

Obstacles to River Recreation in Kansas

By: TJ Hittle

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I. Why am I here? - Personal & Professional background:

- a. Paddler
 - i. Member 12 paddling related organizations across the State & the USA.
 - ii. Paddled in seven countries, mostly Central & South America
 - iii. 2008 will go over the 10,000 river mile milestone
 - iv. Awarded:
 1. Kansas Canoe & Kayak Association
 - a. President – 1982
 - b. Distinguished Service Award - 1991
 2. Friends of the Kaw - 1996
 3. Kansas Wildlife Federation - 2007
- b. Landscape Architect – background in Landscape Architecture & Horticulture
 - i. 1973 Graduate of Kansas State University
 - ii. Specialty in Health Care site design & protecting the Environment
 - iii. Recognition of cultural history
- c. Encourage you to become an avid paddler and defender of the rivers in Kansas

II. Six Issues:

- a. Environmental
- b. Access
- c. Marketing & Tourism
- d. Political
- e. Legal
- f. Social

III. Environmental issues:

- a. Kansas Dept of Health & Environment – Dirty Water Bill, SB 204
 - i. Rarely penalizes polluters
 - ii. Only follows up on complaints
- b. Point Source pollution issues
- c. Non-Point Source pollution issues
- d. Sediment issues & related removal of riparian buffer strips

IV. Access Issues:

- a. “Decriminalize Canoeing in Kansas”. Many have seen the blue bumper sticker that features that slogan. It appears on many cars, vans, trucks, and canoes all over Kansas and is available from the Kansas Canoe Association. That single slogan, now a nationwide scandal, attracts a LOT of attention. It generates questions from paddlers and tourists from California to Maine. It was the brainchild of a paddler from Wichita, KS when asked what Kansans could do to help get the message out of the pathetic lack of public access to rivers in Kansas.
- b. The problem of having only three public rivers in Kansas with virtually no public river access to them has plagued Kansans for many years. Kansas has the highest percentage of privately owned land in the entire USA. Our State Constitution was written to reinforce this private land ownership in the strongest possible way. Until 1990, it was assumed by most Kansans that, with the surface waters in Kansas being publicly owned, and as long as you were floating on publicly owned water, you were not trespassing. All that changed in 1990.

V. Marketing & Tourism Issues:

- a. No statewide marketing, incentives, or linkage
 - i. Kansas Dept. of Wildlife & Parks
 1. No river access publications

- 2. Little or no signage
- 3. No personnel assigned to River Recreation
- ii. Kansas Dept. of Commerce, Travel & Tourism
 - 1. No river access publications or tourism promotions
 - 2. No river recreation articles in the KANSAS Magazine
 - 3. Occasional photos
- b. No private books or major private publications,
 - i. Being written by Dave Murphy, former FOK Riverkeeper
- c. Websites only
 - i. Kansas Paddler – 1995
 - ii. Friends of the Kaw - 2001
 - iii. Arkansas River Coalition - 2001

VI. Political Issues:

- a. State agencies are afraid of the Legislature to promote River Recreation
 - i. KS River Recreation Study story; 5 state agencies
- b. The Legislature is afraid of powerful farm lobbies
 - i. State Rep. Carl Holmes story
- c. Political Ignorance
 - i. US Senator Brownback
 - ii. State Senator from (south of Manhattan)
- d. Kansas River Recreation Study, submitted in 1998
 - i. Landowner Survey
 - ii. Recreational Interest Survey
 - iii. Economic Impact - \$2.8 million – market potential in Kansas

VII. Legal Issues:

- a. In 1988, a protracted lawsuit began in SE Kansas on Shoal Creek. The Kansas Wildlife Federation (KWF) handled the vast majority of the legal fees and other expenses associated with the test case brought forward by Chris Meek, then the Cherokee County Attorney. The case was the result of a feud between Holly Haven Canoe Outfitters and landowner, Jasper Hayes, regarding an electric fence that Hayes had placed across Shoal creek to prevent canoeists from crossing his property while floating on public waters. KWF really took some heat on this issue, as did the Kansas Canoe Association and others, who acted as “friends of the court”. I would be remiss without crediting KWF with the moral and financial backbone that took this case forward.
- b. Chris Meek was eventually defeated as County Attorney, much due to the bad press generated by the test case. He continued the case (Meek vs Hays) however, without pay, to the Kansas Supreme Court. Several large Kansas farm organizations poured considerable money in legal fees and other behind the scene efforts into seeing the case defeated and Chris Meek financially ruined. The end result was the interpretation that we have in Kansas now regarding riparian landowner rights and Kansas streams. The State Supreme Court determined that as long as a riparian landowner owns the land to the midpoint of any stream (other than the three historically navigable, aka public, streams, the Kansas, the Arkansas, and the Missouri Rivers) then they also control the use on that water. Essentially, this meant that if you were floating on any stream other than the Kansas, Arkansas, or Missouri Rivers, you were trespassing unless you had permission from all the adjoining landowners along the way. Although there remains a very few streams with their headwaters located small sections of public lands on large lake systems, a review of the typical list of riparian land owners along most private lands bordering Kansas streams quickly show how ridiculous an undertaking of obtaining multiple permissions would be.
- c. The good news is that if you can bushwhack your way down to a public river, without trespassing in the process, you may legally enjoy a float on the public waters of the Kansas, the Arkansas, and the Missouri Rivers. The public land extends to the “ordinary high water mark”, as defined by the US Army Corps of Engineers. Essentially all islands

within the river channel are public and the vast majority of sand and gravel bars along the three public rivers. There are a number of sections to float on the Kansas River and paddlers can find river maps and access information the KANSAS PADDLER Home Page at www.kansas.net/~tjhittle

- d. The Supreme Court further stated that only the Kansas legislature could make changes that would allow access on rivers and streams in Kansas. Interestingly enough, the electric fence was never re-erected by Mr. Hayes and canoeists continue to float Shoal Creek (although illegally), much like I have floated rivers and streams in Kansas for the past 29 years and nearly 10,000 river miles. Most paddlers use public bridge right-of-ways, State, Federal, and City public properties, and other more nebulous means of access as we descend through tall weeds, poison ivy, and dangerous steep muddy banks to access our rivers and streams in Kansas.
- e. The Kansas legislature has also taken the State Supreme Court decision to an extreme by ignoring the well documented potentials of tourism on the three public rivers. At every turn since the 1990 decision, they have acted to kill nearly every legislative attempt at achieving river access on the three public rivers in Kansas. This is despite an overwhelming interest by their constituents demanding river access. A few large cities have circumvented this process. They have individually been building their own river accesses, such as those few found in the Lawrence, Topeka, Kansas City, and Wichita areas. But, by and large, there is virtually no good river access to a great many river sections to any of the “three navigable” rivers in Kansas. This is essentially the equivalent of having hundreds of miles of public parks with no entrances to them....pure hypocrisy.
- f. State Supreme Courts of most other states, such as Nebraska, Missouri, Oklahoma, Colorado, do not interpret their own State Constitution in the same manner. In fact, on the very same Republican River that flows from Nebraska into Kansas, paddlers will find a series of well developed river accesses, that is until they reach the Kansas border. Kansas remains one the only states in the USA that has no state system of public accesses. This, in spite of the many studies, some performed by State of Kansas agencies, which document the tourism potentials of river based tourism in Kansas. The 1996 Kansas River Recreational Study, a five-state agency 2-year study, commissioned by the Kansas legislature, confirmed the need for public access. The study also documented the tourism dollars that will result from a system of public accesses and that will benefit the many businesses and governmental bodies statewide.
- g. What we have in just the Kansas and Arkansas Rivers alone is a public river trail system that extends statewide, near thousands of potential users across Kansas, with virtually no access to it. It just doesn't make much sense to have these two great public rivers with enjoyable potential recreational experiences in our back yard, with no way to access them.
- h. Certainly, public river access will benefit all Kansans and is really a statewide issue with its potential to help keep Kansas' recreational tourism dollars in-state, instead of spending them in Nebraska, Missouri, Oklahoma, Arkansas, and Colorado, as is the case now. A number of natural resource and recreational organizations in Kansas and on a Federal level are working to change the lack of river access. Your membership and voice in any of those organizations would make a real difference. Please join and help in the efforts to improve river access in Kansas. Our neighboring states long ago have seen the wisdom and recognized the benefits of a system of public river accesses, but this is the sad state of river access in Kansas.

VIII. Social Issues:

- a. Public Paranoia:
 - i. Regarding the plan public meetings, I've heard many of the same landowner concerns before when the many of the new public river accesses along the Kansas River were being proposed a few years back. As a landowner, I want to address those. To date, none of the trespassing or illegal activities concerns have come to fruition at the new public river accesses. This is according to law enforcement resources within the nine counties that border the Kansas River.

Why? It is because public river accesses that are well designed allow ample parking and are safe to use. They keep the public from trespassing using the new public river access where land trespass is not an issue. Concerns about illegal activities were mute because good public river access allows scrutiny by law abiding citizens and regular visits by law enforcement officials. Taxpayers, landowners, and our kids in Kansas deserve good public river access to help improve recreational activities and the quality of life. Good, well designed public river access is the best thing to have in Kansas if we TRULY want to reduce both private land trespass and illegal activities along our public rivers.

- b. Public Apathy:
 - i. Testifying on Legislative issues
 - ii. Attending public meetings
- c. Chicken & The Egg debate
 - i. Outfitters
 - ii. Public Interest