelson, & Graefe, 1994). Greenways that include trails often created more debate regarding issues related to safety, trash, trespassing and privacy for adjacent land owners (Doherty, 1998; Erickson & Louisse, 1997; Flink & Searns, 1993).

Ironically, the success of the Rails-to-Trails program has created some opposition from the railroads. Many of the railroads fear that if a trail is successful and popular, seeking reversion back to use as a railroad might actually be damaging to a carrier's image. Thus, some carriers may opt to not engage in the rail banking negotiations (Desaulniers, Ellis, Lamoreaux, Poling, & Richart, 1999).



## CHAPTER III

### METHODOLOGY

“Anyone who studies current and ancient affairs will easily recognize that the same desires and humours exist and have always existed in all cities and among all peoples. Thus, it is an easy matter for anyone who examines past events carefully to foresee future events in every republic and to apply the remedies that the ancients employed, or if old remedies cannot be found, to think of new ones based upon the similarity of circumstances. But since these considerations are ignored or misunderstood by those who read, or they are understood but are not recognized by those who govern, it always follows that the same conflicts arise in every era” (Machiavelli, Bondanella, & Bondanella, 1997, p. 105).

Williams stated that “Material things in the present remind us of our past” (2003, p. 4). J.R. Seeley believed that history aims to help gratify curiosity of the past as well as to help modify views of the present and forecast the future (Vincent, 1969). The Greek word ‘historia’ is defined as “a searching to find out” (1969, p. 3). Historical research is a process of discovery and construction, with the intent of understanding and explaining the events without bias (Williams, 2003).

Historical research provides the investigator with three major operations related to research: first is to search for material or resources related to the topic (heuristic); second is the appraisal of the material from an evidentiary value base (criticism); followed lastly by a formal statement of findings (synthesis and exposition) (Garrahan, 1957).

Historical method allows the researcher to investigate what happened in the past by evaluating evidence and establishing a chronological order to the events. The evidence

that will be utilized could included "... archives, manuscripts, maps, and documents, but also unwritten evidence – photos, paintings, coins, records, tapes, video, computer hard drives, and so on" (Williams, 2003, p. 11). The reviewing of the evidence allows the researcher to establish a chronological order to the events and attempt to understand and explain past events by interpreting their meaning (Williams). This line of inquiry allows the researcher to "persist in asking questions about the past: why and how did events happen; what caused an event; which individuals played important roles; and what is the meaning of the events studied in terms of both past and present" (2003, p. 12). This methodology is not predictive, "although it can offer some useful perspectives and council prudence for decision makers in the present" (2003, p. 41).

The definition of resources within this methodology is primary and secondary. Primary resources within the context of historical research are defined as "first hand information, such as eyewitness reports and original documents" (Gay & Airasian, 2000, p. 17). Interviews or discussion with someone that witnessed the incident first hand are also considered a primary source. Secondary resources are those resources that include "second-hand information, such as a description of an event by someone other than an eyewitness, or a textbook author's explanation" (Gay & Airasian, p. 17). Interviews or discussions that occur with someone who heard about the incident from another and did not witness the incident in person are considered a secondary source (Gay & Airasian).

This study will be historically based on a particular incident. This is a process, according to Stuart, that "includes choosing a research problem, gathering evidence which bears on the research problem, determining what the evidence means, and writing the report" (Grinnell, 1983, p. 332). Leighninger warned researchers that a "failure to

start with a guiding framework leads to rapid immersion in an ocean of detail”  
(Leighninger, 1995, p. 1253).

The design of this study is a historical overview of the rails to trails conversion in Oklahoma from 1988-1991. The overview will involve the Union Pacific rail line that extended from mile post 174 at the town of Dewar, OK to mile post 297.6 at the town of Durant. The rail line crossed through the towns of: Henryetta, Dustin, Lamar, Calvin, Atwood, Allen, Stears, Steedman, Lula, Tupelo, Clarita, Wapanucka, Kenefic, and Durant (Oklahoma Department of Transportation, 1989). The purpose of this study is to create an understanding of the conceptual foundations related to the legal processes tied to rights-of-way in the conversion of abandoned railroads to recreational trails, and possible future implications on rails-to-trails development.

An examination of history from a broad perspective offers understanding of important events. Shafer and Bennett (1980) define history as “... events of the past,... the actual happenings themselves,... secondly history means a record or account of these events,... finally history means a discipline, that has developed a set of methods and concepts by which historians can collect evidence of past events, evaluate that evidence, and present a coherent and meaningful discussion of it” (pp. 2-3). Thomas (2003) suggested that the historical method provides a means of identifying how an event or phenomena has changed or has remained with the passing of time. The event in this research is the 1987-1991 rails-to-trails conversion attempt in the State of Oklahoma.

Scope presents another variable to look at through a historical lens. Scope includes the time period of the study, the contribution of the events to history, and the events that encompassed the study (Thomas, 2003). Historical method utilizes a holistic

review of evidence to create the most precise narrative of past experiences, events or incidences (Shafer & Bennett, 1980). The extent of historical review is constrained by the quality and quantity of existing evidence (Lichtman & French, 1978). History sets precedence that past incidents are related to present day, thus providing connections between periods in time (Brazun & Graff, 1985).

### **Sample**

Both primary and secondary sources were obtained from agencies, archives, and libraries to help establish a functional understanding of the legal processes and legal concepts. Josh Tosh defines primary and secondary sources as follows: "...regard the original sources as primary. Everything that they and their successors have written about the past counts as a secondary source" (Tosh, 2000, p. 38).

Primary sources for this study included reviewing of Oklahoma Department of Tourism and Recreation documents related to the process and archived documents in the Oklahoma Historical Library from the Oklahoma State Governor. Other primary sources included state and national legislation minutes, minutes of commission meetings, and discussions with participants who were involved in the rails-to-trail process. Secondary sources included academic research, treaties, legislative statutes (i.e., land and recreation), and legal rulings tied to rights-of-way and abandonments.

### **Procedure and Data Analysis**

Due to the nature of the study, data collection and analysis occurred simultaneously. This study utilized primary sources, including original documents and artifacts tied to the rails-to-trails project to facilitate an understanding of right-of-way

development for recreational corridors. The scope of this research will be from 1988 through 1991, when the State of Oklahoma was in negotiations with Union Pacific.

The history of the Henryetta to Durant rails-to-trails conversion in Oklahoma requires examination in order to understand its effect on various components of Oklahoma Tourism related to future rail-to-trails development, tourism, and opposition issues.

## CHAPTER IV

### FINDINGS

#### **Indian Territory/State of Oklahoma**

Indian Territory was officially opened by allowing settlers to run to unassigned lands on April 22, 1889 (State of Oklahoma, 1970). In the beginning of 1897, the railroads that had been constructed in Oklahoma consisted primarily of nine main lines. From 1897 – 1907 various lines were built that crisscrossed the state. Most of the lines built in this time frame would create a network of branches from main-line rails to various locations within the state. Oklahoma railroad reports state that: “It is interesting to note that approximately 75 percent of the railroad mileage that has been abandoned in Oklahoma was built during this ten-year period” (State of Oklahoma, 1970, p. 12). With the adoption of the state constitution in 1907, a moratorium was placed on the expansion of railways due to a condition “prohibiting the sale of intra-state railroads to an inter-state railroad” (State of Oklahoma, 1970, p. 12; Elder, 1908).

The previous ten-year period had been boom years in Oklahoma. Due to legislative measures in the newly adopted Oklahoma state constitution, the best a railroad company could hope for was to expand rail lines within the state. With this provision in mind the Kansas, Oklahoma, and Gulf subsidiary Missouri, Oklahoma and Gulf started building a line from Dustin, OK to the Red River in 1907.

## **Kansas Oklahoma and Gulf Railway Company**

The segment of railroad that is of interest for this study is northeast of Henryetta (the town of Dewar) to Durant within the state of Oklahoma. The rail line of interest was originally constructed by the Missouri, Oklahoma and Gulf Railway Company (MO&G) (State of Oklahoma, 1970). MO&G was “incorporated under the laws of the Territory of Oklahoma, on October 24, 1904” (State of Oklahoma, 1970, p. 48).

The railroad segment of interest was constructed by MO&G in four segments that extended beyond the interest area of Henryetta-Durant. The first segment was constructed from 1904-1905 connecting Muskogee Junction to Dustin (53.6 miles) (State of Oklahoma, 1970). This segment included the areas that would pass through the then current and future towns of Dewar, Henryetta, Parsley, and Dustin (Oklahoma Department of Transportation, 1989). The next two segments were built simultaneously. The first segment connected Dustin to Lamar (13.2 miles); the second segment connected Lamar to Calvin (16.2 miles). Both sections started construction in 1907; while the first was completed in 1908, the second segment was finished in 1909 (State of Oklahoma, 1970). The next section of the railroad would be the longest section built by MO&G in Oklahoma. MO&G built the next section from Calvin to the Red River (Oklahoma /Texas border) (State of Oklahoma, 1970). The Calvin to Red River section (102.2 miles) was constructed from 1908-1910. This section would pass through the then current and future towns of Calvin, Atwood, Allen, Steedman, Lula, Tupelo, Clarita, Bromide, Wapanucka, Coleman, Kenefic, and Durant (Oklahoma Department of Transportation, 1989). The MO&G built a rail system connecting Muskogee to the Red River that was approximately 185.2 miles in length (State of Oklahoma, 1970). The area of interest for this study is the

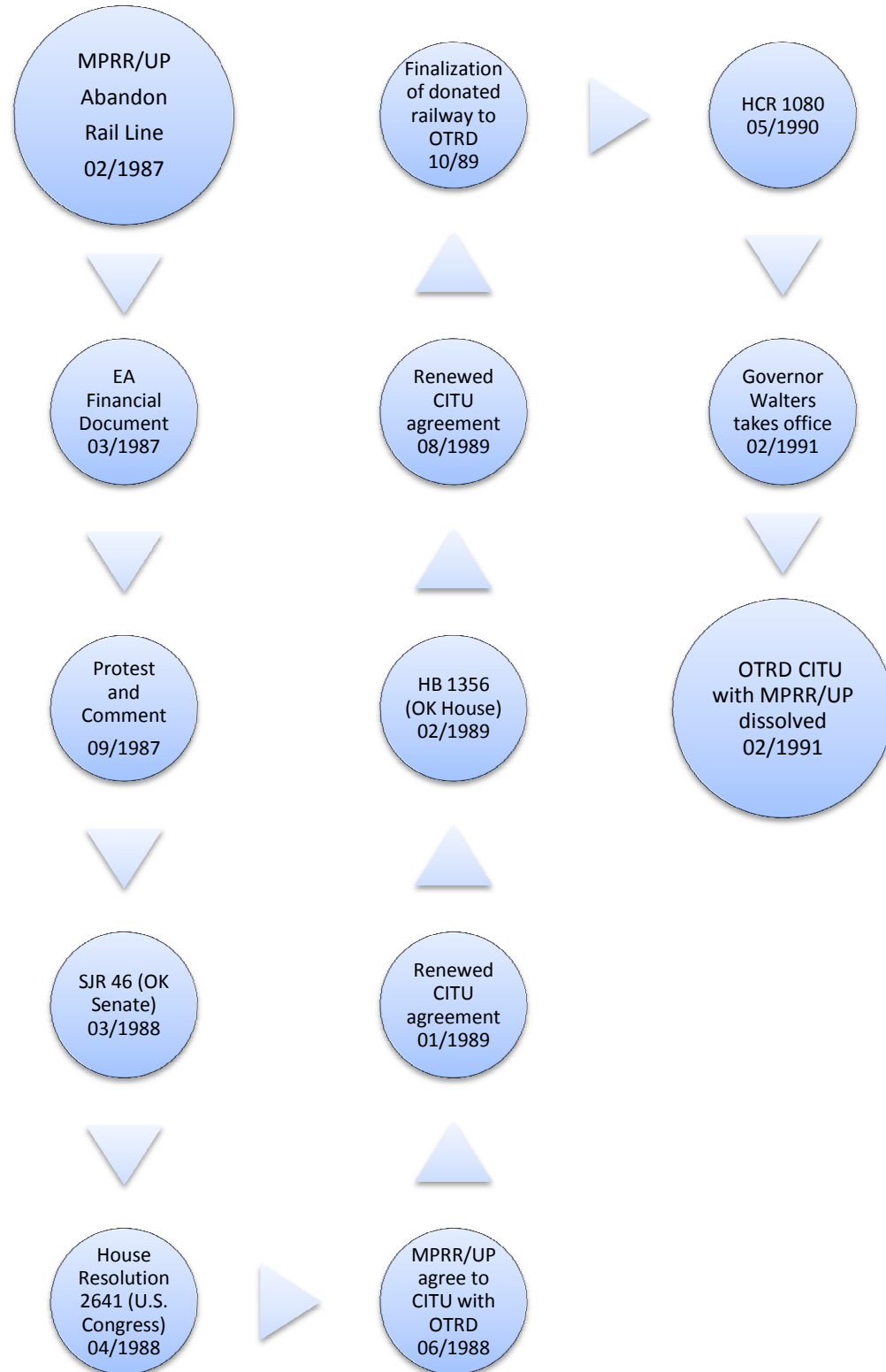
123 mile segment between Dewar and Durant which is approximately 66 percent of the constructed rail line of KO&G.

Although the railroad was constructed by MO&G, it was not operated by MO&G at the time of the 1987 abandonment. MO&G went bankrupt in 1913. Reorganization took almost six years at which time the railroad and interest were sold to the newly incorporated Kansas, Oklahoma and Gulf Railway Company (KO&G). KO&G did not experience economic prosperity and entered into receivership in June of 1924 (State of Oklahoma, 1970; Hofsommer, 1977). Reorganization occurred with the KO&G and the company transferred control to Muskogee Company, which is a subsidiary of the Midland Valley Railway (State of Oklahoma, 1970). Due to the non-direct route as compared to other railroad carriers in the same vicinity, the KO&G (under the direction of Midland Valley Railway) was unable to claim a significant portion of the long distant freight service in that area (Hofsommer, 1977). Post World War II cooperation with Missouri Pacific established more long distant traffic service. This cooperation resulted in a 1970's lease of the line to Missouri Pacific, which is a subsidiary of Union Pacific.

The original MO&G railroad segments ended up under the control of Missouri Pacific/Union Pacific which would then be merged with the Missouri-Kansas-Texas (MK&T) (Interstate Commerce Commission, 1987). The merger between the Missouri/Pacific and the MK&T would create the need for the Henryetta to Durant abandonment (Interstate Commerce Commission, 1987).



**Figure 1: Overview of Abandonment Process**



## **Petition for Abandonment**

A notice of intent for a railroad abandonment in the state of Oklahoma was mailed on February 11, 1987 to the following: “United States Department of Transportation, Federal Railroad Administration; United States Department of the Interior, Bureau of Outdoor Recreation; United States Department of Defense; Interstate Commerce Commission, Offices of Special Council, Section of Energy and Environment; and Oklahoma State University” (Interstate Commerce Commission, 1987, p. 2). At the same time a notice of intent to abandon the rail line was published for three consecutive weeks from February 19, 1987 through March 5, 1987 in the following papers: “Henryetta Freelance; Okemah News Leader; Hughes County Times; Allen Advocate; Tishomingo Capital-Democrat; Coalgate Record Register; Atoka County Times; and Durant Democrat” (Interstate Commerce Commission, 1987, p. 3).

The Interstate Commerce Commission (ICC) received docket AB-3 (Sub-No. 63), prepared on March 12, 1987, regarding the abandonment of the Missouri Pacific Railroad (MP) Company’s holdings in Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, and Bryan Counties in the state of Oklahoma (Union Pacific Corporation, 1987). Docket AB-3 (Sub-No.63) was issued in response to Environmental Assessment Finance Docket No. 30800 (Sub-No.1). The Environmental Assessment (EA) Docket allowed the ICC to prepare an EA which evaluated the impacts that were associated with the proposed action and would provide any alternatives related to the abandonment of the lines (Interstate Commerce Commission, 1987).

The EA Financial Docket established why the abandonment of the MP holdings would be necessary. A merger between Union Pacific/Missouri Pacific Railroad and

Missouri-Kansas-Texas Railroad would create duplicate services in several areas across Texas, Missouri, Kansas, and Oklahoma. The merger would actually create twelve (12) abandonments: Five in Texas; one in Missouri; five in Kansas; and one in Oklahoma (Interstate Commerce Commission, 1987, p. 3). Total rail abandonment for this merger would consist of approximately 325 miles of rail line. The single Oklahoma segment of the abandonments constituted more than 38 percent of the total rail line abandonment (Interstate Commerce Commission, 1987).

Justification for the abandonment (as denoted in Table 7 of the ICC Finance Docket and related to the 1986 Local Traffic count) was due to its limited use; only three (3) carloads of farm products were moved through the agricultural and urban setting through which the rail line passed (Interstate Commerce Commission, 1987, p. 30). The financial burden of having the Oklahoma rail segment as it related to cost benefit of the rail line can be noted by product moved across the rail lines. The Union Pacific/Missouri Pacific Docket also argued that the line did not have signal systems and was inadequate in siding capacity for traffic for both the Missouri Pacific and Missouri-Kansas-Texas lines (Union Pacific Corporation, 1987, p. 3). Another reason for the abandonment was the duplication of line that was already in place from Muskogee to Durant; the abandoned line was actually thirty miles longer than the parallel line of the Missouri-Kansas-Texas (Union Pacific/Missour Pacific Railroads, p. 3).

According to the disposition of abandonment rights-of-way segment in the EA Financial Docket, “Under the provisions of 49 U.S.C. 10905, any person may offer to subsidize or acquire all or a portion of an about-to-be abandoned rail line for the purpose of continuing railroad operations” (Interstate Commerce Commission, 1987, p. 36). This

would allow any other railroad company who was interested in purchasing the line the ability to do so. The EA Financial Docket also outlined the provision that if any person did not attempt to take over the abandoned rail line in segment or its entirety it “could be acquired for trails purposes under section 8(d) of the National Trails System Act” (Interstate Commerce Commission, p. 37). It was noted that if the railroad withheld its agreement to trail conversion then Section 8(d) would not be possible. Furthermore, it stated that there were applicants for National Trails Conversions for the abandoned railways. The railways would be allowed to convert to trail use upon the salvaging of the track and ties only by the current rail owner (Interstate Commerce Commission). Upon conversion of the rail system to a trail, the use would be granted only on an interim basis, until the rail line was needed (if ever) to reopen along the same corridor.

The EA Financial Docket provided under statute that interested parties would be given the “opportunity to negotiate to acquire an abandoned railroad right of way for public purposes, including other forms of transportation, recreation, and even conservation” (Interstate Commerce Commission, 1987, p. 37). It continued to state that the statute does not prohibit the abandonment but instead provides an opportunity for interested parties to negotiate public use of the abandoned lines (Interstate Commerce Commission).

From this point forward in the acquisition process the “federal statutory guidance with respect to the reuse issue is exhausted. State, regional, and/or municipal land use plans, zoning ordinances and other land use controls may come into play” (Interstate Commerce Commission, 1987, p. 38). Any party interested in acquisition of any of the abandonments was required to notify the ICC and railroad of their interest in an

acquisition. The contact for Union Pacific was Joseph D. Anthofer, General Attorney (Union Pacific Corporation, 1987, p. 4).

The system diagram map related to Union Pacific/Missouri Pacific Railroad holdings and the Oklahoma abandonment was released on June 30, 1987. The line in question in OK was classified as a category 3 which is defined as “abandonment application pending before the ICC” (Union Pacific/Missour Pacific Railroads, 1987, p. 9). It should also be noted that the aforementioned line was identified November 7, 1987 as a category 1, or “lines anticipated will be the subject of an abandonment application or discontinuance within three years” (Union Pacific Corporation, 1987, p. 3).

The docket also addressed the issues about condition of the properties. The docket addressed specifically the issues of bridges. It was stated “there is no deferred maintenance or rehabilitation, but deferred work on the bridges needs to be performed within the next five years” (Union Pacific Corporation, 1987, p. 4). The estimated cost of work to bring the bridges up to code along the abandonment was approximately 1.766 million dollars (Union Pacific Corporation).

Issues related to land use were identified per county and it was found that there were no zoning matters related to the abandonment of the rail lines at the time of the docket in the following counties: Okmulgee, Hughes, Pontotoc, and Bryan. Coal County developed the following resolution regarding the abandonment:

“All land abandoned by the Railroad would revert back to Land Owners, with the provision that the County can haul gravel from said land. Also any land (1 acre or so) that does not join the Railroad, but was used by the Railroad such as depot and Switch Track, will convert back to the County” (Union Pacific Corporation, 1987, p. 12)

The County Commissioners in Okfuskee, Johnston, and Atoka counties did not have a response in the docket at the time of printing in regard to the zoning issues.

Abandonment sites were not within a designated wetland or 100 year flood plain; “however, if physical changes are associated with the abandonment, these should be evaluated to ensure there are no increases in flood hazards” (Union Pacific Corporation, 1987, p. 13). According to the officials that represent the following services, the abandonment would not have a direct affect on prime agriculture lands, transportation, energy services, air pollution, safety, wildlife habitat, water standards, historical places, and passenger service lines.

### **Petition for Easement**

In a letter from Governor Henry Bellmon to Jackie Bubenik (River Parks Authority) dated September 1, 1987, Governor Bellmon addressed the issue of a Protest and Comment regarding the abandonment of the Henryetta to Durant line (Bellmon, 1987). On September 21, 1987, Union Pacific received the Protest and Comment sent forth by the Oklahoma Department of Tourism from the Executive Director Glenn Sullivan requesting documents related to ownership interest (Anthofer, Glenn Sullivan, 1987).

The Protest and Comment was penned by the Oklahoma Tourism and Recreation Department (OTRD) in collaboration with the Rails to Trails Conservancy (RTC). This protest was in regard to abandonment of a rail-line from milepost 174.0 near Henryetta to the end of the line at railroad milepost 297.6 near Durant for a total approximate mileage of 123.6 miles (Interstate Commerce Commission, 1987, p. 1). The OTRD and RTC requested a certificate for interim trail use (CITU) for the abandoned rail line to allow for

public use related to this right of way. The Protest and Comment also requested that the ICC “issue public use conditions (1) barring disposal of the right-of-way other than for public recreational trail use for 180 days (2) precluding the railroad from removing structures (such as bridges, culverts, and so forth) suitable for trail use” (Interstate Commerce Commission, 1987, p. 1).

The Protest and Comment outlined the public use condition guidelines. The first item was the condition sought. The condition sought was to allow the OTRD and RTC to negotiate with the railroad for a minimum of 180 days to acquire the right-of-way for public use (trails or other compatible means) (Interstate Commerce Commission, 1987, p. 2). The second condition sought identified the importance of the condition. The importance of this rail line was that it either transected or was in close spatial relationship to six state parks (Fountainhead State Park, Arrowhead State Park, Texoma State Park and Lodge, Okmulgee Recreation Area, Boggy Depot Recreation Area, and McGee Creek Recreation Area) (Interstate Commerce Commission). The rail line was also near various hunting areas, seven ghost towns, and 67 locations on the National Register of Historic Places. Furthermore, the rail line would develop green-belting.

Green-belting at the time was “a concept suggested by the President’s Commission on American Outdoors, [which] would be accomplished by linking the communities along the right-of-way together with hiking, biking, and equestrian trails, along with the possible operation of excursion trains” (Interstate Commerce Commission, p. 2). It was noted that the conversion of the bridges would be beneficial to continued interconnection of the communities along the rail line.

The next stipulation addressed the justification for a 180-day public use condition. In order for the OTRD and RTC to evaluate the titles of the properties, assess the condition of the structures, and negotiate terms with the railroad, a minimum of 180-days was required (Interstate Commerce Commission, 1987, p. 3).

A secondary public use condition was requested by the OTRD and RTC. That condition was in regard to structures along the rail line. The condition sought “barring the railroad from removing bridges, culverts, and similar structures useful for trail purposes, and that the railroad be barred from conduction salvage activities that unduly damage the roadbed” (Interstate Commerce Commission, 1987, p. 3). The importance of the condition was that while the bridges and culverts had a negative value to the railroads they were a positive value for the development of trails. This condition did not prohibit the railroads from collecting the railroad ties for salvage. The time period for this condition was also “180-days or the termination of the CITU whichever is greater” (Interstate Commerce Commission, 1987, p. 3).

The Protest and Comment further dealt with the issue of applying for Section 8(d) under the National Trails System Act. This application requested that the ICC rule that the right-of way be transferred to OTRD for the use of rail-banking. The request was followed by the “Statement of Willingness to Assume Financial Responsibility” (Interstate Commerce Commission, 1987, p. 4). The document stated that OTRD would be:

“willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by Missouri-Pacific Railroad Company” (p. 4).



OTRD also noted that the aforementioned right-of-way would be subject to user maintenance to meet the financial obligation associated with the possible reconstruction and reactivation of the right-of-way for rail service. It was also mentioned that “OTRD is a state agency and is financially responsible” (Interstate Commerce Commission, 1987, p. 5). If the abandonment were to occur, the state of OK would have an entitlement to the rights-of-way upon abandonment. The justification for the entitlement was based on federal law “43 U.S.C. 912 or similar statutes for the purposes of conversion of the corridor to a public highway which can encompass recreational trails” (Interstate Commerce Commission, 1987, p. 6). The document requested that the railroad company (Union Pacific) provide the state (OTRD) with the appropriate documentation of the railroad rights-of-way related to the abandonment.

In response to the Protest and Comment provided by the OTRD and the subsequent request for documentation, Union Pacific’s general attorney commented in letters to OTRD and ICC, “In the interest of determining whether we have such documents available, I would appreciate information concerning the specific nature of the documents which you wish to review” (Anthofer, Docket No. AB-3 (Sub-no.63), 1987, p. 1). The general attorney for Union Pacific also penned a letter to the ICC regarding the Protest and Comment made by the OTRD. Union Pacific requested that if the public use condition was imposed, the railroad company still had the right to salvage the track and ties during the 180-day request period (Anthofer, Docket No. AB-3 (Sub-No.63), 1987). Union Pacific noted that it was not agreeable to negotiating the abandoned line for interim trail use or rail banking since the company did not foresee reconstruction on the line for future rail service (Anthofer, Docket No. AB-3 (Sub-No.63), 1987).

As a representative of both OTRD and RTC, Charles Montange responded to Union Pacific. Montange addressed the request for specific documentation regarding the right-of-way. The letter specifically outlined how the railroads gained title to land. Montange asked if the land was procured under the 1875 Act or another federal statute. He also requested to review the deeds to the rights-of-way to establish the railroad's title to the land within the abandonment. Montange sought clarification regarding the ICC letter written by Union Pacific's general attorney. The first issue was the statement that Union Pacific was not agreeable to utilization of the Trails Act for rail banking. Montange responded by saying that this would not pose a problem "if the right-of-way is not subject to reversionary interest other than those governed by 43 U.S.C 912" (Montange, ICC Dkt. No. AB-3 (Sub-No. 63), 1987, pp. 1-2). Montange continued stating the corridor would be less desirable for rail banking, recreational trails, and conservation uses if it became split due to multiple issues regarding ownership. It was also stated that if multiple types of holdings (type of ownerships) existed that the Trails Act was designed to handle such problems. The document noted that until the proper documentation regarding the abandonment was produced it would have to seek the use of the Trails Act. Montange conveyed that the OTRD and RTC were in agreement about the removal of the track and ties as requested by the railroad, with the exception of the culverts, bridges and roadbed. The exceptions needed to remain intact during the 180 day period as it would be useful for the development of the trail pathway. The document also stated "OTRD believes that conservation of this right-of-way through recreational trail use represents an exciting and once-in-a-lifetime opportunity for the state" (Montange, ICC Dkt. No. AB-3 (Sub-No. 63), 1987, p. 2).

As the interactions between Montange and the Union Pacific's general attorney transpired, the Environmental Assessment (EA) was completed by the ICC. It was made available on October 27, 1987 (Interstate Commerce Commission, 1987). The EA explained the abandonment and noted that transition from rail service to truck service would "not significantly affect human health or safety or the physical or natural environment in the affected areas" (Interstate Commerce Commission, 1987, p. 32). The negative impacts related to the abandonment were addressed in relation to the salvage of the rails and ties post abandonment. Such requirements would be related to location and requirements as set forth by the National Historic Preservation Act, if applicable. The EA did not identify any areas of historic interest for Docket AB-3 (Sub-No. 63) (Henryetta-Durant abandonment). The EA went on to explain that the abandonments were not always negative in nature but could have a positive effect on the local environment. A few of the listed positive implications were the reduction of energy consumption (as related to multiple rail providers serving the same area) as well as the available acreage for public use (Interstate Commerce Commission, 1987).

The EA document explained the possible disposition of abandoned rights-of-way through statute 49 U.S.C 10905 which allows for a person or company to subsidize or purchase the said abandonment for the purpose of continuing rail service (Interstate Commerce Commission, 1987). The document further explained that if statute 49 U.S.C. 10905 was not utilized, then under the provision of section 8(d) of the Trails System Act (16 U.S.C. 1247 (d)) could be evoked to acquire the abandonment (Interstate Commerce Commission, 1987). The railroad company maintained the legal right to refuse the evoking of section 8(d) of the Trails System Act. Interested agencies could also utilize 49

U.S.C. 10906 to negotiate and “acquire abandoned railroad rights-of-way for public purposes, including other forms of transportation, recreation, and even conservation” (Interstate Commerce Commission, 1987, p. 37). Section 10906 did not prevent the abandonment; it only provided negotiation preference to agencies that would “further purposes in securing rail-owned properties” (Interstate Commerce Commission, 1987, p. 37).

In conclusion regarding the EA document, the ICC defined the process in which an interested party could request to take over an abandoned rail line. This included the abiding of state and local statutes as it “relates to zoning ordinances and other land use controls” (Interstate Commerce Commission, 1987, p. 38). The document provided the guidelines and requirements that must be met for acquisition of the abandoned line. Subsections .27-.29 of section 1152 of C.F.R. 49 defined what must be completed for the abandonment to occur. Section .27 outlined the financial assistance procedures, while section .28 defined the public use procedures. Finally, section .29 defined the prospective use of rights-of-way for interim trail use and rail banking (National Archives and Record Administration, 2009).

Upon receipt and review of the EA document produced by the ICC, Montange (representing the OTRD and RTC) crafted a response on November 25, 1987. Montange discussed that while OTRD and RTC did not object to the merger of the rail companies, they did believe that the EA was “inadequate and must be supplemented extensively” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 1). The response pointed out that the EA did not have any information or analysis concerning the proposed abandonment regarding the Henryetta to Durant section. The

comment went on to discuss the lack of research regarding possible environmental concerns and that “OTRD and RTC will help ICC on its way with some starting points” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 3).

The comment included a list of registered historical places which are in the vicinity of the rights-of-way and “may be adversely impacted by the abandonment as proposed by Missouri Pacific” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 3). The comment document prepared by Montange requested review of the EA document. This accusation was founded in the National Environmental Policy Act (NEPA) as it relates to historical resources as well as the National Historical Preservation Act (NHPA). NHPA “requires ICC to consider the impact of its actions on historic resources before it acts” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 3). OTRD and RTC found 93 sites listed on the National Registry that would be negatively impacted by the abandonment. This abandoned rail line was also in close proximity to seven ghost towns which could be identified as historical sites in the future and potentially negatively impacted by the abandonment.

Under the NEPA legislation it was documented that thirteen known archeological sites were in close proximity to the abandonment as well (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987). The issue of archeological sites was not only addressed with NEPA but also with the Archeological and Historical Preservation Act (AHPA). The Oklahoma Natural Heritage Inventory provided a report “from information currently on file that the proposed abandonment may affect a rare tree

in Oklahoma (the nutmeg hickory), a remnant bald cypress slough, and tall grass prairie” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 4). Due to the evidence provided by the OTRD and RTC regarding several issues not mentioned in the EA, it was believed that the ICC did not validate a substantial reason not to conduct an environmental impact statement (EIS) related to the abandonment.

The comment continued stating that it “fails to acknowledge the interest expressed by OTRD and RTC in rail banking and recreational trail use for the right-of-way in question, and it fails to mention or to discuss key alternatives with respect to the Henryetta to Durant abandonment” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 4). The author continued by addressing the issue that the EA had agreed with the railroad’s proposal of an unrestricted abandonment. The alternatives for unrestricted abandonment are:

“(a) continued rail service; (b) discontinuance of rail service but not abandonment; (c) rail banking through interim trail use under the National Trails System Act; (d) recreational or conservation use of the corridor under 49 U.S.C 10906; (e) other public use of the corridor; and (f) mixed public and private use for various portions of the corridor” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 5).

The OTRD and RTC comment stated that options (a)-(d) would be suitable options that would not have a negative impact on the historical, natural, or archaeological sites. The comment noted that alternatives (c)-(f) would protect the environment and provide greater public benefit rather than unrestricted abandonment (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987).

It was also noted in the EA that the ICC would not make a decision regarding any possible effects of the abandonments “until after a decision is reached by the ICC on each request for abandonment authority” (Interstate Commerce Commission, 1987, p. 36). It

was furthered discussed in the OTRD and RTC comment that “the very idea of NEPA is to have environmental information, including information related to key alternatives, in front of the agency decision maker before the decision maker acts” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 5). The comment mentioned that NEPA procedures required that environmental information must be available to public officials and citizens before the decisions were rendered and actions administered.

Based on the previous rebuttal of information, the OTRD and RTC comment suggested several items that would lower environmental impacts. The first was the proposed development of a recreational trail along the abandoned line. It was also suggested that the ICC impose conditions on the abandonment (Union Pacific) to reduce environmental impacts. OTRD and RTC requested that the ICC intervene and create a climate of negotiation between Union Pacific and OTRD. The reason for the last request was in response to the correspondence that Montange received regarding his appeal for deeds sent in October. The request specifically asked the ICC to require the railroad:

“immediately (within 20 days) to provide OTRD and RTC with all data and information available to the railroad, its agents, its representatives and related companies, related to the ownership interest claimed by the railroad in the Henryetta to Durant right-of-way” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 7).

The request was made so that OTRD and RTC could establish how the right-of-way was established. OTRD and RTC needed to know if the right-of way was established in whole or in part by specific land grant statutes or under governmental acts. This information will help the state “determine whether it has a right to the property upon abandonment under statutes such as 43 U.S.C. 912, and whether the railroad has interest

in the right-of-way which does not terminate upon abandonment” (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987, p. 7). 43 U.S.C. 912 states that if a railroad was established through the use of a public land grant, that upon abandonment, it would become a public highway (a public trail qualifies) if established within one year of the abandonment. If the highway is not established, then the land would be granted to those who own the land adjacent to the abandonment (Vlex, 2009). Based on the public land grant question, the comment prepared by the OTRD and RTC requested that ICC require the railroad to provide the documents since the previous request had been ignored.

The comment also requested that since it was obvious that there was public interest at stake, it required the railroad to negotiate with the OTRD and RTC regarding the abandonment and rail banking (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987). It was noted that the Trails Act did not require the railroad to negotiate, but that the railroad had refused to negotiate without justified cause and had not proven that there would be a burden to engage in negotiations. Furthermore, such negotiations were within public interest. It was also requested that the ICC implement provisions that would protect historic and archeological resources (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987). In closing remarks made by Montange, it was suggested that since the original EA was not conducted properly in regard to absolute abandonment that to comply with NEPA responsibilities an environmental impact study (EIS) would need to be conducted to inspect the possible impacts related to a complete abandonment. Upon completion of the



EIS, the OTRD and RTC requested a minimum of 30 days for public comment (Montange, Comments of the OTRD and the RTC (Environmental Assessment), 1987).

Upon receipt of Montange's comments sent to ICC and UP, the general attorney for UP responded on December 2, 1987, to both ICC and OTRD/RTC. The general attorney stated "I object to your request that the Commission require Missouri Pacific to provide detailed data regarding the means by which the right-of-way underlying the Henryetta-Durant line was acquired" (Anthofer, AB-3 (Sub-No. 63) Proposed Abandonment of Henryetta-Durant Line, 1987, p. 1). It was also noted that UP had previously contacted OTRD in regard to the enormous effort that would be needed to document how the 400 pieces of property were acquired. The letter followed up with "In any case, we [Union Pacific] would be agreeable to your clients' [OTRD/RTC] review of the acquisition documents which are on microfilm here in Omaha" (Anthofer, AB-3 (Sub-No. 63) Proposed Abandonment of Henryetta-Durant Line, 1987, p. 1). The general attorney believed that the agreement would be equitable based on OTRD's interest in the information. In closing UP stated, "If your clients [OTRD/RTC] wish to acquire this line, it would be more productive, from our perspective, to discuss that interest with us, rather than litigating the issue before the ICC" (Anthofer, AB-3 (Sub-No. 63) Proposed Abandonment of Henryetta-Durant Line, 1987, p. 2).

Following Anthofer's December 2, 1987 letter representing UP, Montange responded on December 8, 1987, indicating that OTRD was interested in working with UP without the intervention of the ICC. The issues discussed in this particular letter included the notation that OTRD/RTC needed information regarding "condition of title or its asking price, or cooperation applying section 8(d) of the Trails Act, to the extent

necessary to address revisionary interest” (Montange, Re: AB-3 (Sub-no. 63)

Abandonment, Henryeta to Durant, OK, 1987, p. 1). Montange also requested that this process be expedited for the following reason:

“We are concerned that this be done as soon as practicable, especially in the event that abandonment is authorized so that we might have more time to respond. OTRD is a governmental agency, and in the nature of things needs as much time as possible, especially for a project this large” (Montange, Re: AB-3 (Sub-no. 63) Abandonment, Henryeta to Durant, OK, 1987, p. 2).

In a document produced by the ICC on May 1988, it was noted that:

“(T)he Commission found that the public convenience and necessity permitted the MPRR to abandon a 123.6-mile line of railroad between Henryetta and Durant, OK. Issuance of a certificate of abandonment, subject to a 180-day public use condition was authorized. The OTRD and RTC had also requested interim trail use/rail banking under the Trails Act, but the Commission declined to impose a Trails Act condition because the MRPP had been unwilling to negotiate for such an arrangement” (Interstate Commerce Commision, 1988, p. 1).

On June 1, 1988 Governor Bellmon sent a letter to Chairman Walsh of Union Pacific and requested that:

“Union Pacific consider donating its interest in the Henryetta to Durant right-of-way to the State of Oklahoma. This donation of course, would have some beneficial tax consequences for Union Pacific and would have long term benefits for the citizens of Oklahoma as well as visitors to our state” (Bellmon, 1988, p. 1).

Governor Bellmon also attached an information sheet in the letter that provided the Union Pacific Chairman with the current miles converted from rails-to-trails nationwide. At the time of the letter UP had only converted two (2) miles from rails-to-trails. The information sheet listed other carriers with their conversion numbers. Chicago North Western (606.3 miles) topped the list with Missouri-Kansas-Texas (204.2 miles) placing fourth (Bellmon, 1988, p. 2).

ICC published a document on June 15, 1988, which contained the following: “By letter filed June 1, 1988, MPRR/UP indicates that it is now agreeable to a condition for trail use” (Interstate Commerce Commission, 1988, p. 1). The ICC document also noted OTRD’s willingness to assume financial responsibility for the interim trail use as stated under the guidelines of the Trails Act. MPRR/UP stated in the ICC document that the railroad would rescind the certificate of abandonment and issue a certificate of interim trail use or abandonment (CITU). This agreement would be established with OTRD for a 180-day negotiation period. The 180-day period allowed for open negotiations between OTRD and MPRR/UP without intervention from the ICC. If an agreement was not reached in 180-days then MPRR/UP could fully abandon the line (Interstate Commerce Commission, 1988). The 180-day negotiation period would end on December 19, 1988.

In September of 1988, a representative from OTRD met with MPRR/UP officials to discuss the CITU. This meeting allowed the two agencies to discuss whether the rail line would be purchased or if MPRR/UP would consider donating the property. It was stated that “they [MPRR/UP] did express some willingness to consider it [donating the property]” (Commissioners Meeting, 1988, p. 1). During a Commissioners meeting it was suggested that the line be received by “the department of transportation, since they are authorized by the legislature to receive this type of property and own railroad lines” (Commissioners Meeting, 1988, p. 1). From there the line could be leased to OTRD or a private concessionaire to operate segments of the trail.

The 180-day negotiation period that was imposed under the CITU ended on December 19, 1988. The ICC reported the following: “Although no agreement for interim trail use/rail banking had been reached by the 180<sup>th</sup> day, negotiations were continuing”

(Interstate Commerce Commission, 1989). A request was made by OTRD with the consent of MPRR on December 28, 1988 to extend the CITU period if granted by the ICC (Marek, 1988). The OTRD letter to the ICC stated that on Dec 13, 1988, MPRR agreed with this condition. The extension was granted orally by the ICC on January 3, 1989. A petition was filed on March 7, 1989, by the OTRD for the ICC to “confirm by order the oral extension of the CITU period to and including July 17, 1989” (Interstate Commerce Commission, 1989, p. 1). It was also noted in the ICC report that the MPRR was agreeable to the request made by representatives of OTRD. OTRD made a request for a formal document due to confusion of dates and times related to the extensions:

“ (B)ecause of the lack of documentation as to the grant of the extension and because of the possibility of third party challenges to the validity of the interim trail use and rail banking agreement reached by MPRR and ODTR during the extension period” (Interstate Commerce Commission, 1989, p. 1).

It formally documented that the CITU would be extended for 180 days based on the agreement date of January 18, 1989 through July 17, 1989. The next document related to this process was created by the ICC. The ICC presented a document dated August 9, 1989, that discussed another extension necessary for negotiations regarding the CITU. The request was made by OTRD to extend the deadline for another 90 days. The request for extension was granted by the ICC to OTRD and MPRR until October 16, 1989 (Interstate Commerce Commission, 1989). The reason for the extension was based on inconsistent communications with the ICC: “we [ICC] received a letter from MP stating that this line was abandoned effective May 19, 1989. This letter could be interpreted as implicitly withdrawing MP’s prior agreement to trail use, and indicating consummation of abandonment” (Interstate Commerce Commission, 1989, p. 1). The previous statement created uncertainty at the ICC as to the status of the line. Due to the confusion created by

MPRR it was “requested and directed that MPRR clarify its position and the status of the line” (Interstate Commerce Commission, 1989, p. 1).

In May of 1989, a follow-up meeting occurred with the Director of Real Estate for MPRR/UP to discuss the acquisition of the line and the confirmation of the appraisal that would be conducted. At that meeting it was conveyed to OTRD by the Director of Real Estate that MPRR/UP would be donating the line to the State of Oklahoma (Commissioners Meeting, 1989, p. 1).

The exact date of the agreement between MPRR and OTRD/RTC was not noted in any document, but it can be inferred that an agreement was reached prior to June of 1989 as the minutes of the Commissioners meeting noted: “Mr. Rollins moved and Mr. Walters seconded the motion to approve the acceptance of title from Union Pacific Railroad for the right-of-way from Henryetta to Durant.” This was followed by a notation that the “vote was unanimous for approval-motion carried” (Commissioners Meeting, 1989, p. 1).

On October 16, 1989, OTRD’s executive director (Glenn Sullivan) signed an agreement that confirmed the understanding related to MPRR/UP’s donation of the Henryetta-Durant right-of-way to OTRD. The description of property was noted as: “(T)otalling 1,951.73 acres more or less, trestles, culverts, mile post markers, ballast, those ties located on any bridge or trestle, and all bridges with the exception of the steel spans” (Union Pacific, 1989, p. 1). Section two of the agreement addressed the issue of an appraisal that needed to be made by OTRD prior to obtaining the property. The value would be evaluated and approved by MPRR/UP (Union Pacific, 1989).

A follow-up letter was sent November 16, 1989, to the Director of Planning and Development for OTRD regarding the draft of selling/donating the proposed line (Collins, 1989). A day prior to this correspondence, an appraisal report was conducted. The fair market value for the property in question with the ties was appraised at 15.6 million dollars and 14.9 million without the ties (Tuttle, 1989, p. 11). The appraisal included 60 acres of fee land owned by MPRR/UP and 1,892.88 acres of easement interest (Tuttle, 1989, p. 1). The counties containing the fee land were: Hughes (55 subdivisions; 10.23 acres), Pontotoc (21 subdivisions; 19.6 acres), Coal, (21 subdivisions; 17.02 acres), Johnston (14 subdivisions; 4.12 acres), and Bryan (15 subdivisions; 8.1 acres) (Marek, 1988).

The Office of the Attorney General of Oklahoma reviewed all of the documents regarding the fee simple deeds and the quitclaim deeds “until final resolution of all issues was received on March 15, 1990, when the contract was signed” (Commissioners Minutes, 1990, p. 1). MPRR/UP had contractually agreed to donate its interest in the Henryetta to Durant right-of-way to the State of Oklahoma with an appraised value of 14.9 million dollars.

On November 28, 1990, MPRR/UP provided information to the ICC regarding the current status of the trail development. It was noted that: “The Oklahoma Farm Bureau has petitioned for revocation of the certificate of interim trail use on the ground that there is no trail user” (Union Pacific, 1990, p. 1). MPRR/UP responded to the Oklahoma Farm Bureau’s (OFB) petition by replying that the argument is misdirected in nature and premature. MPRR/UP supported the claim by explaining that at the time of the request the railroad had not completed the reclamation process related to the rails and ties

along the right-of-way. The railroad also explained to the ICC what activities and modes of travel would be accommodated. It was also noted that the OTRD had a contract with MPRR for the purpose of developing a recreational trail (Union Pacific, 1990).

Montange sent a memo to OTRD about the pilot section of the Katy Trail (rails-to-trail conversion in MO). Montange noted that in the first month it was already considered a significant tourist attraction. The focal issue with the trail was lack of adequate parking (Montange, 1990). A regional paper provided support information related to the OTRD memo. The paper stated: “The Department of Natural Resources [State of MO] conceded that parking problems are serious, but called them growing pains” (Flannery, 1990, p. 8).

### **Opinion Survey**

In September of 1989, Oklahoma State University was contracted by OTRD to conduct a public opinion survey in regard to the Henryetta to Durant rails-to-trail project (Caneday, 1989). The survey was conducted via telephone to incorporate the greatest number of participants in the shortest amount of time. The study examined attitudes of residents within the eight counties where the abandonment would occur as well as citizens in the other 69 counties that did not include the abandonment. The minimum ratio of the survey was one person contacted per county for every one thousand in the population. This established that for the eight county samples there would need to be a minimum of 151 respondents (150,660 total population for eight counties) (Caneday, 1989). The sample size was then increased to 255 to ensure a robust representation of the population. The remaining counties held a population of 2.7 million. Caneday concluded that a ratio of one per ten thousand people would provide a comparable group sample size

for these counties. The eight county group provided a sample size of 255 while the rest of the state provided a 273 sample size (Caneday, 1989). Total for the sample size was 528. Numbers were randomly selected from the telephone listings. A total of 750 numbers were chosen to allow for number replacement (i.e. participants refused to participate, call was disconnected, etc.) (Caneday, 1989). The systemic calling for the survey started on October 5, 1989 and continued through October 14 of the same year. The total number of surveys conducted was 540 with 12 refusals providing a final number of 528.

One of the questions utilized in the survey established whether or not participants favored rails-to-trails. A brief explanation of rails-to-trails was provided prior to the conduction of the survey. From the total survey sample the question related to rails-to-trails found that “72 percent favored the rails-to-trails program” (Caneday, 1989, p. 8). When these percentages were analyzed by geographic location (according to their relation to the abandonment), the eight county percentage favored rails-to-trails at 56.1 percent (143 in favor (n=255)), while the statewide percentage favored rails-to-trails at 86.8 percent (237 in favor (n=273)) (Caneday, 1989, p. 8).

“Have you heard about rails-to-trails before” was also a survey question (Caneday, 1989, p. 20). The survey found that regardless of location the knowledge of rails-to-trails was similar. When asked ‘have you heard about rails-to-trails before’ 73 people responded ‘yes’ in the eight county area, with 74 ‘yes’ respondents in the statewide area (Caneday, 1989). The 147 respondents who reported knowledge related to rails-to-trails were provided a follow-up question to identify how they acquired knowledge related to rails to trails (Caneday, 1989, p. 9). Simple frequency distribution identified the highest information source as television and newspapers respectively.



Another issue that was addressed was whether or not survey respondents owned property. Of the five hundred twenty eight (528) respondents, four hundred one (401) affirmed that they owned property (Caneday, 1989). Of these four hundred one property owners, twenty-eight (28) reported that they owned property that was adjacent to a railroad right-of-way (Caneday, 1989). These twenty-eight property owners with land adjacent to railroads were further questioned about their support of the establishment of additional recreation areas and then whether they favored rails-to-trails. Landowners reported that they favored the creation of additional recreation areas (85.7 percent reported this as a favorable event). However, only 46.4 percent of these landowners surveyed reported that they favored rail-to-trail conversions (Caneday, 1989, p. 10).

The study provided the following conclusions:

1. "Over 90 percent of all respondents throughout Oklahoma favor additional recreational facilities in their area.
2. There is a significant difference in percentage of those favoring the rails-to-trails concept between the residents of the eight county area and those persons in the rest of Oklahoma.
3. There is limited knowledge of the rails-to-trails project among residents of the state of Oklahoma. Proportions of those familiar with the project were almost identical regardless of present activity to transfer use of a right-of-way within a given region.
4. Those individuals who own property adjacent to a railroad right-of-way tended to be less favorable toward rails-to-trails than the general population." (Caneday, 1989, p. 11)

### **Opposition to Rails-to-Trails**

The Oklahoma Farm Bureau (OFB) started discussions with the ICC regarding the abandonment on September 14, 1989. The Farm Bureau was awaiting the outcome of a Supreme Court case that was based in Vermont. Due to that case, the OFB requested that the ICC "delay indefinitely Docket AB-3 (Sub No. 63) and await the court's action"

(McFall, 1989, p. 1). The following day the bureau sent a similar letter to Oklahoma Governor Henry Bellmon asking for a withdrawal, at that time, on a state level regarding the rails-to-trail abandonment of Henryetta-Durant (McFall, 1989).

The OFB constructed a letter on September 19, 1989 to the following legislators: Senators Stipe, Shurden, Mickle, Wilderson, and Representatives Johnson, Coffee, Roberts, and Davis. OFB requested that until the US Supreme court ruled on the Vermont (rails-to-trails) case, officials lobby OTRD to withdrawal its request (Oklahoma Farm Bureau, 1989).

A letter from the general attorney of MPRR/UP to the (OFB) on September 13, 1989, discussed the right-of-ways. MPRR/UP divulged to OFB that “most of the realty is reversionary in nature, subject to further study. If the question is important to you [OFB], I strongly recommend that you obtain your attorney’s opinion regarding the matter” (Union Pacific Railroad, 1989, p. 1).

In a combined effort U.S. Congressman Watkins, U.S. Senator Boren, and U.S. Senator Nickles crafted a letter to the chairman of the ICC on September 29, 1989. The legislative officials were supporting petitions of the American Farm Bureau Federation and the Oklahoma Farm Bureau Federation to reconsider against the CITU of MPRR/UP rail line to the OTRD. The letter supported rails-to-trails in highly populated areas where such areas could be monitored by law enforcement and there was not controversy with adjoining land ownership. The legislators stated that land owners would be exposed to fires and litter due to camping activities. The authors also state: “Most importantly is that many of the landowners have reversionary rights to the adjacent land upon the abandonment of the line” (Watkins, Boren, & Nickles, 1989, p. 2).

The justification for the letter is not in the revisionary rights of the land owners. The authors point out that the ICC over-extended its power when it provided the second extension for ninety days on August 9, 1989. The evidence to the claim was supported by the MPRR/UP letter that stated the line had been officially abandoned prior to the August 9, 1989 extension.

Congressman Wes Watkins, in an October 5, 1989 newsletter, publically showed his worry about the development of the rails-to-trail development. Watkins stated that landowners “fear that law enforcement will not be enough in these remote areas to prevent drug activities and other crimes” (Watkins, 1989, p. 1). Watkins also presented the ICC with a letter of support related to the OFB objection of the CITU extension. This extension had been provided to OTRD/RTC and was related to the MPRR/UP abandonment (Interstate Commerce Commission, 1989).

Following HR 1080, (OTRD was sanctioned not to develop or promote the rails-to-trail project), OFB and American Farm Bureau petitioned the ICC to certify an abandonment based on the inability of the State of Oklahoma to develop the trail as agreed upon. The petition was filed on September 11, 1990. The OFB stated in the petition that if the trail user “intends to terminate trail use it must send the ICC a copy of the CITU and request that it be vacated” (Farm Bureau, 1990, p. 2). The OFB would then request that the ICC vacate the CITU and immediately and effectively issue an abandonment certificate. OFB stated:

“This right-of-way has become the trail nobody wants. It has been spurned twice by the railroad—once in May of 1988 when it indicated an unwillingness to negotiate, and again in May, 1989 when it notified ICC that the line had been abandoned. It has now been dumped by OTRD. This makes strike three” (Farm Bureau, 1990, p. 2).

The ICC responded to the OFB petition in a December 19, 1990 decision. The decision was that the ICC would reopen the case “to afford OTRD [the trail group involved] an opportunity to show that the statutory conditions for interim trail use continue to be met” (Interstate Commerce Commission, 1990, p. 1).

On January 14, 1991, the American Farm Bureau Federation assistant council notified the OFB that the ICC had reopened the petition with OTRD and MPRR. The national agency conveyed to the state agency that OTRD had 30 days to file a response (as per the decision by the ICC). It was suggested that OFB do what they could to stop OTRD’s efforts to fulfill their obligations to MPRR and the CITU. The items mentioned to ‘hammer on include’: “(1) Cost for weed control and litter removal; (2) Cost for liability insurance and payment of real estate taxes; and (3) Cost for police and fire emergency services” (Krause, 1991, p. 1).

On January 16, 1991, Glenn Sullivan, the Executive Director of OTRD, sent a letter to the ICC regarding their January 4, 1991 decision. Sullivan stated, “[OTRD] accepted financial responsibility for the line and is able to carry out that responsibility, although as indicated the State through OTRD does not currently plan to expend funds to install or to maintain an advanced type of trail” (Sullivan, 1991, p. 1). The Commission’s decision expressed concern about the Farm Bureau claims regarding OTRD’s inability to pay taxes on the line. It was noted that if a state agency (OTRD) owns the line, then the property is state property and is not subject to taxes (Sullivan, 1991).

On January 29, 1991, Governmental Relations from OFB sent a letter to J.B. Bennett, Executive Director of OTRD. The letter commented on OFB’s stance on the rails-to-trail issue. It was stated that OFB “is not opposed to rails-to-trails if the Railroad

Company of the state owns the land” (Howard, 1991, p. 1). The letter continued by noting that neither the state nor the railroad owned the land under their interpretation of Article II Section 24 of the Oklahoma Constitution; therefore, it was concluded by OFB that private property rights were being violated by the OTRD. An OFB representative addressed these issues in the following statement:

“The old-timers tell me that State agencies used to abide by the constitution and legislative intent. Speaker Johnson has reserved a shell bill if we need to use it in the event that you do not withdraw your ICC response by February 4<sup>th</sup>” (Howard, 1991, p. 1).

On January 31, 1991, the Executive Director of OTRD wrote a response letter to the Governmental Relations office of the OFB. The letter stated that “We [OTRD] have elevated your concern to the top of our agenda and I am conferring with the Governor’s staff on their disposition” (Bennett, 1991, p. 1). The Executive Director continued by stating that “this [OTRD] agency shares your great concern on this controversial subject and wants to bring it to the best possible conclusion for all concerned” (Bennett, 1991, p. 1). Bennett also sent a letter to Governor Walters providing a background and outlining the current situation of the rails-to-trails abandonment. OTRD asked Governor Walters for a disposition:

“[I]n order to guide the Department’s [OTRD] further actions, we need your [Governor Walters] position on this critical issue. Your decision determines whether this once in a lifetime opportunity for the state to own and operate this trail will become a reality, or whether the corridor will revert back to adjacent or other owners” (Bennett, 1991, p. 1).

The statements above were made after the director of planning and development (OTRD) had provided a memo (January 29, 1991) that documented and supported rails-to-trail development. The evidence was founded in federal legislation, Supreme Court

cases, Oklahoma Survey of Public Opinion, economic impact studies done in other states and resolutions with support information.

Four days later the OTRD Executive Director received the Governor's disposition on the rails-to-trail topic. On February 4, 1991, Governor Walters' inauguration day, he penned a letter that advised the ICC of the following: "The newly inaugurated administration in the State of Oklahoma wishes to vacate the Interim Trail Use Agreement for the above referenced [Henryetta-Durant abandonment by MPRR] project to be effective February 5, 1991" (Walters, 1991, p. 1).

One week after the vacated date (February 12, 1991), Bennett sent a letter to the Governor's office offering support to his public relations staff in developing a response for removal of the CITU. This offer was extended due to the overwhelming support provided to OTRD in the previous two weeks. It was noted by the OTRD that "200 letters of support were received" and "29 pages of petitions [were] signed by individuals in favor of the project" (Bennett, 1991, p. 1). OTRD believed:

"Some sort of response is in order to the public, at least as a damage control measure. The potential for negative publicity is great on this project in that Oklahoma's actions will impact not just Oklahoma but other states which are trying to implement similar rail banking efforts" (Bennett, 1991, p. 1).

This letter included a hand written response stating, "This is a problem for you [OTRD] to solve not pass on – [I would] be happy to look at a recommendation" (Bennett, 1991, p. 1). The request by David Walters to remove the CITU on February 4, 1991 is what "killed the rails-to-trail project in Oklahoma" (Henry, 2009). Once the CITU was removed, the trail folded as the state no longer held ownership of the property. This ultimately allowed MPRR to file for an unrestricted abandonment (Henry, 2009).

## **State legislature and Rails-to-Trails (1987-1991)**

During the second session of the 41<sup>st</sup> Legislative session of the Oklahoma Senate (seventeenth legislative day, February 4, 1988), Senator Floyd read for the first time a joint resolution (SRJ 46) “directing OTRD to take appropriate steps to plan, develop, operate and maintain a State Trails System for recreation purposes: and providing an effective date” (State of Oklahoma, 1988, p. 170). Senator Floyd represented district eleven which was comprised of: Coal, Hughes, Murray, Okfuskee, Pontotoc and Pottawatomie counties (State of Oklahoma, 1988, p. xii). Senator Floyd was also the Chairman for the Tourism and Recreation subcommittee. SJR 46 was read a second time on February 8, 1988, and was sent to the subcommittee of Tourism and Recreation (State of Oklahoma, 1988, p. 174). SJR 46 was released as “Do Pass as amended” on the twenty-sixth legislative day, February 23, 1988, from the Tourism and Recreation subcommittee. This was coauthored by Senator Write and Representative Littlefield (State of Oklahoma, 1988, p. 273). The thirtieth legislative day of the session (Tuesday March 1, 1988), Senator Luton (Majority Floor Leader and District nine representative), “advised that the authors of following bills [of which SJR 46 was one] ... [request] unanimous consent that the measures be withdrawn from the calendar and referred to the committees named” (State of Oklahoma, 1988, p. 322). The SJR 46 resolution was re-referred to the subcommittee of Tourism and Recreation.

SJR 46 was a resolution that was created to:

“expand the definition and purpose of trails under the Oklahoma Trails System Act, declaring that a public purpose exist for trail acquisition; providing for transfer of acquired rights-of-way to local governmental agencies for operational and maintenance; directing the Oklahoma Tourism and Recreation Department to evaluate existing and potential abandoned railroad right-of-ways and identifying certain factors for consideration; directing the Department to maintain a list of

potentially available railroad right-of-ways in cooperation with other state agencies; providing for public and private access to information; authorizing the Oklahoma Tourism and Recreation Department to accept title, including non-marketable title, to abandoned railroad rights-of-way for trail uses, authorizing the Department to grant easements; and declaring an emergency” (Floyd, 1988, p. 1).

The language focused on rewording the Oklahoma Trails System Act (OTS) found in Chapter 241 Section 4(a) 2 of the Oklahoma Session Laws of 1974. The focal point was with the planning and type of trails that the state would and could create under the guise of the OTS. This was written to define state hiking trails in the following manner: “State hiking trails, which will be extensive trails and will serve to connect parks, scenic areas, historical points and neighboring communities” (State of Oklahoma, 1974, p. 476). SJR 46 suggested that the verbiage be amended as follows: “State recreational ~~hiking~~ trails, which will be extensive trails and will serve to interconnect ~~connect~~ and provide access to ghost towns ~~parks~~, scenic areas, historical sites ~~points~~, hunting areas, lakes, recreational areas, state parks and neighboring communities” (Floyd, 1988, p. 2). SJR 46 also added a fourth section to OTS addressing planning and development of future trails:

“The planning, development, operation, and maintenance of the state trails system authorized by sections 1853 -1859 is declared to be a public purpose, and the Tourism and Recreation Department, together with the other political subdivision of the state, is authorized to spend public funds for such purposes and to accept gifts and grants of funds, property or property rights from public or private sources to used for such purposes” (Floyd, 1988, p. 1).

The resolution dealt with the issue of railroad right-of-way abandonment. As the 1974 section noted: “The commission shall review all formal declarations of railroad right-of-way abandonment for possible inclusion into the state trail systems” (State of Oklahoma, 1974, p. 477). It was suggested in the resolution that “the commission may provide for the acquisition of such right-of-ways” and that the Tourism and Recreation Department evaluate existing and potential abandonments and identify possible corridors that would



be suitable for acquisition for a recreational trail (Floyd, 1988, p. 3). Floyd advocated for the creation of an evaluation method for trail development that addressed the following:

- “Current and future recreational need
- Potential for local sharing in the acquisition, development, operation or maintenance of abandoned rail corridors
- Cost of acquisition, development, operation and maintenance
- Time of availability of right-of way” (p. 3).

The last issue the SJR 46 identified was how the acquisition of land would occur. The resolution recommended that for the purpose of the rails-to-trails program the commission adopt the following:

- Accept title, including nonmarketable title, to abandoned railroad right-of-way purchased, leased, donated, or reverted back to the state and to any areas abutting such rights-of-way which are needed for the construction of trail use support facilities
- Accept title to abandoned railroad right-of-ways which are conveyed by quitclaim deed through purchase, gift, grant, or settlement (Floyd, 1988, p. 4).

The suggestions made in 1988 would not come to fruition as the resolution was never brought back to the Senate floor.

The minutes from a Commissioners meeting would reflect that in March of 1988 those who were named in attendance (George Walters, Representative Holden, Kris Marek, Bob Rollins, Lori Davis-Johnson, Mr. Garber, Robert Kerr, Mr. Langston, Mr. Sullivan, and Mr. Jones) voted unanimously for the approval of the Rails-to-Trails proposal and supported SJR 46 for approval (Commissioners Meeting, 1988, p. 4).

The unanimous approval of the rails-to-trail project by the Commission was the catalyst in the creation of the *Resolution of the Oklahoma Tourism and Recreation Commission Regarding SJR 46*. The resolution supported SJR 46 in a written declaration: “WHEREAS the Commission feels this legislation would be of substantial assistance to

the Oklahoma Tourism and Recreation Department's efforts at obtaining viable recreational trails within the state which link various recreation and historical areas" (OTRD Commission, 1988, p. 1).

At the national level related to rails-to-trail conversion, it was documented on April 19, 1988 in the 100<sup>th</sup> Congress that House Resolution 2641 was being created to help reduce the state and local government bureaucratic red-tape when attempting to access abandoned tracks and convert them to trails. It was stated by Mr. Synar that: "A statewide system of trails would complement the existing outdoor resources and enhance Oklahoma's tourism potential" (Congressional Record, 1988, p. 1).

In the first session of the 42<sup>nd</sup> Legislative session of Oklahoma, Representative Littlefield introduced HB 1356 which was similar to SJR 46 (since Littlefield was also a co-author of the revised SJR 46). HB 1356 was introduced on Monday, February 6, 1989 (the nineteenth legislative day); this bill suggested changes that were similar to those found in SJR 46 which was presented almost one year prior (State of Oklahoma, 1989, p. 200). The next legislative day HB 1356 went to the Tourism and Recreation subcommittee for review and revisions. HB 1356 would never be voted on or come out of committee (State of Oklahoma, 1989).

House Concurrent Resolution 1080 was introduced in the State of Oklahoma House of Representatives on May 16, 1990 (the fifty-ninth legislative day) of the forty-second legislative session. It was written by Representative Johnson and Senator Mickel. The resolution's intent was concerned that "the Oklahoma Department of Tourism and Recreation not develop or promote the Rails to Trails program in a certain area; and directing [sic] distribution" (State of Oklahoma, 1990, p. 1369). The resolution addressed

OTRD's agreement with MPRR/UP to take title of the Henryetta-Durant line. HCR 1080 also noted that "... the citizens of Hughes County, Okmulgee County, Coal County, Bryan County, Johnston County, and Okfuskee County oppose the development of a hiking trail in their area" (Johnson, et al., 1990, p. 1). The justification for the resolution was under Section 24 of Article II of the Oklahoma Constitution.

HCR 1080 was called for consideration on May 21, 1990. This call created eight new co-authors for resolution. It was considered, adopted, and referred for engrossment to the Senate (State of Oklahoma, 1990). On the same day as the engrossment, the resolution was sent to the Senate and read for the first time (State of Oklahoma, 1990). The following day the resolution was read for a second time in the Senate, and then "referred to the calendar" (State of Oklahoma, 1990, p. 745). On May 24, 1990, HCR 1080 was "adopted upon motion of Senator Mickle, properly signed and ordered returned to the Honorable House" (State of Oklahoma, 1990, p. 766). On May 25, 1990, HCR 1080 was signed in open session by both the House and Senate and "filed with the Secretary of State" (State of Oklahoma, 1990, p. 1955). Section one of the resolution as passed noted, "It is the intent of the Oklahoma Legislature that the Oklahoma Tourism and Recreation Department take no action to develop or promote their "Rails to Trails" project for Henryetta to Durant" (State of Oklahoma, 1990, p. 1955). HCR 1080 removed the ability to develop the rails-to-trail abandonment by OTRD. HCR 1080 was based on Article II Section 24 of the Oklahoma State Constitution, which dealt with issues of private property for public use and landowner compensation for any parcel of land taken (State of Oklahoma, N.D.).

## **Environmental Report to the Governor**

In November of 1988, through executive order, Governor Bellmon created the Oklahoma Environmental Concerns Council. The council consisted of five different subcommittees: (1) Air Quality; (2) Water Quality; (3) Land Use and Preservation; (4) Solid Waste Management; and (5) Regulatory Structure (Swimmer, Talley, & Williams, 1989, p. 2). The Land Use and Preservation subcommittee stated that due to the “abundance of agricultural and forested lands, prime public recreational areas, scenic open spaces, wildlife habitat and natural areas, historic sites and structures” Oklahoma could anticipate an increase in population and continued residential, commercial and industrial growth (Swimmer, Talley, & Williams, 1989, p. 17). It was suggested by the authors that Oklahoma prepare for the growth by determining land uses. The council established six major concerns: (1) coordinating the best use of state resources within various locations of the state; (2) protection and preservation of lands for public use and wildlife habitat; (3) preservation and protection of private lands that are uniquely situated for wildlife habitat and public use; (4) development of methods to reduce pollution and erosion of farmland topsoil; (5) increasing roadside reforestation and minimizing scenic threats such as junkyards and roadside trash; and (6) instilling a sense of pride in the citizens of Oklahoma to maintain the natural beauty and diversity of the state.

The council also noted that Oklahoma’s economy had suffered due to its failure to anticipate certain occurrences. At the time of the council’s report, it was noted that tourism was considered the second largest industry in the state “but less than five percent of the state’s total area is open to public recreation and these areas are distributed unevenly across the state” (Swimmer, Talley, & Williams, 1989, p. 18). It was

recognized by the council that public lands were useful avenues for recreation, historic preservation, tourism, and protection of the natural habitat. It continued on with the idea that acquisition of public land is a pivotal issue in the state's development of its tourism industry (Swimmer, Talley, & Williams, 1989). The report addressed the issue of acquisition of said properties and the impact that it would have on the reduction of the local tax base as well as the effects on the state. It also mentioned that: "There are a variety of funding mechanisms available to acquire land and many different methods available to make private lands available for public use without having to acquire those lands" (Swimmer, Talley, & Williams, 1989, p. 19). The authors suggested that a policy be developed to cover how this occurs as well as a method to the operational nature of this process.

Since only five percent of Oklahoma is open for public use, the other ninety-five percent is held by private landowners or the federal government. The council recommended that the state review the methods by which land could be acquired. The authors suggested the following tactics be used: "Donation or a bargain sale, lease or special use permits, life or term estates, land trusts, and conservation easements" (Swimmer, Talley, & Williams, 1989, p. 19).

The council discussed that Oklahoma's executive and legislative leaders must initiate a long term planning process to put the necessary tools (legislation) and processes in place for such planning to be carried through to fruition. The issue was compounded by a culture among many Oklahoman's that individual rights and priorities related to self and property were an entitlement. Due to this dual paradigm, it was difficult for leaders to plan for long term preservation when the owners of the properties did not embrace the

same ideologies (Swimmer, Talley, & Williams, 1989). The authors addressed the fact that another dual paradigm existed: Land could be used for economic prosperity or a piece of property could be preserved for public use.

At the time of the report over three billion dollars was brought into the state's annual economy due to recreation (Swimmer, Talley, & Williams, 1989). Because of minimal public lands available for all Oklahomans and visitors to enjoy in an equitable manner, it was suggested that the state adopt a policy for acquiring additional areas for public use and preservation. Areas for land acquisition that were noted by the council included: "Recreation; Historic Preservation; Protection of Biodiversity and Natural Habitat; and Tourism" (Swimmer, Talley, & Williams, 1989, p. 90). It was suggested by the council that a "State Land Acquisition Council" be developed that would "identify and prioritize critical areas for state ownership" (Swimmer, Talley, & Williams, 1989, p. 90). There existed a need for the creation of a useable policy for land acquisition on a prioritized basis or, according to the council, "a great opportunity to improve the quality of life in Oklahoma will be lost" (Swimmer, Talley, & Williams, 1989, p. 90). As the industry of outdoor recreation and tourism increased and became a vital part of the Oklahoma lifestyle, it would also become vital to the state's economy. The thread between economic viability and outdoor recreation focused on land utilized for activity. The authors concluded the study with various recommendations. Recommendation fifteen under Land Use and Preservation suggested that the state "should commission publication of a brochure which describes all of the opportunities available for conservation or preservation of natural, scenic, open lands which are held in private hands" (Swimmer, Talley, & Williams, 1989, p. 110).

## Newspapers

On April 29, 1991, Tulsa World printed an article that quoted Governor Walters' reason for opposition to the Henryetta to Durant project: "Maybe it is the fact that I grew up on a farm that was split right in two by a railroad that was rarely used and knowing of the advantages to small farmers and ranchers being able to get their land back" (Ford & Fink, 1991, p. A11). This same article states that the reason that the landowners do not want the rails-to-trails project is because they do not like the "idea of joggers, bikers and others near their property as they fear a rise in crime" (Ford & Fink, 1991, p. A11). Bennett, the Executive Director at the time, was also quoted saying, "I think he [Walters] knew he was doing something that would not be looked upon favorably by recreationists and yet I knew he had made a commitment to the Farm Bureau and Speaker Johnson" (Ford & Fink, 1991, p. A11).

On September 9, 1991, The Tulsa Tribune printed a story about the dissolution of the agreement between MPRR/UP and OTRD. The story demonstrated the dual paradigms related to the project. One side of the story dealt with revisionary rights. One Coal County land owner was quoted as saying, "It is our land in the first place" (Associated Press, 1991, p. 3A). The Farm Bureau continued the idea by suggesting that "the local folks are very concerned about crime" (Associated Press, 1991, p. 3A). Land owners were also concerned that they were paying taxes on property that they were not able to utilize.

The same article interviewed a representative of a state trail user group that believed the trail would help with economic benefits to the depressed economy in southern Oklahoma. The authors stated that a survey had been conducted by Oklahoma

State University that examined public opinion related to the project. The results stated “that more than 80 percent of all Oklahomans favor converting the old line to a trail” (Associated Press, 1991, p. 3A). It should be noted that previous OTRD Executive Director Glen Sullivan, who worked with Bellmon to secure the MPRR/UP line, stated, “This [removal of CITU] is a bunch of B.S. and you can quote me on that” (Associated Press, 1991, p. 3A).



## CHAPTER V

### CONCLUSION

#### **Introduction**

The unfolding drama within the legislative and political arena associated with the conversion of the Henryetta to Durant rails-to-trail project established a precedent for similar projects attempted since. Bureaucratic red tape during the negotiation process can be identified as a major issue leading to the downfall of the project. The rails-to-trail project, originally projected to take 180 days for a CITU, eventually extended into a process lasting almost two and a half years.

#### **Identification of indicators associated with rails to trail conversions**

The common landowner perceptions associated with rails-to-trails conversion in research and literature were: Anticipated increase in unlawful activity; inability of local law enforcement agencies to patrol easements; increased levels of trash along the easement; decreased property values; and the perception of violation of personal property rights.

The first indicator, anticipated increase in unlawful activity, was unsubstantiated in either literature or research. Those who opposed the conversion were not only concerned with unlawful activities, but also with the ability of law enforcement to adequately patrol or monitor the trail for unlawful activity. Unlawful activities can be defined in many different forms (ranging from misdemeanor to criminal). Common misdemeanor issues such as littering, trespassing, etc. were addressed in various studies and plans. The central suggestion from these reports included local property owners

working in conjunction with the governing agency or trail agency to ensure that trash receptacles were placed along the trail. In addition, conducting an annual trail clean-up day was also proposed as a mechanism to help address litter issues (Citizens Advisory Committee on Environmental Quality, 1975). In previous conversions it was recommended that landowners discuss trespassing issues related to trails with land managers. Common recommendations included construction of physical barriers or the creation of natural barriers (with plants) between the easement and property lines.

Discussions regarding barrier issues between property owners and the railroad easement brought the notion of trespassing to the forefront and projected the matter as an issue. Although trespassing was never mentioned in public documents surrounding the abandonment process of the Henryetta-to-Durant line, it was highly probable that this was a point of contention among landowners. It should be noted here however, that such concerns were not documented in state archives. Historically, the issue of trespassing and public trails was separately documented within state statutes. When use of a trail is free to the public, the landowner is protected under the recreational use statute of Oklahoma (Oklahoma Legislature, 2004). Essentially, any land owner who had property adjacent to the abandonment would not be liable for accidents occurring on their property, as long as they did not charge for use of that property and it was in its natural form (Oklahoma Legislature, 2004).

Concern surrounding decreased land values of property adjacent to the abandonment was also touted as a negative outcome by opponents of the conversion. This issue extended far beyond land value into the perceived negative value of having a trail next to private property. This issue of LULU (Locally Unwanted Land Use) was found in

the research conducted by Caneday in 1989. This could explain why 80 percent of the state's population in the 69 counties (counties not intersecting with the abandonment) favored the conversion, while in the remaining eight counties (where the abandonment did intersect) there was only a 56.1 percent approval rating (Caneday, 1989).

Furthermore, among landowners adjacent to the abandonment approval for the conversion dipped to 46.4 percent (Caneday, 1989). This contrast of values among those who owned property next to the abandonment as compared to those across the state who did not was a clear example of LULU. Perceived negative effects (i.e. lower property values, crime, trespassing, and legal obligations) among landowners of property adjacent to the abandonment were a greater concern when compared to developing a publically beneficial item (Brion, 1991).

NIMBY (Not In My Back Yard) was another issue that could be observed in the abandonment process through the eight counties where the abandonment intersected. This could be seen with the issue of trail development across the state when “over 90 percent of all respondents throughout Oklahoma favor the addition of recreational facilities in their area” (Caneday, 1989, p. 11), while those who had actual property that intersected with the new recreational opportunity had an approval rating of approximately half that (46.4 percent). This suggests that many Oklahomans support the development of recreational opportunities as long as it is not on or adjacent to their private property.

The proposed development of trails at abandoned railways held concern even beyond the negative perceptual issues of LULU and NIMBY; negative financial fears were also addressed. On January 29, 1991, OTRD sent correspondence to the governor's office regarding land values and rails-to-trails conversion. The Burke-Gilman study

(contained within this correspondence) found that land adjacent to the trails sold easier and with a six percent increase in value. It should also be noted that according to the study, those who owned land prior to construction of an adjacent trail were less likely to see it as an economic asset, while those who purchased property adjacent to a trail post construction found it to be an economic benefit (Seattle Engineering Department, 1987). Like the 1989 Caneday study, the Burke-Gilman research found major attitudinal differences among property owners with land adjacent to proposed trails. The Burke-Gilman study may have provided insight into why landowners studied by Caneday (1989) responded differently to trail development than their counterparts without land in the area.

Another issue during the proposed development of trails was the perception that personal property rights were being violated. This was the concern touted by the OFB and the issue that framed their argument against trail development. The OFB conveyed to landowners that once the railroad abandoned the line the land would automatically go into revisionary interest. Part of the OFB statement was correct; if the line was considered in absolute abandonment, then the possibility of revisionary rights existed. However, when abandoned rail lines were rail banked to an organization that would utilize the abandonment for trails it was still considered a transportation corridor. When the property was categorized as a transportation corridor it was then being utilized in a manner similar to the original easement. The difference was that the railroad did not have an economic profit or debt from rail banked property. The land owners (and OFB) did acknowledge this in the Henryetta-to-Durant abandonment. The argument with the abandonment was how the ICC allegedly over-stepped its authority by providing

extensions during the CITU negotiations between OTRD and MPRR/UP. The focus of OFB during this time can be seen when OFB argued that in May of 1988 MPRR/UP was unwilling to negotiate with OTRD. This was followed by a 1989 document by MPRR/UP that notified the ICC that the line had been abandoned. In both cases the OFB believed that the ICC overstepped its authority, although the ICC was granted Congressional oversight related to railroads (1887) and railroad abandonments (1920) (Drumm, 1998; Rails-to-Trails Conservancy, 2007).

Identifying and yielding to the fact that the ICC was within their authority to provide extensions to OTRD/MPRR, the OFB resurrected their lobbying tactic against the conversion. Their new approach framed the issue around land ownership. The lobbying tactic dealt with the revisionary rights of the property. The OFB received a letter from MPRR/UP that stated “most of the land is revisionary in nature... I [General Attorney for MPRR/UP] strongly recommend that you obtain your attorney’s opinion regarding the matter” (Union Pacific Railroad, 1989, p. 1). The argument is valid in relation to the numerical count associated with easements (less than fee simple) as compared to deeded titles (fee simple). Easements granted to the railroad by land owners (from 1904-1910) constituted 1,892 acres (more or less) while the railroad owned 60 acres (more or less). While the approach to land rights was the lobbying tactic utilized by legislators, it was still not the main focal point of the fight against trail development. The OFB framed its position around the violation of property rights and suggested that this occurred with ICC’s over-extension of power. The OFB believed that revisionary rights should have occurred after the first 180 day CITU had expired.

### **Who owned the land?**

Historical research related to the development of railroads in Oklahoma established that the Henryetta-to-Durant rail line was constructed by the Missouri, Oklahoma and Gulf Railway (MO&G) from 1904-1910. Construction of the rail line began three (3) years prior to Oklahoma statehood; the MO&G was incorporated under the Territory of Oklahoma. Based on the timeline related to construction (1904-1910), the use of eminent domain or land grant was minimal (if it was used at all). The railroad only owned sixty (60) acres of land (more or less) after establishing easement rights with the property owners of the other 1,892 acres. A grand total of less than three (3) percent of the total acreage involved was owned by the railroad.

### **Economic Impacts and Political Decisions**

Prediction of economic impacts related to a non-existing trail cannot be made. Williams stated “although it [historical research] can offer some useful perspectives and council prudence for decision makers in the present”, it should be noted that historical research is not predictive (Williams, 2003, p. 41). What research determined was that states with rails to trails had an average inflow of revenue equal to about eight dollars per person per day (Knoch & Tones, 2006). It should also be noted that the economic impact for counties with rails-to-trails was an increase of 400,000 to 600,000 dollars annually from trail users (Moore, Graefe, Gitelson, & Porter, 1992). Applying the total monetary increase found in other areas to the Oklahoma counties that would have held the Henryetta-to-Durant trail, 3.2 million to 4.8 million dollars would have been generated each year for those eight counties. The application of previous studies to the Henryetta-

to-Durant line demonstrates that conversions of rails-to-trails could have had significant beneficial economic impact to the counties involved.

It was noted in the 1989 Governor's Environmental Report that Oklahoma's economy was suffering. The report also confirmed that recreation and tourism was the second largest industry in the state (Swimmer, Talley, & Williams, 1989). At the time of the release, the state was amid negotiations regarding the Henryetta-to-Durant line conversion. Had the abandoned line converted to a trail, Oklahoma would have held one of the top 10 rails-to-trails opportunities in the nation. The Governor's Environmental Report also established that Oklahoma's economy had suffered due to a failure to recognize and anticipate certain occurrences. The report also mentioned that the acquisition of public lands for recreational opportunities was a pivotal issue in developing the state's tourism industry (Swimmer, Talley, & Williams, 1989).

The report further discussed Oklahoma's need to initiate a long-term planning process placing necessary legislation in position to assist in the development of recreation and tourism. In early February 1988, Senators crafted Senate Joint Resolution 46 (SJR 46). SJR 46 had the opportunity to assist in the development of recreation and tourism as suggested in the Governor's Report. Unfortunately, the resolution would never make it out of subcommittee. On a national level that same year, House Resolution 2641 (HR 2641) was being created to help states remove bureaucratic red tape when attempting to access abandoned rail lines for trail development (and increase expansion of recreation opportunities). When HR 2641 was discussed on the House floor, the Oklahoma rails-to-trails conversion was used as model. It was stated that "a statewide system of trails would complement the existing outdoor resources and enhance Oklahoma's tourism potential"

(Congressional Record, 1988, p. 1). The following year (1989) in the Oklahoma Legislature, House Bill 1356 (which was essentially SJR 46) was introduced in the House. This bill would also stall in committee and never be voted on.

Historically, Oklahoma legislation has dramatically contradicted what was suggested by state funded research as a necessity. The 1989 Governor's Environmental Report suggested that Oklahoma needed to develop recreational resources. However, when the Oklahoma state legislature authored two separate documents (SJR 46 and HB 1356) attempting to assist in the development of recreational opportunities in the state, both would die in committee. Furthermore, one year later, in 1990, House Concurrent Resolution 1080 (HCR 1080) would essentially halt the development of one of the largest public rails-to-trail conversions. HCR 1080 stopped funding of a project that would have added to the annual three billion dollar revenue brought into the state coffers through recreation.

Governor Walters may have failed to consult the information contained within the 1989 Governor's Environmental Report. On his first day in office, Walters requested that the CITU with MPRR/UP be dissolved and that the rail line be abandoned. The executive decision to remove the CITU undermined the previous two years of negotiations between OTRD and MPRR/UP. The removal of the CITU also contradicted the findings and suggestions of the 1989 Governor's Environmental Report, which had been released approximately eighteen months prior. When asked the basis of his decision related to the CITU request, Walters was quoted as saying "...it is the fact that I grew up on a farm that was split right in two by a railroad that was rarely used and knowing [sic] of the



advantages to small farmers and ranchers being able to get their land back” (Ford & Fink, 1991, p. A11).

### **Items of interest**

Upon removal of the CITU from the Henryetta-to-Durant abandonment initial issues raised in the environmental assessment response by OTRD were not addressed. The various concerns included: impacts on historic resources as defined by National Environmental Policy Act (NEPA); the thirteen (13) defined archeological sites as defined by the Archeological and Historical Preservation Act (AHPA); and the nutmeg hickory, remnant cypress slough, and tall grass prairie on the Oklahoma Natural Heritage Inventory. Understandably, this was no longer a necessary component since the results would be available to interested parties that wanted to prevent or develop the absolute abandonment. It is interesting to note that these aforementioned impact issues were not resolved as originally addressed by the OTRD, yet they continued to be overlooked post abandonment due to lack of interest by the state.

The total acreage discussed in the study was approximately 1,952 acres (more or less). The eight counties that the abandonment would have passed through were approximately 5,897.91 square miles (U.S. Census Bureau, 2009). To place this into perspective, the land tied to the abandonment was equal to approximately three square miles spread out over the eight counties in question. The total abandonment would have been equal to approximately half of one percent (.05) of the total land area of the eight counties.

An issue that may have been overlooked by Governor Walters was that the abandonment was donated to the state by MPRR/UP. The donation was appraised at

approximately 14.9 million dollars without the rails and ties. This substantial donation to the State of Oklahoma was disregarded by the administration at the time. This issue was especially concerning in light of the fact that there were not any hidden stipulations or clauses tied to the donation. This clearly demonstrated political positioning rather than a focus on what was best for the state.

The issue of sustainability for rural communities was not mentioned in any documents tied to the abandonment. The creation of revenue assisting towns along the abandoned rail line could only be predicted based on research tied to monies generated by rails-to-trails in other studies. It is interesting to note that the 1989 Governor's Environmental Report discussed property issues in Oklahoma. Suggestions were that land be used for economic prosperity or preserved for public use (Swimmer, Talley, & Williams, 1989). With absolute certainty, conversion of the abandoned rail line would have provided a means of economic sustainability to the area while also preserving land for public use.

## **Summary**

This study focused on the historical review of a two and a half year process concerning 123 miles of rails-to-trail conversion in the state of Oklahoma. This 14.9 million dollar donation was agreed upon and approved under Governor Bellmon and by state agencies and was then economically hindered (by HCR 1080) and dissolved on the inauguration day of Governor Walters. A key concern related to the study was ignoring the science and overall public opinion in relation to political decisions on the abandonment. The use of political power by a single governmental branch to dissolve a contractual agreement between OTRD and MPRR/UP created an unfortunate precedent.

Since this occurred Oklahoma has not seen an opportunity for another long distance trail and chances are that it will not again anytime soon. Trails developed by railroad abandonments since the MPRR/UP abandonment have been substantially shorter in length. The executive decision to forego rail conversion, combined with HB 1080, created another regrettable precedent: Individual municipalities rather than state agencies develop and manage rails-to-trails projects. Many of the state's smaller conversions have been granted federal funds from the Recreation Trails Program. These trails are managed by municipalities. With various municipalities having oversight and development of the rails-to-trails, they are not managed equitably nor developed with set standards. This also creates a burden on the local tax base and resources associated with the city.

The opposition to rails-to-trails by OFB was effective due to framing the issue around personal property rights. The issue was compounded by a culture among many Oklahomans that individual rights and priorities related to self and property were an entitlement. The entitlement issue can be seen in Governor Walters' quote about growing up on a farm: "...and knowing of the advantages to small farmers and ranchers being able to get their land back" (Ford & Fink, 1991, p. 4). The perception of personal entitlement to this land that was created was interesting as the property in question had been under easement for almost eighty (80) years.

Overall, the long term positive impacts that could have occurred with the inception and fruition of this project will never be able to be seen. To prevent this type of incident from happening again, legislation must be tied first to scientific research and then to public opinion rather than to single personal opinions and political positioning that negates years of negotiations.

## **Recommendations**

Future development of rails-to- trails within the state will greatly benefit from a strategic and concerted approach to such efforts. For instance, ensuring that the managing agency of long distance trails is a state agency helps to maintain consistency throughout the trail (both in development and maintenance) while allowing funding to be used in a beneficial manner. As a matter of development and maintenance, state guidelines provide uniformity in procedures related to repairs and upkeep. State managed trails also promote the use of state law enforcement and monitoring capabilities.

Eight (8) of the top ten (10) national rails-to-trails by distance are managed by state agencies rather than by towns or municipalities. These state agencies include those in the areas of transportation, natural resources, state parks, fish and wildlife, and parks and recreation. State management of long distance conversions provides uniformity between towns and/or municipalities as well as those areas that do not fall within the boundaries of any town or municipality. This tactic promotes equality when marketing the trail and its destinations, as opposed to disparities that may occur city to city when each becomes a competitor for users. Furthermore, state agencies that oversee long distance trails are better able to prioritize the funding needed to maintain those trails; towns and municipalities often have competing demands for rather limited budgets. Development of a culture and environment where scientific research and public opinion are more important than political positioning must be developed and embraced for future recreational opportunities. The precedent set forth by HB 1080 and Governor Walters halted state oversight of rails-to-trails projects. Once development of the conversion ended at the state level, this aided in creating a culture that visualized the inability of state

agencies to oversee rails-to-trails conversions. There is no law that asserts that a state agency is unable to take on such responsibilities. Both of the declarations (i.e. HB 1080 and Governor Walters' quote) were based on political positioning rather than research and public opinion.

Future efforts to promote long distance rails-to-trail conversions would benefit significantly from implementing a well designed media advocacy campaign. Media advocacy campaigns are built on strategies that focus on solutions and framing issues so that target audience members understand the need for policy and legislation (Wallack, Woodruff, Dorfman, & Diaz, 1999). Just as the OFB used framing in their opposition efforts to focus on the issue of personal property rights, future advocacy for trails should address economic viability, health promotion, and rural sustainability. Framing rails-to-trail activities in this manner allow target audience members to better understand the long-term benefits of such conversions. Furthermore, in today's economical climate, such framing persuades many to consider supporting conversions that otherwise may not have done so.

Advocates who use the media understand that such campaigns take private conversations and make them public (Wallack, Woodruff, Dorfman, & Diaz, 1999). For instance, conversations that are truly taking place between advocates and those in power (such as legislators or the governor) utilize a public realm to discuss the matter. In doing this, advocates are able to frame the issue in a way that matters to the broader public, and then utilize these concerned citizens (i.e. constituents) in their advocacy efforts. Wallack and colleagues also note that such advocacy campaigns must specifically inform the target population what is being requested of them (i.e. 'contact your legislator and

governor in support of the rails-to-trail conversion in the state'). In doing this, the campaign requests action of the broader population who is then able to place pressure on key individuals in power. By using a media advocacy campaign to first educate the Oklahoma public about the economic and health benefits of rails-to-trail conversions, and then request action on the part of those who support these activities, a greater base of individuals are available to request the conversion and advocate support among those in power.

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## APPENDICES



STATE OF OKLAHOMA

DAVID WALTERS  
GOVERNOR

February 4, 1991

Mr. Sidney L. Strickland, Jr., Secretary  
Interstate Commerce Commission  
Room 2215  
12th and Constitution N.W.  
Washington, D.C. 20423

RE: Docket No. AB-3 (Sub-No. 63)  
Missouri-Pacific Railroad Company - Abandonment  
In Okmulgee; Okfuskee; Hughes; Pontotoc; Coal;  
Johnston; Atoka; and Bryan Counties, Oklahoma

Dear Mr. Strickland:

This is to advise you that the newly inaugurated administration in the State of Oklahoma wishes to vacate the Interim Trail Use Agreement for the above referenced project to be effective February 5, 1991.

Due to shortness of time we are submitting this letter on our own behalf.

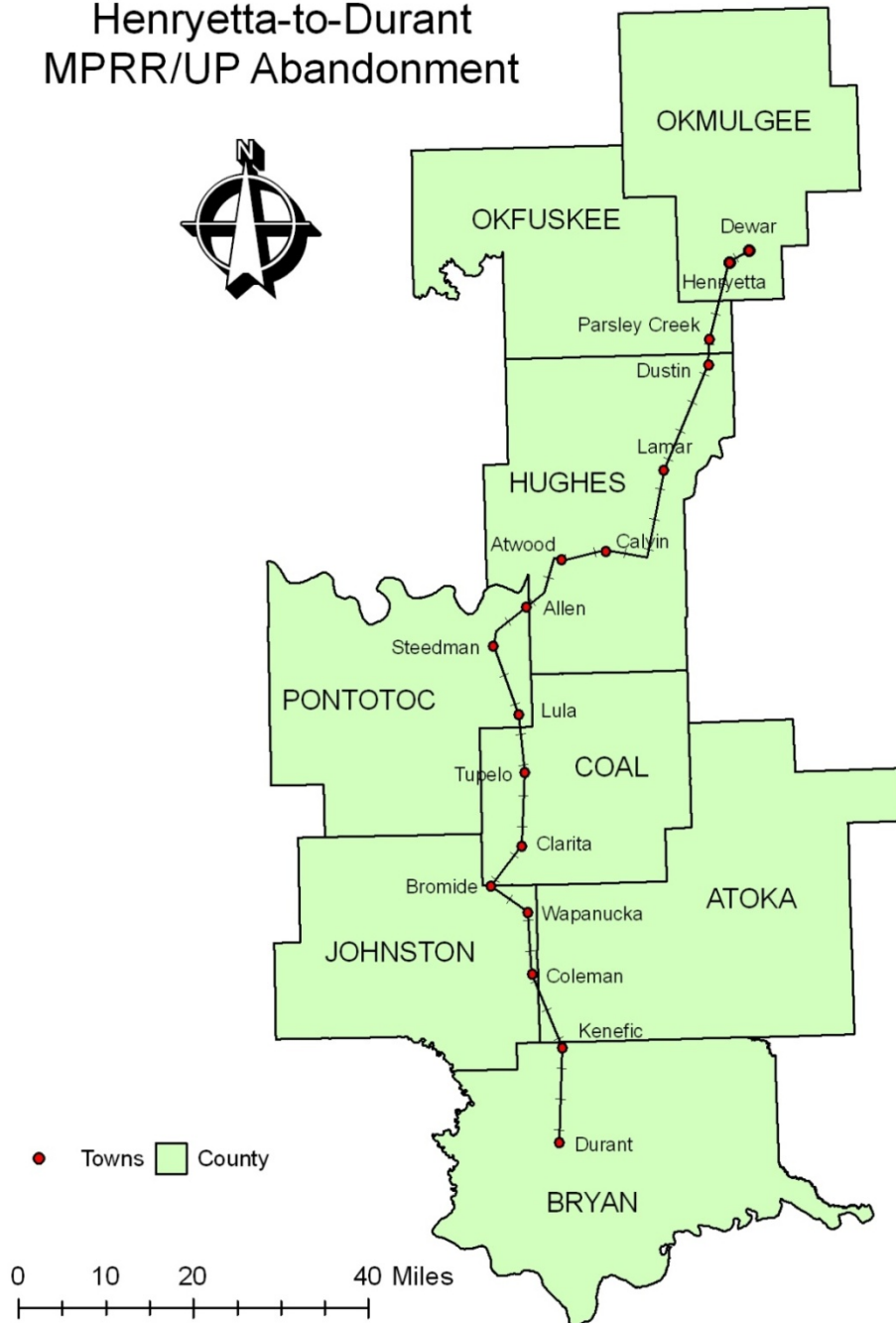
Sincerely,

A handwritten signature in cursive script that reads "David Walters".

David Walters  
Governor

cc: Mr. Charles H. Montange  
Richard Krause, Esq., American Farm Bureau  
Joseph Anthofer, Missouri Pacific Railroad

# Henryetta-to-Durant MPRR/UP Abandonment



## VITA

Jerel Lee Cowan

Candidate for the Degree of

Doctor of Philosophy

Dissertation: RAILS-TO-TRAILS CONVERSIONS IN OKLAHOMA: POLITICS,  
PRACTICES AND FUTURE

Major Field: Environmental Science

Biographical:

Education:

Completed the requirements for Bachelor of Science in Recreation Management at the University of Central Oklahoma, Edmond, Oklahoma in August, 2000.

Completed the requirements for Master of Science in Leisure Studies at Oklahoma State University, Stillwater, Oklahoma in July, 2004.

Completed the requirements for Doctor of Philosophy in Environmental Science at Oklahoma State University, Stillwater, Oklahoma in May, 2009.

Experience: University of Central Oklahoma Faculty and Program Coordinator for Outdoor and Community Recreation 2004 – present; Oklahoma Trails Advisory Board member 2005 – present; Leave-No-Trace Master Educator Instructor 2005 – present; Edmond Land Conservancy Board Member 2006 – present.

Professional Memberships: National Recreation and Parks Association; American Alliance for Health, Physical Education, Recreation and Dance; Wilderness Education Association; and Oklahoma Association for Health, Physical Education Recreation and Dance.

Name: Jerel Lee Cowan

Date of Degree: May, 2009

Institution: Oklahoma State University

Location: Stillwater, Oklahoma

Title of Study: RAILS-TO-TRAILS CONVERSIONS IN OKLAHOMA: POLITICS,  
PRACTICES AND FUTURE

Pages in Study: 118

Candidate for the Degree of Doctor of Philosophy

Major Field: Environmental Science

Scope and Method of Study:

This study was designed to review the historical issues associated with the State of Oklahoma and the development of a long distance rail-to-trail conversion during the years of 1987-1991. The study also examined how the rail-to-trails process was developed and how it unfolded during the years in question. Using primary and secondary data sources including government documents, this study identifies perceptions among landowners and long-term economic impacts associated with a rails-to-trail conversion.

Findings and Conclusions:

The study focused on the historical review of a two and a half year process concerning 123 miles of rails-to-trail conversion in the state of Oklahoma. This 14.9 million dollar donation was agreed upon and approved under Governor Bellmon and by state agencies and was then economically hindered by HCR 1080 and dissolved on the inauguration day of Governor Walters. Despite a 1989 Governor's Environmental Report suggesting that Oklahoma acquire more land for recreational purposes, the Henryetta to Durant rails-to-trail conversion was ignored. A key concern related to this process was the flagrant disregard of science and overall public opinion in relation to political decisions on the abandonment. The use of political power by a single governmental branch to dissolve a contractual agreement between the Oklahoma Tourism and Recreation Department and Missouri Pacific Railroad / Union Pacific created an unfortunate precedent. Since this occurred Oklahoma has not seen an opportunity for another long distance trail and chances are that it will not again anytime soon.

ADVISER'S APPROVAL: Dr. Lowell Caneday

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