

Water Issues Garner Significant Attention During 2022 Kansas Legislative Session

If you thought congressional redistricting and eliminating the state's sales tax on groceries were the biggest takeaways from this year's legislative session, you were wrong. Despite election year politics, Kansas Republicans and Democrats came together in a bipartisan manner to fully fund the state's water plan fund, which had all but been abandoned by several previous administrations. The

announcement was a key piece of the Governor's State of the State Address in January. And that part of Governor's budget, passed by the Kansas Legislature in March, restored full funding for the Kansas Water Plan Fund for the first time in 15 years. The plan is one of the primary tools used by various local, state and federal agencies to address current water resource issues and to plan for future needs.

The "Mega Water Bill"

Another major piece of Legislation with bipartisan support that was introduced in the Kansas Legislature in February would have brought a number of policy and organizational changes to the way water is managed in Kansas. House Bill 2686, dubbed the "Mega Water Bill," a nearly 300-page document, proposed to abolish several Kansas water agencies and transfer their authorities to a new executive branch department, to be called the Kansas Department of Water and Environment. Under the proposal, a new cabinet level Secretary would have been appointed by the Governor to oversee the new department. Agencies, such as the Kansas Water Office, the KDHE Bureau of Water and the KDA Division of Water Resources would have been essentially consolidated into the new agency. A Kansas Department of Health would continue to exist as its own separate agency. One of the more controversial aspects of the bill proposed to modify election procedures for Groundwater Management Districts, and further proposed requiring those GMDs to submit annual financial reports and water conservation and stabilization plans to justify their existence. Fee and funding issues were also proposed to be addressed by implementing an

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In a bipartisan move that received less attention, the Governor and Legislature approved a one-time payment of \$80 million from the state general fund to pay off water supply storage debt with the U.S. Army Corps of Engineers for Big Hill, Clinton, and Hillsdale reservoirs in fiscal year 2022. This photo shows Clinton Reservoir.

annual water rights fee and by increasing water protection fees and other administrative and regulatory fees.

The bill was introduced by State Representative Ron Highland (R-Wamego) who serves as Chair of the House Committee on Water. While the legislation failed to move forward and Highland has since announced that he will not run for re-election for his term that expires in January, he indicates he still intends to continue to work to on these issues through the summer and fall. The state's water supply, he told the Manhattan Mercury, is concerning and needs to be addressed. "The governor and all the leadership support this," he said. Highland explained that 80 percent of water usage in the state is from irrigation and that the water table was falling rapidly, especially in the western part of the state. Additionally, silting is causing issues with the dams and reservoirs and lowering the capacity which not only controls future flooding but provides drinking water. "It's very important to protect the water supply," he said. "Both quality and quantity." Highland has endorsed his potential replacement, Kenny Titus, an

attorney and business owner. Titus currently serves as Chief Counsel to the Kansas Department of Agriculture, and is one of the state's experts on water law.¹

Upon introduction of the Mega Water Bill, State Rep. Boyd Orr (R-Fowler), Vice Chair of the House Committee on Water, touted the bipartisan process that he said had built consensus on addressing a new

direction on water matters. There are sixteen different state agencies that touch on water, he said during a Dodge City Area Chamber of Commerce legislative update on February 5. Direction on water issues not only comes from the Kansas Water Office and Kansas Department of Health and Environment, which is in Topeka, but also from the secretary of agriculture's office and the Kansas Department of

¹ Staff Report, "Rep. Highland won't seek re-election," *The Manhattan Mercury*, April 27, 2022.

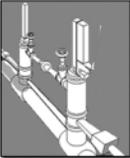
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HOUSE BILL No. 2686

By Committee on Appropriations

2-10

1 AN ACT concerning the water and environment of Kansas; creating the
 2 Kansas department of water and environment within the executive
 3 branch of government; transferring certain powers, duties and
 4 functions; abolishing the Kansas water office, the Kansas department of
 5 health and environment, division of environment, the Kansas
 6 department of agriculture, division of conservation and the Kansas
 7 department of agriculture, division of water resources; updating
 8 statutory references thereof; establishing the water and environment
 9 maintenance fund; modifying procedures for elections of the board of
 10 directors for a groundwater management district, board of directors
 11 eligibility, definition of eligible voter and term limits of board of
 12 directors; requiring groundwater management districts to submit annual
 13 financial reports to the legislature and to submit water conservation and
 14 stabilization plans to the chief engineer; increasing water protection
 15 fees for public water supply systems, industrial use and stockwatering
 16 permit holders; authorizing the chief engineer to issue certain orders
 17 without review by the secretary of water and environment; establishing
 18 a civil penalty for obstructions in streams violations and creating the
 19 water structures emergency fund; amending K.S.A. 2-3302, 2-3703, 2-
 20 3704, 2-3710, 12-2707, 19-27a03, 19-27a12, 19-27a17, 19-2963, 19-
 21 3704, 24-407, 24-418, 24-656, 24-659, 24-1202, 24-1204, 24-1211, 24-
 22 1212, 32-1152, 32-1154, 32-1403, 42-701, 42-725, 47-1214, 47-1511,
 23 49-403, 55-527, 65-153f, 65-156, 65-157, 65-159, 65-162a, 65-163, 65-
 24 163c, 65-163d, 65-163g, 65-164, 65-165, 65-166, 65-166a, 65-166b,
 25 65-167, 65-169, 65-170, 65-170b, 65-170d, 65-170e, 65-170g, 65-
 26 171a, 65-171b, 65-171c, 65-171d, 65-171e, 65-171f, 65-171h, 65-171i,
 27 65-171m, 65-171n, 65-171o, 65-171p, 65-171q, 65-171r, 65-171t, 65-
 28 171u, 65-1,107, 65-1,178, 65-1,182, 65-1,201, 65-1,222, 65-1629, 65-
 29 3002, 65-3003, 65-3005, 65-3011, 65-3018, 65-3022, 65-3027, 65-
 30 3303, 65-3308, 65-3309, 65-3310, 65-3311, 65-3312, 65-3313, 65-
 31 3321, 65-3329, 65-3330, 65-3401, 65-3402, 65-3419, 65-3423, 65-
 32 3424d, 65-3424i, 65-3426, 65-3427, 65-3430, 65-3446, 65-3458, 65-
 33 3491, 65-34,102, 65-34,126, 65-34,133, 65-34,142, 65-34,144, 65-
 34 34,153, 65-34,162, 65-34,175, 65-34,176, 65-34,178, 65-4501, 65-
 35 5301, 65-7003, 68-1414, 68-2203, 74-2608, 74-2609, 74-2622, 74-
 36 99f04, 75-3084, 75-37,121, 75-5601, 75-5608, 75-5608a, 75-5609a,

industry with public and future interests. We need to do everything we can to ensure that our families, communities and farmers have the water they need for generations to come.”³

Although a number of constituencies from municipalities to environmental groups liked many of the bill’s proposals, Big Ag opposed them. That’s because the current policies and status quo effectively benefit them. The Division of Water Resources is administered by the Kansas Department of Agriculture. And the Groundwater Management District Boards are predominantly made up by irrigators. So, it’s no wonder that organizations, such as the Kansas Farm Bureau and the Kansas Livestock Association opposed the legislation. And it’s also no wonder that after decades, few meaningful changes have actually been implemented to slow the decline of the aquifer in much of the High Plains Aquifer.

Opponents claim that local control remains the best path forward and that the irrigators are the best stewards of the resource. The reality is that has not happened. The way water is managed in Kansas affects everybody, from those who have small domestic wells for household use, or for watering gardens, to corporate hog farms, feedlots and irrigators. But there’s no formal requirement that the GMD Boards (for example) be comprised of

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HB 2686, dubbed the “Mega Water Bill,” was a nearly 300-page document, proposing major policy and organizational changes to the way water is managed in Kansas. Most of its provisions were later stripped in committee, but many aspects of the bill could be revived next session.

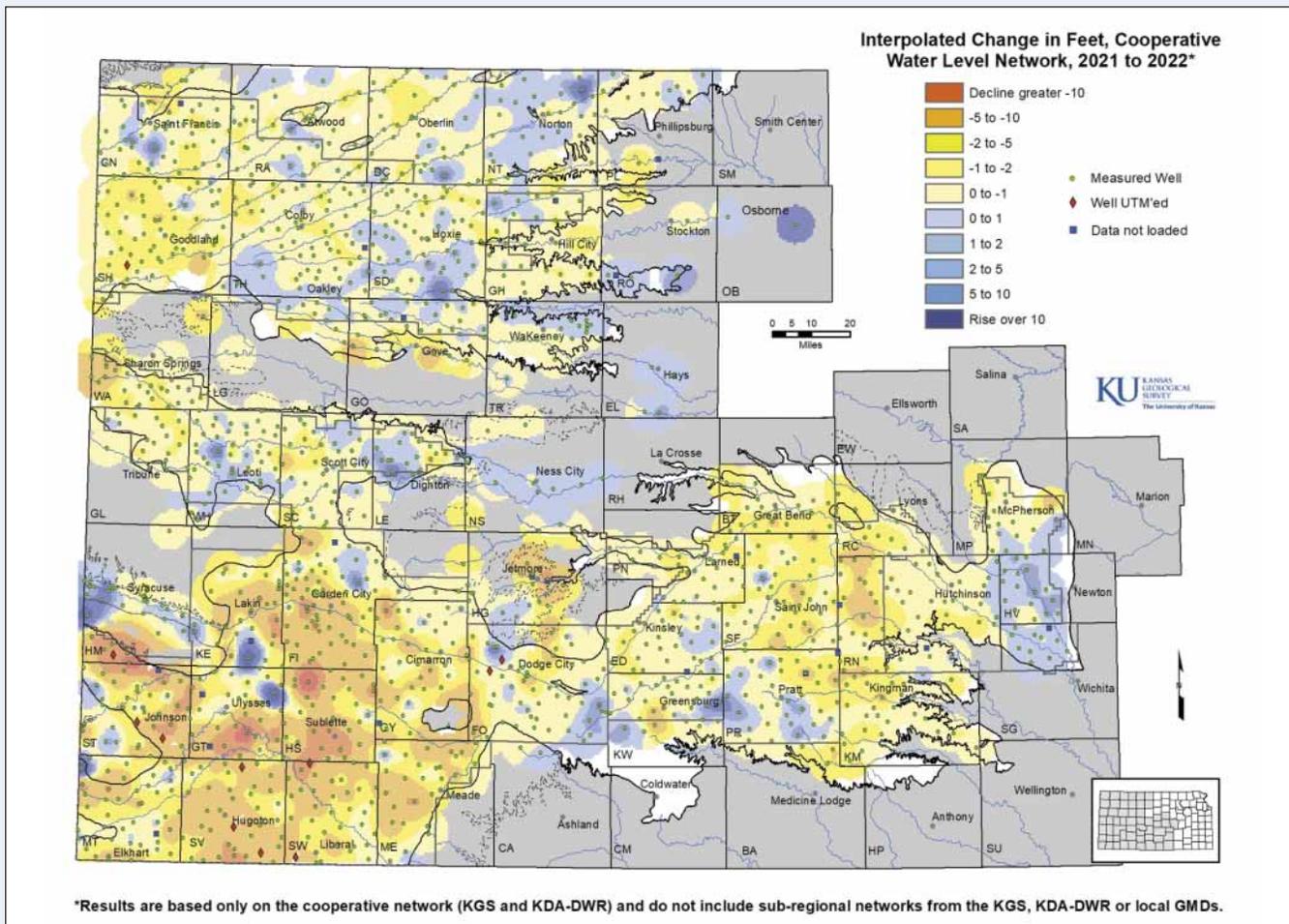
Agriculture, which is based in Manhattan. The time has come to have one secretary to be devoted to water issues, Orr said.²

The Ranking Minority Member of the Kansas House Committee on Water, Lindsay Vaughn (D-Overland Park) echoed the need to pass

legislation that will address the underlying reasons for our current dilemma. “Our committee is now focused on this task,” she said in a guest commentary published in the Kansas City Star. “The state has a duty to balance the beneficial use of water for municipalities, irrigation and

² Dave Bergmeier, “Water secretary needed cabinet position in Kansas, lawmaker says,” *The High Plains Journal*, February 12, 2022.

³ Rep. Lindsay Vaughn, “Kansas farmers really are running out of water. But we can find bipartisan solutions,” *The Kansas City Star*, January 28, 2022.



Provisional data released by the Kansas Geological Survey shows continued significant declines in water levels across the High Plains Aquifer in western Kansas. In Southwest Kansas GMD 3, average groundwater levels dropped 2.17 feet in 2021.

a broad cross-section of water users. As a result, Big Ag has a disproportionate voice in water policy in Kansas. Many of the changes proposed by the Mega Water Bill would have fixed this.

Meanwhile aquifer declines continue to be acute in southwest Kansas, where the Kansas Geologic Survey reported in March, that average groundwater levels continued to drop significantly during 2021. In Southwest Kansas GMD 3, covering all or parts of Grant, Haskell, Gray, Finney, Stanton, Ford, Morton, Stevens, Seward, Hamilton, Kearny and Meade counties, average groundwater levels dropped 2.17 feet during 2021. This was the largest decline in the region since 2013, when groundwater levels fell 2.43 feet. The southwest Kansas portion of the Ogallala Aquifer has suffered the greatest losses since groundwater levels started dropping in the 1950s,

according to the KGS. In the drought years between 2010 and 2014, declines there averaged about three feet per year.

While many of the provisions of HB 2686 were stripped from the bill in committee and even that bill ultimately died, the underlying problems clearly still exist and the concepts contained the original bill will hopefully be revisited throughout the summer months during legislative meetings, interim sessions and into the next legislative session. In what might be a sign for what's to come, Representative Orr, in April, after the bill died, joined two other members of the Kansas House Committee on Water, Jim Minnix (R- Scott City) and Adam Smith (R-Weskan), to issue a call to action to irrigators in western Kansas. "If we are going to maintain the economy and quality of life we have

enjoyed in western Kansas," said their release, "we need to make sure we have water. That means we need to be forward thinking and proactive in addressing groundwater level declines." They encouraged irrigators to act individually to conserve water and to join the discussion about the future of water in our state. "Water issues should be a priority but haven't gotten enough attention at the state level for far too long."

Ken Kopp, P.G., Water Rights/Source Water Specialist, joined KRWA as Water Rights/Source Water Specialist in early 2016. He also serves as KRWA Assistant General Manager. He worked for twenty-three years at the Kansas Dept. of Agriculture, Division of Water Resources and most recently was New Application Unit Supervisor.

