

**Testimony before the Kansas  
Special Committee on Water**

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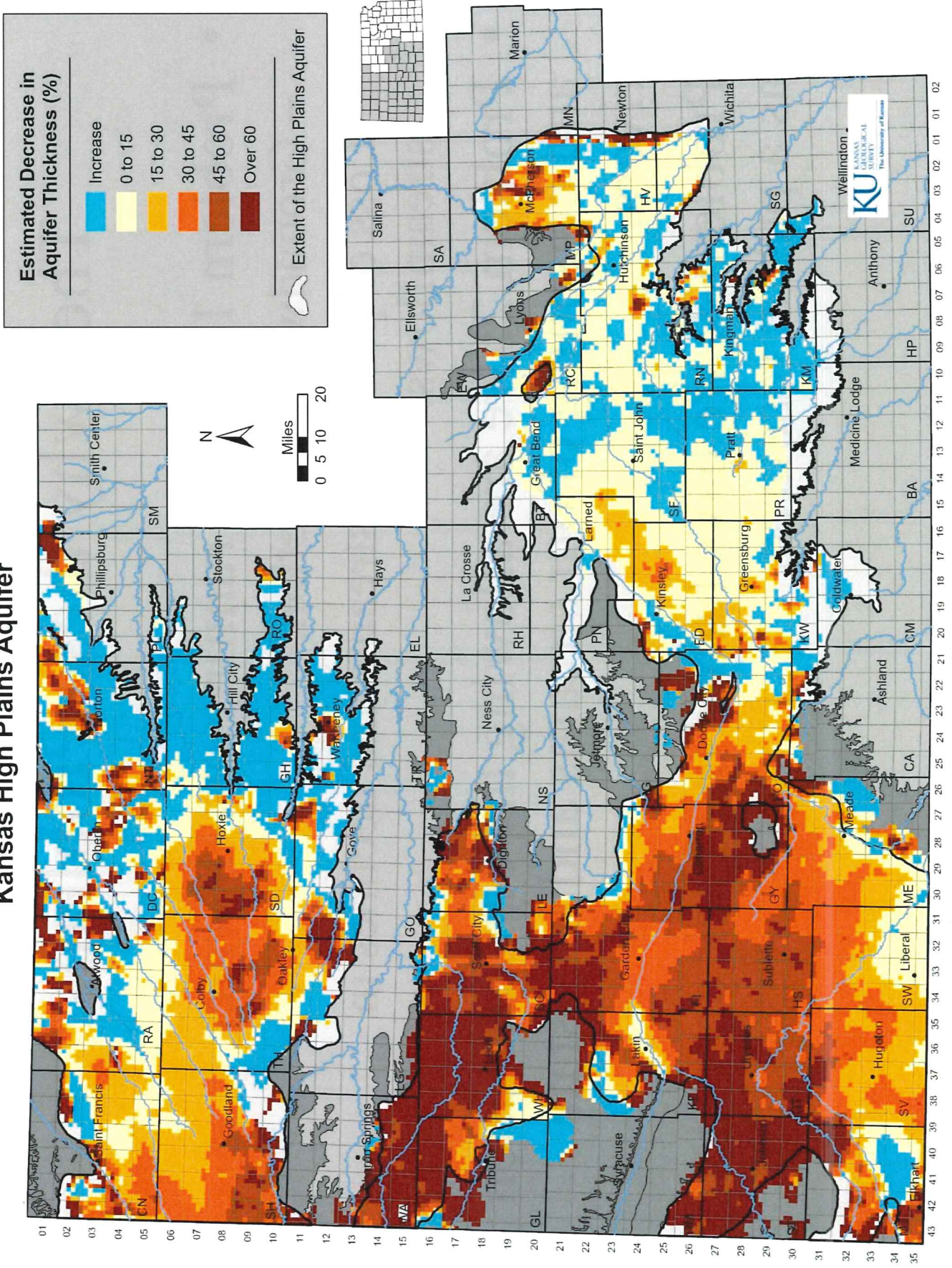
# Kansas has mostly good water law.

- Unitary regulation of groundwater and surface water through a permitting system.
- Unitary, statewide jurisdiction over all water rights.
- All non-domestic rights are quantified, reported, and enforced.
- Owners have clear property protections.
- The state has clear regulatory powers to protect property owners and the public.

## Then why these Problems?

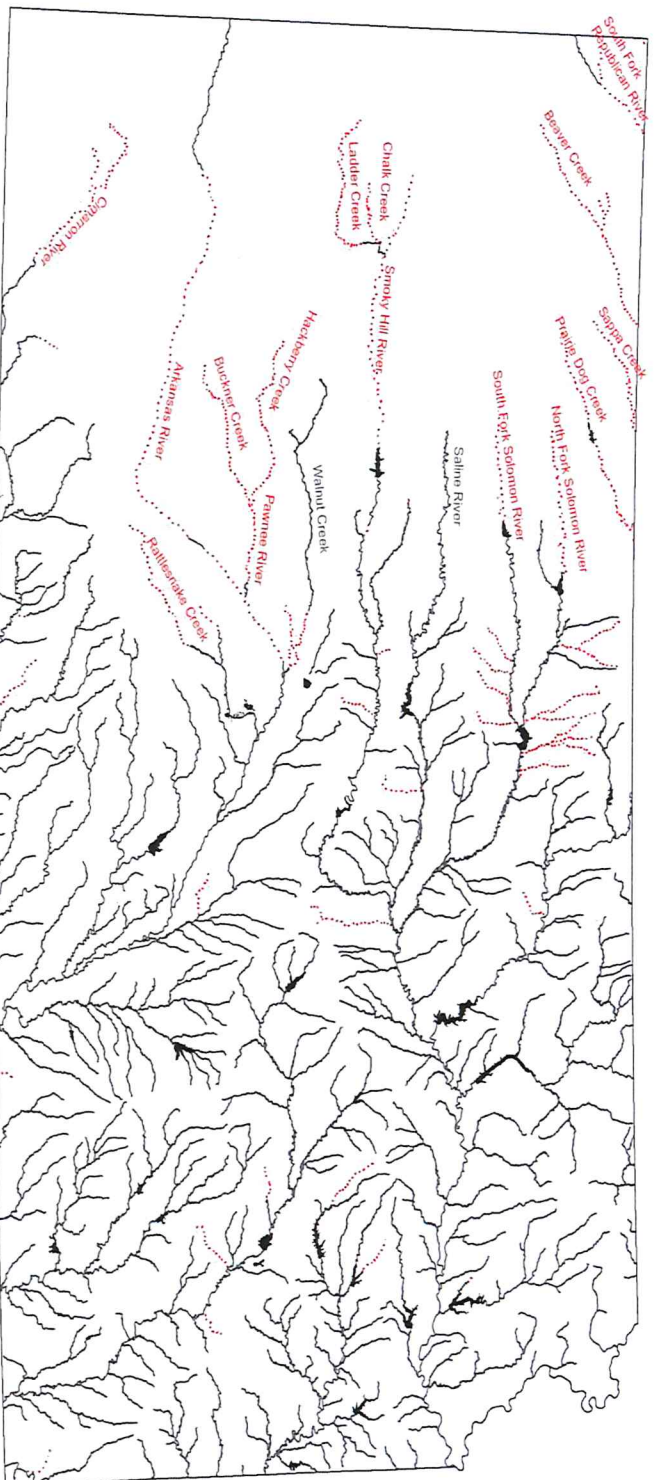
- Problem 1: we are running out of water.
  - Groundwater depletion.
  - Loss of perennial streams and declines in streamflows.
- Problem 2: we are allowing the contamination and poisoning of our streams and interstate rivers.
- Problem 3: we have turned our back on water as a public resource.

# Percent Change in Aquifer Thickness, Predevelopment to Average 2020-2022, Kansas High Plains Aquifer



# Groundwater pumping depletes streamflow statewide

## Major Perennial Streams 1961 and 2009



Kansas Department of Agriculture  
Administrative Services, GIS  
March 12, 2010



- Legend**
- ..... Streams regarded as perennial in 1961 but as nonperennial in 2009
  - Streams regarded as perennial in both 1961 and 2009

Stream Data provided by the Kansas Department of Health and Environment  
1961 coverage (USGS: special surveys)  
2009 coverage (KDRS: long term observations)  
Perennial: containing water throughout the year except for infrequent periods of severe drought (USGS, 1996).



Note: Some of the smaller streams shown on this map lacked recent observational data but were carried over as perennial systems pending further study. The standing water in these systems from the center of the map and just north of the Arkansas River is Ogishmo Bottoms, which is normally a terminal basin.

# Why are we running out of water?

- Amendments to the KWAA in 1957:
  - A policy decision: beneficial use is more important than protecting water rights.
  - A policy assumption: if water levels decline, private water rights owners will protect their rights. Because, you know, property.
- Consequence: over-appropriation. A water law term for bankruptcy.

## Why aren't owners protecting their rights?

- Local economic relationships.
- Owners own both senior and junior rights in the same area.
- Legal costs of defending rights (even though that should be the state's job).
- Federal farm policy: the irrigation treadmill.
- So, the assumption in 1957 that owners would protect their individual water rights, and therefore police the depletion of the Ogallala Aquifer, has been thoroughly discredited.

Why isn't the State doing something?

- The CE has powerful, effective, litigation-tested tools to do this. **It could begin today.**
- But the CE lacks backing from the executive branch and the Attorney General to reduce and reverse our intrastate water losses.
- Worse, when water supplies run low, the CE is subordinate to the Secretary of Agriculture, whose job is opposed to that of the CE.



# Question: How can this work?

- KDA mission statement, available online:
  - “to serve, promote and grow” agriculture, the state’s “largest industry, employer, and economic contributor.” (\*In terms of state GDP, agriculture is **much smaller** than services and manufacturing, according to BEA-DOC.)
- DWR’s statutory duty:
  - “enforce . . . the laws of this state pertaining to the beneficial use of water and shall **control, conserve, regulate, allot and aid** in the distribution of water resources of the state for the **benefits and beneficial uses of all of its inhabitants in accordance with the rights of priority of appropriation.**” K.S.A. 82a-706.

## Question: How does this work?

- Under the law, KDA can overrule DWR for new water rights, changes to existing rights, civil penalties for overpumping, IGUCAs, and LEMAs. K.S.A. 82a-1901.
- Breaking the law:
  - KDA has blocked DWR's plans to administer junior water rights impairing the senior right held by Quivira NWR.
  - And even though KDA has no 82a-1901 authority over the administration of water rights.

## We are running out of water because:

- We chose to enter water bankruptcy, and we have deliberately ignored its consequences.
- We put the burden of protecting our water supplies on private property owners, not the state.
- We tolerate a regulatory system that subordinates the protection of our water supplies to political considerations. Even to the point of breaking the law.

## Problem #2: Water Quality

- Water contamination and the Clean Water Act
- Contamination of Arkansas River flows by delivery of 8-10 tons of uranium and other heavy metals every year.
- These are extremely serious matters. A contaminated aquifer is a depleted aquifer.
- But they are mostly governed by federal and interstate law.

## Problem #3: Water and the Public.

- *Kansas v. Colorado*, 1902: the state's water supplies are the state's business. When a state sues another state, it does so on behalf of **all** of its inhabitants.
- *KWAA*, 1945: all of the waters of the state are dedicated to the people of the state. K.S.A. 82a-702.
- Local initiative to protect water supplies: the GMD Act, 82a-1020 *et seq.*

# K.S.A. 82a-1020: for the public!

“it is the policy of this act to preserve basic water use doctrine and to establish **the right of local water users to determine their destiny** with respect to the use of groundwater . . . . It is, therefore, declared that **in the public interest** it is necessary . . . to permit the establishment of groundwater management districts.”

## K.S.A. 82a-1021: voting in GMIDs

- To vote, one must be:
  - Either a landowner owning more than 40 acres outside of a municipality, **or**
  - a “water user,” defined as the owner of a water right.
- A municipality receives one vote, to “represent all persons within its corporate limits who are not water users as defined above.”

# GMD4

- 10 counties, with an approximate population of 23,832.
- Approx. 5,757 “eligible voters” within GMD4.
- So, about 24% of the “water users” within GMD4 are eligible to vote.
- No municipal or rural resident without a water right or owning less than 40 acres can vote.



# GMMD2

- Four counties, with a total approximate population of 649,205. Includes the water-service area for Wichita.
- Approx. 4,440 eligible voters in GMMD2.
- So, about .68 of 1% of the residents who use water within GMMD2 can actually vote in GMMD2 elections. (about 1 in 150 people.)
- And none of these people are in Wichita, which only receives one vote.

# GMD3

- 12 counties, with an approx. population of 125,512.
- GMD3 has about 11,000 “eligible voters,” or about 8.8% of the total population within GMD3.
- But only about 2-4% of the “eligible voters” are actually registered to vote in GMD3 elections—approximately 303 voters. (3% of 1100).
- So, about .27 of 1% of the total population of GMD3, or about 1 in 400 people, can currently vote in GMD3 elections. And none of those people live in Garden City or Dodge City, which only receive one vote apiece.

## Question re: the Public

- K.S.A. 82a-1020 declares that the “water users” within a GMID, and not just water rights owners, have the “right to determine their destiny.”
- But if the GMID Act’s definition of “water user” and GMID rules produce an electorate of between .27% and 24%, then,
  - **Do the water users of these areas really have the power to determine their destiny?**

# Reforming Kansas Water Law.

- Confront the over-appropriation problem.
  - Adjudication, using DWR and KGS data
  - A quasi-judicial process insulated from politics
- Clarify the duties of the chief engineer.
  - Recognize that we have a collective action problem here, not an individualized one.
- Restore the independence of the chief engineer and DWR, holding the office accountable through judicial review, not politics.

# Reforming Kansas Water Law.

Restore the public dimension of our water supplies.

- Reform the representation of GMDs so that they serve right of all water users to determine their destiny, and not just a tiny minority.

