



Since 1894

To: House Committee on Water  
Rep. Ron Highland, Chair

From: Aaron M. Popelka, V.P. of Legal & Governmental Affairs, Kansas Livestock Association

Re: **HB 2686 AN ACT concerning the water and environment of Kansas; creating the Kansas department of water and environment within the executive branch of government and other purposes.**

Date: February 16, 2022

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,700 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.*

Thank you, Chairman Highland, and members of the Committee, for the opportunity to testify. KLA opposes HB 2686.

While Kansas water law and administration is not perfect, and KLA agrees some modest changes to water policy might be beneficial, this bill is unnecessary and would negatively impact rural Kansas. If you were to ask most KLA members about water policy, most would make suggestions about how to make water appropriation rules more user friendly, the need to protect the private property right that comprises a water appropriation, or the need to have a Kansas Department of Health and Environment (KDHE), Livestock Waste Management Section that better understands the agriculture industry. Few if any would suggest stripping away the current roles of the Kansas Department of Agriculture (KDA) to deposit that authority in a new giant bureaucracy with unknown staff and procedures. In fact, most would probably view this bill as a solution in search of a problem. KLA would urge the committee to pause, seek additional input from water rights owners, and work on simple changes within the existing agency framework that avoids a tax increase on water users.

Every year KLA members get together at the annual KLA convention to adopt new policies and revise old polices. It is those polices that guide the actions of KLA staff on public policy discussions. A number of these KLA policies apply to water. This bill runs counter to a number of those KLA polices, which are detailed below.

- KLA strongly opposes moving the Chief Engineer out of the Kansas Department of Agriculture (KDA). This office has been housed within KDA since the beginning of the Kansas Water Appropriation Act. Most water appropriations in Kansas are agricultural in nature. Moving the Chief Engineer would damage existing relationships and cause confusion among water right owners. It would also decrease the level of trust that

agricultural water right owners have in the Chief Engineer and his staff that is necessary to engage in voluntary water conservation programs.

- KLA opposes giving the Chief Engineer greater ability to unilaterally impose Intensive Groundwater Use Control Areas (IGUCAS). KLA policy states that before any IGUCA is created, changed, or expanded, it should have the approval of the local Groundwater Management District (GMD). KLA opposes section fourteen of the bill and its expansion of IGUCA powers. KLA strongly believes in the law of prior appropriation codified in K.S.A. 82a-707. Arbitrarily mandating a 50 percent reduction in the rate of decline in an IGUCA runs afoul of prior appropriation and undermines the value of the real property right that underlies every water right in Kansas.
- KLA opposes changing the persons eligible to vote for or sit on a GMD board of directors to any “qualified elector”. KLA believes that voluntary conservation programs like Local Enhanced Management Areas must have the support of the affected water right holders. This is done through the GMD approval process. If any person residing within the boundaries of a GMD are allowed to sit on the GMD board, it will upend the very reason for the GMD’s existence – to provide a local voice and governance for water policy and conservation programs. If any resident is allowed to sit on a GMD board, it will create distrust and lessen the success of voluntary conservation programs.
- KLA policy specifically opposes imposition of a new irrigation fee or an increase in the existing stockwater fee. The fee increases in HB 2686 are directly contrary to the Blue Ribbon Funding Task Force for Water Resource Management, commissioned a few short years ago. The Task Force recommended that any additional funding for the state water plan come from a statewide sales tax and not an increase in the existing user fee structure. That is because most demands on the State Water Plan are public in nature and do not meet the typical purpose of fee assessments, to provide the state payment for a service provided.
  - Although the HB 2686 goes to great length to avoid stating it is imposing an irrigation fee, that is clearly the purpose of section nine. Almost all water rights not paying the water protection fee are irrigation rights. KLA opposes this fee because irrigators and other farmers are already assessed a water protection fee through fertilizer and pesticide assessments. While agricultural retailers collect and remit the fees, the fees are directly passed on to farmers at purchase.
  - Stockwater appropriation rights are assessed a direct fee and HB 2686 would increase that fee by 67 percent. KLA opposes raising this fee because the fee provides little if any benefit back to the livestock industry. Most stockwater appropriations are groundwater rights. Most State Water Plan programs do not address livestock needs among groundwater users and we are not asking for implementation of such programs. It should be noted that a significant reason for the fertilizer and pesticide fees is to address nonpoint source pollution. Livestock facilities, however, are considered point sources and subject to stringent state and federal laws, thus diminishing the need for voluntary conservation programs that are funded by the State Water Plan and aimed at nonpoint source pollution. Finally, this is the first year in over a decade that a governor has proposed to fully fund the State Water Plan. Perhaps the Committee should look for ways to prioritize and ensure effective ways to spend that money before asking for more.

- KLA policy calls for reevaluating how dam safety laws are administered. In particular KLA is concerned with the cost and frequency of dam inspections for either low hazard dams or significant hazard dams where it is only the dam owner's property at risk. KLA is also concerned about the cost of dam inspections and repairs if downstream development occurs in an inundation area after a water structure has been built. Until these areas of the law are addressed, KLA opposes imposing new civil penalties on owners of water structures. Such penalties are especially concerning because the bill states that every day an inspection is not completed or a dam not fixed, it could be a new \$1,000 fine. Furthermore, all the penalty assessment would be deposited in a new water structures emergency fund. This creates a perverse incentive for an underfunded agency to maximize penalties rather than work with a landowner to achieve compliance.
- KLA questions why non-water related policy missions are included as part of a new water agency if the goal is to centralize and prioritize water policy. For instance, KDHE Division of Environment has many non-water related missions including air quality, solid and hazardous waste, and remediation, among others. In addition, KLA questions why the bill would remove the Division of Conservation from KDA. This is a cooperative agency created specifically to serve the agricultural community on more than just water conservation efforts. Removing this program from KDA would only work to alienate the constituency it was created to serve, harming the Division's mission.

Thank you for the opportunity to submit testimony. Given the numerous defects in this bill, KLA asks the Committee to oppose HB 2686.