Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:08 a.m. on February 20, 1996, in Room 531-N of the Capitol.

All members were present except: Sen. Marian Reynolds

Committee staff present: Mike Heim, Legislative Research Department

Theresa Kiernan, Revisor of Statutes Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Representative John M. Toplikar

Lewis A. (Pete) Heaven, Jr., Attorney at Law

James Walton Todd Bleakley

Edward Schlagel, Consulting engineer

Betty Patterson

Betty Lu Duncan, Water District No. 1

Byron Johnson, General Manager, Water District No. 1

Others attending: See attached list

SB 653: Concerning water supply and distribution districts; relating to the detachment of certain land.

Staff explained that the bill would provide a procedure for detachment of land from a water district created under K.S.A. 19-3501. Only one district, Water District No. 1 of Johnson County, has been created under this statute. The bill provides that if a petition requesting detachment of land from a water district organized under this statute is signed by 51% of the landowners and is presented to the board of the district, the board must detach.

Senator Langworthy confirmed with staff that **SB** 653 would not apply statewide but affects Water District No. 1 only.

Representative John Toplikar testified in support of <u>SB 653</u> as a much needed service to property owners. (Attachment 1)

Lewis A. (Pete) Heaven Attorney at Law, testified further in support of **SB 653** as a property owner's "bill of rights", not as an attempt to deprive Water District No. 1 of its current authority. (Attachment 2)

The Chairman explained that the City of Olathe previously ran water lines through the Water District No. 1 area under discussion to reach another "pocket" area; therefore, the City of Olathe currently has lines in the area in need. Connection to these water lines would be very much less expensive for landowners than extension of service by Water District No. 1.

James Walton, a rancher owning property in the area in need of water, testified in support of <u>SB 653</u>. He explained that his property is very near to neighbors who have access to water service provided by the City of Olathe, and he felt that he had the same right to this water service as those neighbors. He noted that he had been paying taxes on a benefit sewer district that has no sewers because water is not available to service the sewers.

Todd Bleakley, owner of 68 acres of land in the area of controversy, followed with testimony in support of **SB 653.** Mr. Bleakley said he had been unsuccessful in his attempts to get service from Water District No. 1 for the past two years. He found this frustrating because water is available a "stone's throw away" from his property. Ownership of this land has been financially devastating to him because the property cannot be

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on February 20, 1996.

developed without water service. He said, when he purchased the land, he believed that water service would be available.

Edward Schlagel, a consulting engineer, passed out copies of a map indicating the service areas under discussion, in particular, the Cedar Creek area. He used the map as an aid to illustrate that there is a need to run an additional loop water line from the City of Olathe to serve Cedar Creek.

Betty Patterson, an owner of a forty-acre tract of land on the boundary of the City of Olathe, spoke in support of <u>SB 653</u>. She explained that four water connections are located near her property and that a City of Olathe water main passes through her property. However, an attempt to obtain water service through an interlocal agreement had not been successful. (Attachment 3)

Betty Lu Duncan, Water District No. 1 of Johnson County, testified in opposition to **SB 653** because it would undermine and destroy the planning and financing of the utility. She noted that the areas affected by the bill petitioned to be a part of Water District No. 1. (Attachment 4)

Byron Johnson, General Manager of Water District No. 1 of Johnson County, followed with further testimony in opposition to the bill as it would negatively affect the water district's long-range plans and investments in merged areas, and it provides no mechanism to compensate the water district rate payers for transmission and distribution mains and facilities. He suggested other methods to assist financing of new development. (Attachment 5)

The Chairman asked Mr. Johnson why Water District No. 1 objected to the City of Olathe providing water to the areas under discussion. Mr. Johnson replied that Water District No. 1 had spent \$6 million on an infrastructure for a long-range plan to bring water to this area. Mr. Johnson said he was agreeable to working on an interlocal agreement with the City of Olathe to provide water off its lines. The Chairman further questioned Mr. Johnson as to how problems of landowners, such as those presented by Mrs. Patterson, could be solved as long as the unwillingness to compromise exhibited thus far by Water District No. 1 continues. Mr. Johnson reiterated that he would be willing to work with the City of Olathe on an interlocal agreement. The Chairman requested that Mr. Johnson work on a solution with Mr. Heaven, the City of Olathe, and any others deemed necessary and that he report to the Committee next week. Mr. Johnson consented to do so.

Senator Langworthy felt that the Committee should receive input from the City of Olathe to get the "full story." The Chairman informed the Committee that he had a letter from the City of Olathe indicating that it was neutral to the bill and that it would supply the water if the Legislature required it to do so.

The meeting was adjourned at 10:03 a.m.

The next meeting is to be announced.

LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: <u>Fibruary</u> 20,1996

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NAME	REPRESENTING
Pete Heaven	Todd Bleakley; James Water, et al
Ed Schlagel	Cedar Creek Properties
JIM WALTON	Jim WALTON WATON /HAZAS PAN.
Todal Blakley	Preparty Owner
John Weber	, (((
Bob Mantgomery	Advocate of Prupuly Ouners
netty Patrical	Grapert Dunn
Rep. John Toplikan	Olatha
Virla a Capplebaum	Property OWNER
Vistas (1 Gppleblaum	TELFLOPER
MIKE ARMSTRONG	WOTER DISTRICT NO I
Larry Rosenow	Water Dist No.1
RONALD R. GOOLD	pt (1 d
Betty Lu Duncan	" board "
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STATE OF KANSAS

JOHN M. TOPLIKAR

REPRESENTATIVE, 15TH DISTRICT 507 E. SPRUCE OLATHE, KS 66061



HOUSE OF REPRESENTATIVES

OFFICE: 155 EAST TOPEKA, KS 66612 (913) 296-7683

February 20, 1996

TESTIMONY ON SB 653

Mr. Chairman and members of the Senate Local Government Committee:

I come before you today in support of Senate Bill 653. It seems reasonable and fair that if 51% of the affected landowners wish to be served by the city, they should be allowed to do so.

I also believe it is the intent of those requesting this legislation, that any money previously expended by the water district for engineering studies or other associated costs incurred in planning the development of the area, should rightfully be reimbursed by the city to the water district upon documentation of the expenses after the relinquishment.

I ask the Committee to consider drafting such an amendment to the bill and for your support so that the property owners can be served in the near future.

Thank you.

Rep. John Toplikar 15th District

> Senate Local Gov4 2-20-96 Attachment 1

TESTIMONY BEFORE THE LOCAL GOVERNMENT COMMITTEE KANSAS SENATE SENATE BILL 653

February 20, 1996

Mr. Chairman, and Ladies and Gentlemen of the Committee:

My name is Lewis A. (Pete) Heaven, Jr. I am attorney with the law firm of Holbrook, Heaven & Fay, P.A. (Kansas City, Merriam and Topeka) and my office is located at 6700 Antioch, Suite 420, Merriam, Kansas. Most of my professional activities involve municipal government and land use issues, and I appreciate the opportunity to appear before you to testify in favor of Senate Bill 653. I come before you today not so much as a spokesman for a client but rather as a landowner and one whose profession is directly impacted by the availability of water.

Senate Bill 653 can best be termed a property owner's "bill of rights". It should not be read as a critical response to Johnson County Water District #1 ("Water District #1"), nor should it be considered an attempt to deprive Water District #1 of its current authority. Rather, Senate Bill 653 is a reflection of basic property rights recognized elsewhere in our statutes.

Prior to 1951, the Kansas counties in the Kansas City Metropolitan Area purchased water from the Kansas City Suburban Water Company, Inc. Many at that time believed that the Missouri counties served were given preference to water, and the Kansas counties experienced frequent interruptions in service and charges that were well above the average rate in the state of Kansas.

Senate Local Gout 2-20-96 Attachment 2 In response, the Kansas legislature, in 1951, enacted K.S.A. 19-3501, et seq. (the "Act"). The Act permitted the creation of quasi-municipal water districts to be formed in Miami, Franklin, Johnson and Wyandotte counties so that independence could be achieved from the then-current private water company system. By the authority granted in the new statutes, Water District #1 was created, and now exists as the only water district created under the Act. And although the new statutes served an immediate need, no one at the time of enactment could have imagined the tremendous residential and commercial growth Johnson County was about to experience; growth that created extraordinary utility demands and the serious consideration of multiple water distribution systems.

I deal on a daily basis with real property development issues. Demand for development continues to increase and the quality of development in Johnson County continues to excel. There are areas in Johnson County, however, whose growth has been stunted as a result of the unavailability of water, and this impediment affects the entire State of Kansas.

The one utility absolutely essential to residential and commercial growth is water. Development can continue without sanitary sewers, piped gas and off-site electricity; all of those utilities can be provided in one form or another on-site. Without water, however, property becomes under utilized and virtually uninhabitable.

The irony is that the undeveloped areas of Johnson County are within Water District #1, and one would assume from that that water is or should be available. Due to financial and other

constraints, however, many landowners are told by the District that they must wait years before water service will be available. Those property owners fortunate enough to be close to or within the existing water distribution system continue to enjoy the ability to expand and develop, while those without the availability of water must peer through an invisible barrier that separates them from their neighbors.

While one may argue that having water distributed to property is not a "right" of the owner, no one can argue that a property owner should be afforded an <u>equal</u> right to water when it is plentiful and available. Senate Bill 653 recognizes the equality of that right.

A compelling example of the irony and a good example of how Senate Bill 653 will benefit Kansans is the situation existing in the area of the City of Olathe.

Olathe maintains a municipal water distribution system sufficient to service areas adjacent to however not within the City. Through the use of benefit districts (which Water District #1 does not have statutory authority to use) or private payments, water lines can easily be extended to those adjacent areas. Unfortunately, however, the adjacent areas are within the jurisdiction of Water District #1, which is not now servicing the areas, and Olathe, although willing to supply water, understandably does not want to be involved in a jurisdictional dispute. Senate Bill 653 would enable property owners in the Olathe area to enjoy a water supply that is readily available, however is currently statutorily prohibited.

As stated above, our statutes recognize and protect the rights of property owners to basic services in other analogous situations. For example, if a city wishes to annex an unincorporated area, it must adopt a plan whereby municipal services are provided to the annexed area within two and one half years. In the event the municipality does not extend services to the annexed area within that time, the affected property owners can petition the Board of County Commissioners to de-annex their property or file an action to compel the provision of municipal services. See K.S.A. 12-532 and 12-533(a).

In contrast, the Act permits a water district to annex territory, however does not impose any corresponding duty to supply water to the area annexed. As a result, the annexation preempts alternative sources of water, and creates no duty upon the district to provide water within a reasonable period of time. Without such a duty, the property owner becomes trapped and subject to the discretion of the water district as to when and if water can (or will) be supplied.

Water District #1 may argue that it is not possible, due to financial or other considerations, to promise the availability of water in all sectors of the District within the foreseeable future. Assuming this to be the case, however, property owners should be given a reasonable alternative for the supply of water so that they may fully enjoy the use of their property. Stated differently, rather than forcing Water District #1 to provide service (as cities are forced to do), allow property owners to obtain an alternative source of supply.

Water District #1 may also argue that by allowing a "competing" water supply, it will lose a portion of its investment in existing facilities. While the intent behind Senate Bill No. 653 is not to produce such a result, the Legislature has addressed a similar issue in K.S.A. 19-3512. Therein, a water district is empowered to assume jurisdiction over a rural water district, and if it does so, financial consideration must be given to the rural water district in the form of assumption of liabilities and bonded indebtedness. While I do not believe that the issue of existing facilities of the Water District #1 is applicable to the areas to be benefited by Senate Bill No. 653, I would recommend that if the issue does exist, it be addressed in the Bill, as opposed to using the issue to defeat the important property rights afforded by the Bill.

In summary, I would like to thank you for allowing me to address the Committee and share my thoughts. The basic property rights of landowners to the availability of utilities is of tantamount importance and essential to the orderly growth of our State. Although the statutory scheme of K.S.A. 19-3501, et seq. was, at the time of passage, a response to a very real problem, continuation of that statutory scheme without viable alternatives to property owners has created another problem. The problem that now exists is very similar to the one addressed by the 1951 Kansas Legislature - the availability of water. To fail to address the problem, particularly since water is plentiful in Johnson County, brings to mind the classical paradox of the stranded sailor: "water, water everywhere, and not a drop to drink".

STATEMENT

My name is Arch Patterson. My wife, Betty Patterson, and I live at 12901 Catalina, Leawood, Kansas. We have owned a forty-acre tract of land located generally at 121st and Lone Elm Road, Olathe, Kansas, for many, many years. The south property line of our acreage is the northern boundary of the City of Olathe. A number of years ago we granted an easement to the City of Olathe for the location of a 24" main water line that runs through our property. As part of that water line easement, we obtained permission from the City of Olathe to have four separate water connections to our property, each being served with a 3/4" line. We assumed that when we developed our property we would have water service from the City of Olathe from the 24" water main that passes through our property. Within the past two or three years, we have had inquiries from one or more developers who were interested in developing our property. We, and they, found by talking with the City of Olathe that we could not make use of the

> Senate Local Gov't 2-20-96 Attachment 3

24" water line to provide service to our acreage because our forty-acre tract was now in Water District No. 1 as a result of consolidation of a number of rural water districts.

We contacted our attorney and requested that he attempt to work out arrangements whereby our forty-acre tract would be provided water service by the City of Olathe. Our attorney visited with the staff and Chief Engineer of Water District No. 1. Our attorney suggested that Water District No. 1 and the City of Olathe could enter into an interlocal agreement whereby our property would be provided water service by the City of Olathe until Water District No. 1 builds the water line infrastructure necessary to serve our property from Water District No. 1 service lines. Our proposal was rejected by the staff of Water District No. 1.

Attached to this written testimony is a letter our attorney received from Water District No.

1 in which they refused to consider a de-annexation and provided to our attorney the

estimated costs that we would have to pay to extend Water District No. 1 service to our property. As you can see, the cost is approximately \$40 per foot plus additional costs which makes the estimated cost at least \$250,000 or more. This is totally impractical and, in effect, makes our property not available for development. This is extremely frustrating to us in that we are now being served by the City of Olathe, we have a 24" water main of the City of Olathe going through our property, and we have been told point blank by Water District No. 1 that they will not consider, under any circumstances, our being served by Olathe.

Under these circumstances, we wholeheartedly support Senate Bill 653, and we believe the subject bill does clarify and assist our situation. It seems to us that Water District No. 1 should not be put in a position to make our property unmarketable and not available for development. We urge the committee and the state legislature to adopt the bill now before it. The view expressed by Water District No. 1 is an excellent example

why citizens become upset with government officials. Too many of our elected officials, as well as the staff that really run the show and make decisions, are more interested in protecting their "turf" and really have no interest in helping solve a problem. In our situation, it is not only unfair to deny full use of the water service running through our property, it is wasteful of tax and user fee dollars to require us to construct lines just because Water District No. 1 refuses to use and exercise common sense and good judgment.

Arch Patterson





5930 Beverly — Mission, Kansas 66202 Mailing Address: P.O. Box 2921, Mission, Kansas 66201 Tel. (913) 722-3000 FAX (913) 262-0375

October 27, 1994

Mr. Robert F. Lytle
Bennett, Lytle, Wetzler
Martin & Pishney, L.C.
P.O. Box 8030
Prairie Village, Kansas 66208-0030

Re: Patterson Property
123 and Lone Elm

Dear Mr. Lytle:

We received your letter dated October 19, 1994, on October 24, 1994. I apologize for our failure to respond to your earlier request for information.

You had inquired about the possibility of obtaining water service from the City of Olathe on either a temporary or permanent basis. Our legal counsel is of the opinion that we have no capacity to de- annex area within our existing boundaries to allow Olathe to provide permanent service.

We have considered the option of Water District No. 1 purchasing water wholesale from Olathe and then providing that water to the subject property through Water District No. 1 distribution mains and service connections. We have also considered the option of allowing Olathe to temporarily serve the area with distribution mains and service connections that would be relinquished to Water District No. 1 at some point in the future.

After careful consideration, our staff would not recommend either option to the Water District Board. Purchasing water wholesale from Olathe would require the Water District to create a special water rate which would be higher than our standard rate or cause our other rate payers to subsidize this area. Allowing Olathe to serve the area on a temporary basis can be detrimental to the normal expansion of our water distribution system.

Page 2 October 27, 1994

We did perform a hydraulic analysis to determine what improvements to our distribution system would be needed to serve the subject property.

We currently have an 8" main on 119 Street that ends 1/4 mile west of Woodland Rd. We can connect a 12" main to the existing 8" main and extend the 12" main west to Lone Elm Rd., and then south along Lone Elm Rd. to the property. This will provide a fire flow at Lone Elm Rd. as follows; 1,000 gallons per minute (g.p.m.) at a residual pressure of 26.5 pounds per square inch (p.s.i.). However, it should be noted that this is only 6.5 p.s.i. above our 20 p.s.i. minimum. Depending upon the street

routing and elevations within the project it may or may not be possible to maintain a 20 p.s.i. residual pressure within the property. Another alternative would be to extend a 12" main from the existing 12" main at 111 Street (College Blvd.) south along Lone Elm Rd. to the site. This would provide a residual pressure of 63.3 p.s.i. along Lone Elm Rd. while flowing 1,000 g.p.m.

A rough estimated cost for the extension of a 12" water main is \$35.00 to \$40.00 per foot assuming little or no rock excavation. Please note that this rough estimating cost is for general information only and is not to be relied upon for any specific purpose. We of course can prepare a more accurate cost estimate after a specific route has been selected. This estimate could take in to account rock excavation, property restoration, easement costs, etc.

For your information, we have agreements pending, which may result in the extension of 1/4 mile of 12" main along 119 Street to a point 1/2 mile west of Woodland Rd.

As I believe you are aware, the developer would be required to fund the cost of any water main extensions needed to serve his or her property. However, we do have a procedure for a Benefit Area Agreement which can provide for a refund of up to 100% of the cost of water mains 12" or larger. Terry Schulze of our office would gladly explain to you how the Benefit Area Agreement works.

If you have any further questions, please contact me at 722-3000 ext. 511 or Terry Schulze at 722-2852 ext. 237.

Sincerely,

Byron N. Johnson General Manager

BNJ/cjc

pc: Terry Schulze

TLS1025

WATER DISTRICT NO. 1 OF JOHNSON COUNTY

5930 Beverly — Mission, Kansas 66202 Mailing Address: P.O. Box 2921, Mission, Kansas 66201

Tel. (913) 722-3000 FAX (913) 432-6132

TESTIMONY PRESENTED TO
SENATE LOCAL GOVERNMENT COMMITTEE HEARING
ON SENATE BILL 653
BY
WATER DISTRICT NO. 1 OF JOHNSON COUNTY

THE BOARD
DICK NOON, Chairman
TOM E. BARRY, Vice Chairman
ROBERT P. REESE Member
DICK WEISSER, P. E., Member
BETTY LU DUNCAN, Member
ANNE B. LYDDON, Member
ROBERT S. OLSON, Member

FEBRUARY 20, 1996

Mr. Chairman- Committee Members. Thank you for taking time to hear our concerns. My name is Betty Lu Duncan. I am here as a Board Member and rate payer of Water District No. 1 of Johnson County. I speak for all of the Board Members opposing Senate Bill 653. We also support the testimony that will be provided by the District's General Manager, Byron Johnson.

I am amazed and disappointed that this issue is before you. We have and are meeting our commitment to serve all areas of the District.

A water utility, as other utilities, has to plan for its service area based on future projections — — not just what is needed today. If the rules are changed because some developers or other want special treatment without regard for long term costs of furnishing the service , our financing is in shambles. This legislation seeks to undermine and destroy the planning and financing of the utility. No one is saying that the utility hasn't adequately planned in the past nor poorly designed for the future.

No representative group of owners has attempted recently to meet with our elected officials and staff to hammer out a win-win solution to water service needs.

If passed, SB 653 plants the seeds of destruction for Water District No. 1 of Johnson County.

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WATER DISTRICT NO. 1 OF JOHNSON COUNTY



5930 Beverly — Mission, Kansas 66202 Mailing Address: P. O. Box 2921, Mission, Kansas 66201 Tel. (913) 722-3000 FAX (913) 262-0375

TESTIMONY PRESENTED TO
SENATE LOCAL GOVERNMENT COMMITTEE HEARING ON
SENATE BILL 653
BY
WATER DISTRICT NO. 1 OF JOHNSON COUNTY

FEBRUARY 20, 1996

Good morning Mr. Chairman and Members of the Committee. My name is Byron Johnson and I am General Manager of Water District No. 1 of Johnson County. I am here today to express our utility's opposition to SB 653.

We believe this bill could benefit any special interest group without regard for the historical development of our current district boundaries. The elected boards of Rural Water Districts 2, 3, and 5 petitioned originally to join Water District No. 1, because it is an established well-managed utility delivering a safe, adequate water supply at a reasonable cost. The District has always been ready and able to serve its customers as well as developers engaged in residential and commercial real estate ventures.

SB 653 negatively affects the Water District's long range plans and investments in merged areas. Long range planning by water utilities is necessary to assure adequate water supply for future growth. After the mergers with Rural Water Districts 2, 3, and 5, the Water District made extensive revisions to its long range master plan to provide adequate water supplies to these ares. If the rules change, the District will not have any assurance that its boundaries will remain intact which would make it nearly impossible to make proper long range plans.

we believe SB 653 represents a loss of capital investment such as engineering design, treatment plants, pumping stations and water mains required to provide adequate water supplies to customers in these merged areas. The design of these systems is very complicated. De-annexation of the service area as suggested by this bill will result in a loss of rate payer money because many of the existing facilities would be oversized, duplicated and/or abandoned.

Senate Local Govly

2-20-96

Attachment

The bond ratings of Water District No. 1 could be negatively impacted by de-annexation of the service areas suggested in SB 653. Loss of these detached areas could cause the bond rating services such as Moody's Investors Service and Standard and Poor's Corporation to question the integrity of the District's long term planning and financial status since the customer base may not be available to generate impact fees and water revenue to pay for facilities. If this situation creates anxiety with the bond rating services and causes lower bond ratings, it could drive bond interest rates up, thereby causing rate increases to the 322,000 people currently served by the Water District.

water District No. 1 is opposed to SB 653 because it requires only the owner(s) of a majority of land (which could be as few as one) to sign a petition for de-annexation. It would allow a few developers to disregard the entire utility customer base and carve up the District's present and future service area.

SB 653 impacts current customers negatively in another way. The bill provides no mechanism whatsoever to compensate the Water District rate payers for transmission and distribution mains and facilities that would be confiscated by the "taking" (detachment) of areas from the Water District's service area.

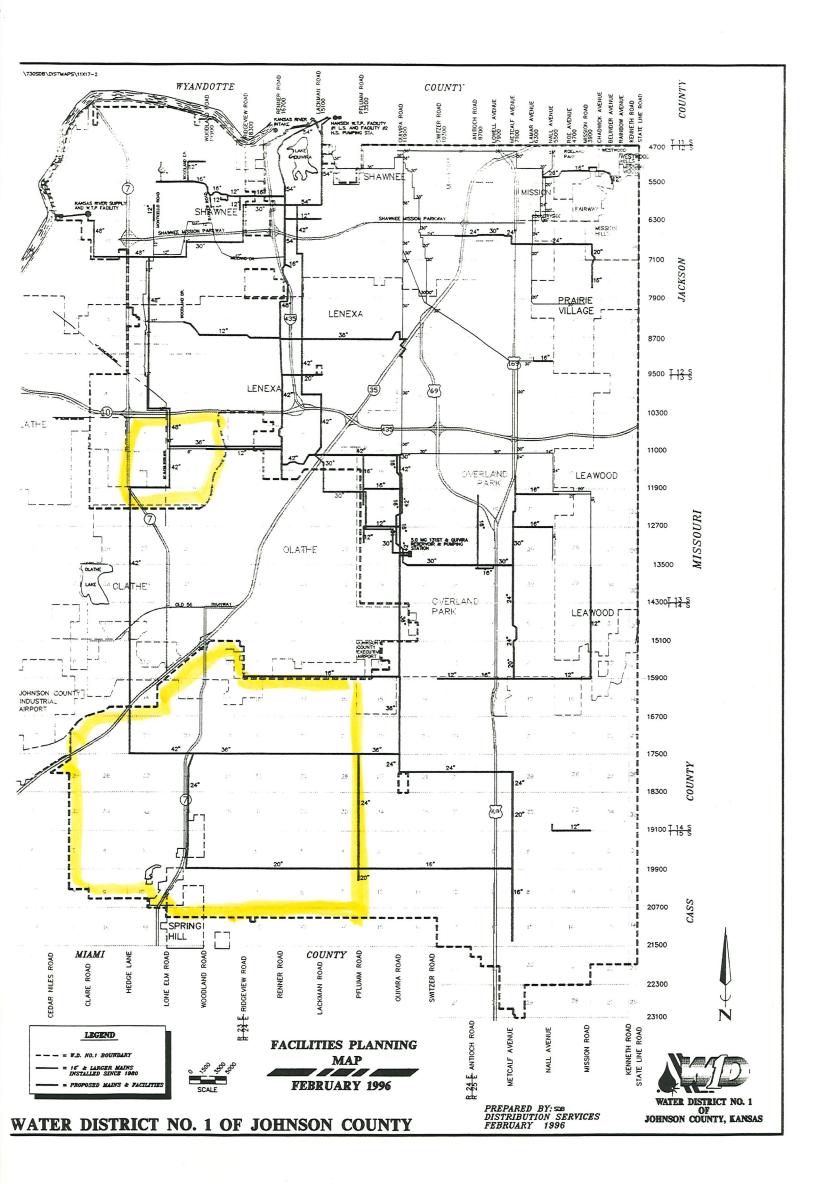
We believe SB 653 does not promote good public policy. This bill would only benefit a few developers, at the expense of approximately 322,000 people who are currently served by Water District No. 1. This bill would promote abandonment of previous investment which would result in loss to all residents involved. The bill gives no consideration to prior investment, bond ratings or long range planning.

We strongly urge you to reject Senate Bill 653.

METHODS TO ASSIST FINANCING OF NEW DEVELOPMENT PROVIDED BY WATER DISTRICT NO. 1 OF JOHNSON COUNTY

The District has always been ready and able to serve developers engaged in residential and commercial real estate ventures. Some of the methods available to assist in financing of new developments include:

- 1. Creation of benefit areas for developers. Water District No. 1 has and will continue to create benefit areas for developers so water main extension costs can be recovered.
- 2. Creation of alternate refund method. Water District No. 1 has and will continue to offer an alternate refund method to allow developers to recover water main extension costs when a benefit area does not apply.
- 3. Letters of Credit. Water District No. 1 allows for a letter of credit in building new mains. Simply stated, the District completely pays for the building of a new main until it is installed and in use before the developer reimburses the District.
- 4. Creation of benefit districts by cities. Water District No. 1 has worked with cities to create a benefit district allowing the cities to fund main extensions and recover their costs.
- Development of infrastructure. Water District No. 1 invests millions of dollars annually developing its infrastructure with large supply lines.



5-4