

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 23, 1995, at 1:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 153
Executive Action: HB 75

{Tape: 1; Side: A}

HEARING ON SB 153

Opening Statement by Sponsor:

SENATOR VIVIAN BROOKE, Senate District 33, Missoula, said SB 153 is an Act conforming certain definitions to the federal Safe Drinking Water Act. Individuals that operate nontransient, noncommunity public water supplies must be certified. SB 153 authorizes the Department of Health and Environmental Sciences to establish rules for cross-connections of public water systems. The bill authorizes the DHES to establish wellhead protection

rules. **SEN. BROOKE** reviewed a list of communities that have begun wellhead protection programs and communities that are interested in wellhead protection, and a list of the advisory committee members. **EXHIBIT 1.**

Proponents' Testimony:

Jim Melstad, Supervisor of the Drinking Water and Subdivision Section of the Department of Health and Human Sciences, said they opposed SB 153 as written, and presented the committee members proposed amendments to the Waste Water Operator Certification law and the Public Water Supply Law as contained in **EXHIBIT 2.**

Mr. Melstad said many water systems are not operated by certified operators and they do not understand the requirements. The DHES requires that schools should have certified operators for their drinking water systems.

SEN. ETHEL HARDING, Senate District 37, said she could not support SB 153 because of the rules, and reviewed some amendments that would change those rules as contained in **EXHIBIT 3.**

Gerald Smith, Galata, said he served on the advisory committee for the Wellhead Protection Program, which is a voluntary program. **EXHIBIT 4.**

SEN. THOMAS KEATING said those people testifying in favor of the bill want to change the bill, and wondered whether or not they were proponents.

CHAIRMAN LORENTS GROSFIELD asked if there were any proponents to testify without amendments to SB 153.

Arvid Miller, Mountain Water Company, said that they were a privately owned water company that serves about 50,000 people in Missoula, and approximately 450 in Superior. He said their involvement initially started in the area of backflow and cross-connection. The problem is, that when devices are installed that will preclude contamination from an outside system, it is imperative that those devices are checked on an annual basis. As an example, there was a main that was repaired in the south hills in Missoula which resulted in negative pressure on the water main. After a main is repaired, it is flushed out to make sure there is no debris left in the system. During the flushing, the water began to turn green, and they traced it back to an abandoned driveway that had antifreeze in pipes beneath the driveway to heat it.

{Tape: 1; Side: B}

Mr. Miller said another example, was a restaurant that was complaining about their water tasting like metal. In checking their water system they discovered a cross-connection without an

appropriate backflow device and some chemicals used by a dentist caused a backflow into the restaurant's water. He said if a hospital was using contagious materials, they could be backflowed into the water system. Without the annual monitoring of backflow devices, those problems could occur. The hospital backflow in Missoula had not been checked for 12 years, and the only way to enforce rules is either from a state or local authority. In 1990 the City County Health Department put together an ordinance adopted by the city of Missoula that would give local control over aquifer protection. There are small communities that don't have the ability to pass an ordinance to protect their groundwater source, and SB 153 would enable them to do so. The bill keeps the Wellhead Protection Program voluntary.

Daniel Keil, board member of the Tiber Water District and the Montana Rural Water Systems, said they have 300 members and they are headquartered in Great Falls. They have a fulltime staff that travels around the state to work on those systems. **Mr. Keil** said they approve the amendments that were presented to the committee members.

John Fitzpatrick, Director Community Affairs, Pegasus Gold Corporation, said SB 153 was not a bill that was of major concern to their company. Last session SB 401 sponsored by the DHES was the non-degradation bill. That bill had some broad grants of authority for rules. Subsequently, the rule-making process was very controversial. A lot of people were very unhappy the way the rules were crafted. **Mr. Jensen's** newsletter described the rule-making process as a great victory for environmentalists. Page 6, Lines 17-24 of SB 153 describes another set of rules by the DHES. **Mr. Fitzpatrick** said he didn't think that the Public Drinking Water Supply Act applied to mines. There was a reclamation project at the Zortman mine, and the Department of State Lands and the BLM were contacted for approval of a reclamation project. The Water Quality Staff person from DSL who was assigned to do the work was present at that meeting. **Mr. Fitzpatrick** said they went through the permit process and attained a permit to go ahead with the facility, then the DHES came out and said they knew nothing about the project. They demanded a second right to review the project by referring to Line 13 of the Statute. He said they have a proposal before the DHES to build a water treatment plan at the mine. The DHES received their plans and specifications, and nothing happened. Finally, **Mr. Pilcher** got the process moving, but it took several months to get that facility reviewed. He said the problem with the DHES is that nothing is done in a responsive manner. He suggested to the committee members that a specific time frame should be included in the bill for those reviews.

Opponents' Testimony:

Lowell Knowlen, private businessman, said he agreed that there should be backflow devices on wellhead systems. However, he was concerned with the definition of non-transient water supply.

Page 5, Lines 8-9 says, "public water supply system, means a provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser or other water supply..." To put all water suppliers under the same restrictions puts a burden on small businesses.

Questions From Committee Members and Responses:

SEN. FOSTER asked **Mr. Melstad** if he would respond to **Mr. Knowlen's** testimony that the bill will involve every business in Montana. **Mr. Melstad** said that was true for systems that meet the minimum definition of the public water system which is 10 or more connections or 25 or more people for at least 60 days per year. The EPA definition includes businesses as well as schools. The existing legislation requires certification of operators for those industries. **SEN. FOSTER** asked **Mr. Melstad** to give him an example of a business that would fall under the law and one that would not. **Mr. Melstad** replied that some of the businesses they monitor only require certification of the operators. Businesses that would have to be certified would be dentist's offices that have 25 or more employees, lumber mills, an office building, etc.

SEN. CHRISTIAENS asked **Mr. Melstad** what the DHES cross-connection inspection requirements were. He said **Mr. Miller's** testimony indicated that a hospital in Missoula had not been checked for 12 years. **SEN. CHRISTIAENS** asked **Mr. Melstad** if there were laws in place to see that those cross-connections are checked. **Mr. Melstad** replied that currently, there are no requirements for inspections. **SEN. CHRISTIAENS** asked **Mr. Melstad** how many FTE's were required to do the inspections. **Mr. Melstad** said with HB 153 they hoped there would be minimum standards for cross-connection control. They did not intend to expand the program to meet those requirements, but would consider individuals currently on staff that could be trained to do those inspections. **SEN. CHRISTIAENS** said he was concerned about expanding services under current law. **Mr. Melstad** said the amendments that were proposed would make the cross-connection portion of the bill optional, and the operator's certification would be eliminated.

SEN. CHRISMORE asked if a person doing an inspection of a cafe or business that has its own water system, would have to be licensed. **Mr. Melstad** replied only businesses with 25 or more employees, not 25 or more customers.

CHAIR. GROSFIELD said cross-connection does not have a close relationship with wellhead protection. These are the two issues in HB 153. He asked **Mr. Melstad** if the wellhead protection program was another primacy area. **Mr. Melstad** answered they were not trying to keep up with federal law or rule-making. Under EPA regulations they are required to develop disinfection definitions for ground water systems. There is a rule that says, "that in

order to avoid ground water disinfection there would have to be a cross-connection control."

SEN. KEATING asked who would be capable of designing a wellhead protection plan. **John Arrigo, Manager of the Ground Water Program, Department of Health and Environmental Sciences** replied that the EPA designed a manual explaining how to establish a wellhead program. He said the community has to get involved, and the water bearing characteristics of the aquifers, the geology, and the pumping characteristics of the well have to be considered for a wellhead program.

SEN. KEATING asked if the communities had qualified people who could put together a wellhead program.

{Tape: 2; Side: A}

Mr. Arrigo replied that many Montana public water suppliers are very small and they do not have the financial and technical capabilities to go through the calculations. It was a voluntary program and the department did not want to mandate that a community must hire a consultant, which could cost up to \$10,000. Missoula had the resources to work with the university to do computer models. The smaller communities are working with **Mr. Melstad**, and propose to use some of their revenue generated by fees. **SEN. KEATING** asked **Mr. Melstad** what kind of experience was needed to design a cross-connection. **Mr. Melstad** replied that a plumber, janitor, or a custodian could do that with proper training.

SEN. FOSTER asked **Mr. Melstad** if the janitor, plumber, etc would be a certified operator. **Mr. Melstad** said yes, that could be the same person, unless that individual didn't want to become certified. **SEN. FOSTER** asked how difficult it would be for a person to become certified. **Mr. Melstad** replied they would have to take a test for different classifications. Those tests are not that difficult, and approximately 70% pass those tests in the first attempt.

SEN. KEATING asked **Mr. Melstad** who inspects those systems to make sure they comply with the law. **Mr. Melstad** answered that the minimum standards would be adopted by the department and the public water supplier would then become responsible for implementation and compliance with the standards.

SEN. KEATING asked if the sanitarian testing the water found it to be pure, would that be proof that the system works. **Mr. Melstad** said if the local supplier found that a system wasn't in compliance, they could involve the DHES.

SEN. KEATING asked **Arvid M. Miller**, if they could shut-off people's water supply. **Mr. Miller** answered that they could shut off the water supply for non-payment of service, illegal use, etc. There is not a specific rule that allows the company to shut off the water for lack of compliance with cross-connection

rules. **SEN. KEATING** said SB 153 would establish in the law more control over the water supply system. **Mr. Miller** said that Public Service Commission regulations say that they are entitled to discontinue service for non-compliance with backflow and cross-connection rules adopted by the DHES for the protection of the public health. **Mr. Miller** clarified that **Mr. Melstad** was talking about the state's views on cross-connection compliance. He said the Mountain Water Company would propose that they submit a backflow cross-connection program for the department's review. Then it would be their job as a water purveyor to take that cross-connection program and apply it to their system. In other states, the water purveyor inspects the water system for violations. He said they have the only certified inspector in Montana, that was trained in cross-connection certification. He said they would not propose that they be the inspectors, but a number of plumbers he talked with in Missoula could be certified to inspect cross-connections, and form a private business. **SEN. KEATING** asked if the Mountain Water Company was controlled by the Public Service Commission, because the company is a public utility. **Mr. Miller** replied yes. **SEN. KEATING** said a small community may be at risk because they wouldn't have the expertise that Mountain Water Company provides for their customers. **Mr. Miller** said, for example, Stevensville chose not to submit for approval from the Water Quality Division, and they are not required to do so under HB 153. However, if they do, they have the option of choosing their own program.

SEN. KEATING said Pinesdale put together a community water supply system for themselves. However, they are in trouble because they didn't go through the permitting process. **SEN. KEATING** asked if the legislation was in place, would they be a voluntary group that would not have to get a permit through the Water Quality Division. **Steve Pilcher, Water Quality Division, Department of Health and Environmental Sciences** answered that the legislation that he was referring to and the voluntary provision, would not relieve the community of Pinesdale from complying with other provisions of the public water supply law. The voluntary provision relates to cross-connection. If they were concerned about cross-connection, they could utilize the provision that is proposed. This could provide the same type of protection that would be provided by the Mountain Water Company or the city of Missoula.

SEN. CRISMORE asked **Mr. Melstad** if the town of Libby had their own water supply system, and if they volunteered to go into that program, could they certify one of their people to do the inspection. **Mr. Melstad** said that was correct.

CHAIR. GROSFIELD asked **Mr. Melstad** if the amendments submitted by **SEN. HARDING** were supported by the department. **Mr. Melstad** replied that he hadn't had a chance to discuss them with **Mr. Pilcher**, but from the program manager perspective, they do support the amendments. **CHAIR. GROSFIELD** said **Mr. Fitzpatrick** expressed some concern over the lack of time-frames for rule-

making. **Mr. Melstad** said the current regulations require a 60 day turn-around time for compliance. The current rules do not address industrial waste systems.

CHAIR. GROSFIELD asked **Mr. Pilcher** if he would comment on the time-frame issue and other types of drainage they were referring to. **Mr. Pilcher** answered that the requirement for a plant inspection review is tied to facilities that have a potential of impacting water quality. He said acid mine waste that could be discharged from a waste rock pile containing highly acidic mineral water, could impact state waters. The department has not attempted to apply that to an irrigation system or every culvert. He said their intent was to restrict the review to those facilities that have a potential impact on water quality. The purpose of review is to ensure that the facility will perform as expected. He said they want to make sure the facility meets all public health standards and that they are in conformance with the regulations. They have not reviewed industrial waste water treatment facilities because of lack of resources, etc. He said they are attempting to address those in order to be consistent.

CHAIR. GROSFIELD asked **Mr. Pilcher** if he would comment on the amendments to HB 153. **Mr. Pilcher** said if **Mr. Melstad** was comfortable with the amendments, the department would support them.

{Tape: 2; Side: B}

Closing by Sponsor:

SEN. BROOKE suggested that a grey bill be prepared with the amendments to help sort through the intent of the amendments and get a better understanding of the changes. There are some good proposals in the bill that say there should be more local control and more involvement in protecting public health. She said the wellhead protection program proposed in the bill, goes to the heart of having local people involved. **SEN. BROOKE** stated that she had the booklet on waste water operator's certification, and asked the committee to work on the bill and come up with a better solution than in the original bill.

CHAIR. GROSFIELD requested that **Todd Everts, Environmental Quality Council**, put together a grey bill just for the committee members, that would make it easier to deal with the bill in executive session.

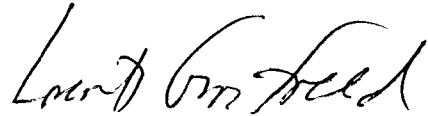
EXECUTIVE ACTION ON HB 75

Motion/Vote: **SEN. FOSTER** MOVED HB 75 BE CONCURRED IN. MOTION PASSED UNANIMOUSLY.


{Comments: this session was recorded on two 60 minute tapes.}

ADJOURNMENT

Adjournment: 2:30 PM



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary

LS/tr

SEN

1-23-95

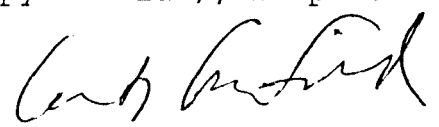
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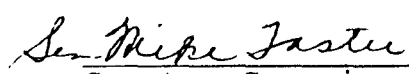
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 23, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 75 (third reading copy -- blue), respectfully report that HB 75 be concurred in.

Signed: 
Senator Lorents Grosfield, Chair

 Amd. Coord. 
SA Sec. of Senate Senator Carrying Bill

201609SC.SRF

Montana Wellhead Protection Program Water Quality Division

Department of Health and Environmental Sciences

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January 19, 1995

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Diana Day
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State Senator
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Vern Heisler
Environmental Engineer
Billings

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General Manager
Mountain Water Company
Missoula

Ed Hillman
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Debi Madison
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Fort Peck Tribes
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Certified Water Operator
Galata

Ward Swanser
Attorney
Billings

Melissa Tuemmler
Cascade County Sanitarian
Ulm

Wayne Van Voast
Research Division Chief
MBMG
Butte

Communities that have begun wellhead protection projects:

Missoula
Sheridan
East Helena
Deer Lodge
Bridger
Belgrade
Plains
Hamilton
Livingston
Manhattan

Polson
Clyde Park
Choteau
Ramsey
Bonner Elementary School
Desmet Elementary School
Eureka, Midvale Water System
Augusta High School
Source Giant Springs Bottling Company
Giant Springs State Park

Communities interested in getting started on wellhead protection projects:

Sidney
Broadus
Huntley
Thompson Falls
Musselshell
Three Forks
Lolo Water District
Lewistown

Sage Creek Water District
Galata Water District
Oilmont Water District
Hungry Horse
Twin Bridges
Fromberg
Basin Water District

FACT SHEET
SB 153

Water and Wastewater Operator Certification Law

- Amends the definitions of water and wastewater systems to be consistent with the revisions described in the proposed amendments to the Public Water Supply Law (see below).
- Requires that individuals that operate non-transient noncommunity (NTNC) public water supplies (PWSs) be certified. NTNC PWSs are those that serve the same non-resident populations for at least 6 months of the year (schools, businesses). This requirement was included in the Safe Drinking Water Act reauthorization bills that passed the US House and US Senate last year. Currently, only water systems that serve resident populations and those that serve industries are required to have certified operators.

Public Water Supply Law

- Revises the definition of public water supply system to be consistent with the federal Environmental Protection Agency (EPA) definition. State definition is 10 or more service connections or 25 or more people for at least 60 days of the year. Federal definition is 15 or more service connections or 25 or more people for at least 60 days of the year. Approximately 20 very small public water supplies would no longer be regulated as public water supplies. The definition of public sewage system is proposed to be similarly changed.
- Minimum standards for cross-connection control programs for public systems. Currently, cross-connections of sources of contamination with a public water supply are illegal, but the department has not adopted minimum state standards for cross-connection control devices. Water suppliers would not be required to adopt cross-connection control ordinances, but could adopt the minimum state standards at their option.
- Voluntary certification of wellhead protection areas and for verification of wellhead protection area ordinances. The amendments are primarily intended to increased local authority for establishment of wellhead protection areas for public water suppliers. The amendments require adherence to existing related state and local statutes, zoning and ordinances and require that local wellhead protection ordinances comply with the Department of Health and Environmental Sciences (DHES) wellhead protection program approved by EPA. The amendments do not make wellhead protection mandatory.
- Clarifies the types of prohibited activities related to construction and operation of water supply and wastewater systems without prior DHES approval.

1-23-95

SB-153

FACT SHEET
LC 392Water and Wastewater Operator Certification Law

- Amends the definitions of water and wastewater systems to conform to the revisions described in the proposed amendments to the Public Water Supply Law (see below).
- Requires that individuals that operate non-transient noncommunity (NTNC) public water supplies (PWSs) be certified. NTNC PWSs are those that serve the same non-resident populations for at least 6 months of the year (schools, businesses). This requirement was included in the Safe Drinking Water Act reauthorization bills that passed the US House and US Senate last year. Although reauthorization of the SDWA did not survive conference negotiations, it is likely that the final reauthorization of the SDWA will contain this requirement.

Public Water Supply Law

- Revises definition of public water supply system to more closely conform to the federal Environmental Protection Agency (EPA) definition. State definition is 10 or more service connections or 25 or more people for at least 60 days of the year. Federal definition is 15 or more service connections or 25 or more people for at least 60 days of the year. Approximately 20 very small public water supplies would no longer be classified as public water supplies. The definition of public sewage system is proposed to be similarly changed.
- Requires the Board of Health and Environmental Sciences (BHES) to adopt minimum standards for cross-connection control programs for public systems. Currently, cross-connections of sources of contamination with a public water supply are illegal, but no state standards for cross-connection control devices exist and water suppliers are not required to implement cross-connection control programs. The proposed amendment also requires the BHES to adopt timeframes for implementation of the standards that are based upon the size of the PWS.
- Requires the BHES to adopt requirements for certification of wellhead protection areas and for verification of wellhead protection area ordinances. The amendments are primarily intended to increased local authority for establishment of wellhead protection areas for public water suppliers. The amendments require adherence to existing related state and local statutes, zoning and ordinances and require that local wellhead protection ordinances comply with the Department of Health and Environmental Sciences (DHES) wellhead protection program approved by EPA. The amendments do not make wellhead protection mandatory.
- Clarifies the types of prohibited activities related to construction and operation of water supply and wastewater systems without prior DHES approval.

Proposed Amendments to Senate Bill No. 153

Introduced (First Reading) Copy

January 23, 1995

Presented by Senator Ethel Harding

1. Title, page 1, lines 11 through 13
Strike: "ESTABLISHING" on line 11 through "REQUIREMENTS;" on line 13
Insert: "AUTHORIZING COUNTY GOVERNMENTS TO ESTABLISH WELLHEAD PROTECTION AREA ORDINANCES"
2. Statement of Intent, page 1, lines 18 and 19
Strike: "and wellhead protection. In regard to cross-connections, the"
Insert: "The"
3. Statement of Intent, page 1, line 28 through page 2, line 3
Strike: page 1, line 28, through page 2, line 3 in their entirety
4. Page 6, line 22
Following: ";"
Insert: "and"
5. Page 6, lines 23 and 24
Strike: subsection (1) in its entirety
Renumber: subsequent subsection
6. Page 7, lines 23 through 25
Strike: "The department" on line 23 through "of the" on line 25
Insert: "The"
7. Page 7, line 26
Following: "300h-7"
Insert: ", enables the department to administer a wellhead protection program that involves certification of local wellhead protection areas and review of wellhead protection area ordinances. In administering this program, the department may perform only those functions provided for by the federal Safe Drinking Water Act and this section."
8. Page 7, line 30
Strike: "requirements"
Insert: "criteria and thresholds"
9. Page 8, line 14
Following: "with"
Insert: "and may not duplicate"
10. Page 8, line 15
Following: "state"
Insert: ", federal,"
11. Page 8, lines 17 and 18
Strike: subsection (6) in its entirety

Testimony for Senate Bill 153

My testimony as a proponent for Senate Bill 153 will be limited to that part labeled New Section Section 6. This section represents the culmination of years of work by a great many people in creating Montana's Wellhead Protection Program. As one of the advisory committee members, I can assure this committee that by accepting this section into Montana law you will have joined us in creating a new concept in water protection. Montana's Wellhead program is unlike most any other in that it is based on local government, local control and a voluntary program. It follows a precedent set in Montana in the 1920's when the legislature allowed local governments to create Water Conservancy Districts because they felt local people knew their local constitions better than anyone else.

The local communities, who are even now working on their programs, that participate in this program have realized that a proactive approach to safe drinking water is just good business. Keeping a water supply clean is easier and cheaper than trying to clean up and treat a polluted supply. Most people in the water business realize that Wellhead Protection is really only an extension of zoning practices which we all recognize as a integral part of growth planning. Since this is a voluntary program, it assures local participation

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in almost all aspects of its creation and implementation. The cost savings to a community who implement this program, whether it be in testing or treatment are considerable.

It is imperative that rural communities such as I live in have this ability to protect their source of water. Having been an operator of a rural water district for almost fifteen years, I can attest to the problems of rural versus city by way of ordinances and zoning. As we move into the 21st Century, we must empower counties as well as cities and towns with the tools to meet the challenges of a new century.

Gerald M. Smith
Box 83
Galata, MT 59444
406-432-2861

Natural Resources

DATE 1-23-95

SENATE COMMITTEE ON SB-137 SB-153

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Arvid M. Hiller	Mountain Water Co	153	X	
Merant M. Smith	Wellhead Center Committee	153	X	
NICK V. CLOS	MT. RURAL WATER SYSTEM	153	X	
Daniel Keil	MT Rural Water System	153	X	
Jim Jensen	MEIC	153	X	
Carol Mackin	self	153	X	
Joe Mackin	"	153	X	
Bethump	DISC	153	X	
John Arriago	DHE S	153	X	
John Fitzpatrick	Pygusus Gold	153		Amend
Margen Cleary-Schwinder	W.I.F.E.			
Lowell Kessler		153		X
Willa Hall	LWV	153	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY