

Bulletin

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ADVANCES SEEN FOR VERMONT'S FOREST LANDS

Coalitions and Compromise Combine to Protect

If any area of environmental protection might be said to be "on a roll," it would be forest conservation. There are encouraging signs that private citizens and lawmakers in Vermont have developed an increased awareness of forest conservation issues.

Those indications include:

- A round of public hearings conducted by the Forest Resources Advisory Council (FRAC) to identify land and forestry issues important to Vermonters;
- Publication in January of an interim report by FRAC which begins, at least, to define what would be involved in a comprehensive program of improved forest management;
- A House-passed bill that addresses clear cutting and puts a moratorium on aerial herbicide spraying in Vermont for two years; and

- Hints of movement in the Legislature toward property tax reform.

FRAC, revived by the Legislature in 1995, was asked to develop parameters to focus public and private forest management and conservation efforts, and to establish benchmarks to gauge their success over time. FRAC issued a preliminary report in the fall and hosted public discussions in four communities. Citizen input influenced an interim report published in January.

Disappointed that the report contained no clear response to public concerns about clear cutting, the House passed H.634, which gives FRAC until January 1997 to present a plan specifically addressing that issue. The bill also imposes a two-year moratorium on aerial herbicide spraying.

"This is what we had hoped for," said Jim Shallow, Director of VNRC's Forests and Outreach Programs. "There's a constructive dialogue developing between FRAC and the Legislature. When

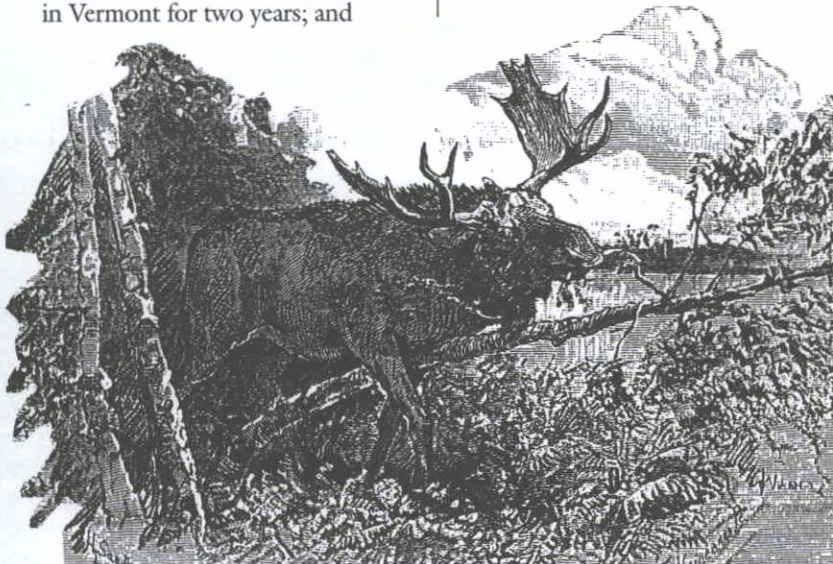
Property tax reform is crucial to improved land management, and after years of inaction a compromise has finally been crafted by Senate leaders.

FRAC didn't accomplish what legislators wanted, the Legislature came back with very specific language."

Property tax reform is crucial to improved land management, and after years of inaction a compromise has finally been crafted by Senate leaders. The plan includes a \$25,000 homestead exemption for all Vermonters, a uniform state tax on new non-residential construction, and elimination of state subsidies through the Current Use program with the requirement that towns tax property upon use value only, supposedly obviating the need for the program. The property tax reform package may be significantly altered as it proceeds through the Senate and House.

And finally, VNRC's well-established living room meetings have now become forums for swapping computerized information on conservation issues. Two grants have enabled VNRC to

continued on page 2





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The Vermont Natural Resources Council (VNRC) is a nonprofit environmental organization founded in 1963 to promote the wise use of Vermont's natural resources. VNRC does research, legislative lobbying, advocacy, and educational activities on issues including land use, forestry, agriculture, water, energy, wastes, and growth management.

VNRC membership includes a subscription to the *Bulletin* (published three times a year) and the *Vermont Environmental Report* magazine (published twice annually). For an individual membership, send \$35.00 to VNRC.

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FOREST LANDS

continued from page 1

create localized maps using data provided by the Vermont Center for Geographic Information.

"The maps provide a full natural resource inventory—deer yards, forest cover, wetlands, recreational sites, public and conserved lands..." said Shallow. "They're a way for people to start talking about what's special in their area and what they want to preserve."

Eventually VNRC plans to make such information broadly available on disk for computer users.

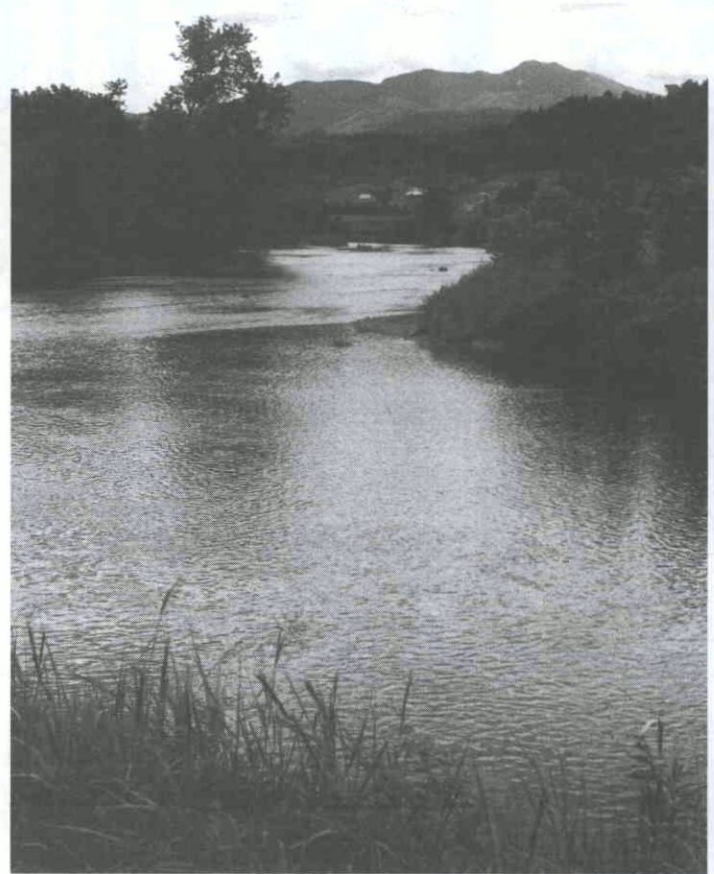
RULES A SNOW JOB FOR VERMONT'S RIVERS

*Delicate Streams
Imperiled by Decision*

Vermont's upland streams were once considered inviolate by law; they could neither be thwarted, impounded nor dewatered. But in January, 1996, the Legislative Committee on Administrative Rules approved on a 5-3 vote new Agency of Natural Resources rules, crafted to boost the ski industry at the expense of the public.

The committee accepted rules drafted by the Agency of Natural Resources that allow ski areas to withdraw water for snowmaking, even if those withdrawals violate minimum standards for stream flow and risk the biological integrity of small mountain waterways.

Existing operations that violate those standards are even allowed to expand. And the rules excuse snowmakers who propose to reduce small mountain streams below February Median Flow from



Vermont Travel Division

any obligation to prove the streams would not be harmed, shifting the burden of proof in contested situations to the state.

The rules do establish February Median Flow as an inviolate standard for large rivers. But, said Chris Kilian, VNRC Staff Attorney and Water Program Director, "the lower protection for mountain brooks conflicts with existing law that says all streams above 2,500 feet are automatically Class A, and must be protected in their natural state. So there's an inherent conflict."

The Conservation Law Foundation has sued the state, charging that the snowmaking rules violate existing laws and doctrine. VNRC agrees but has not joined in the suit.

"Environmental organizations have limited resources," explained Stephen Holmes, VNRC Deputy Director for Policy, "which means we shouldn't duplicate other

people's efforts."

VNRC has focused its efforts on federal relicensing for hydroelectric dams, which has important environmental implications for rivers all over the state.

"VNRC is hopeful that the Washington Superior Court will decide in favor of protecting the integrity of Vermont's water laws," said Holmes.

SETTING THE RECORD STRAIGHT FOR THE LAMOILLE *VNRC Argues against Certification*

Consider any hydroelectric dam in place on any river for 40 years. Should it be treated with the same regard as the river itself, which developed out of precise geologic conditions tens of

millions of years before?

The Agency of Natural Resources (ANR) granted water quality certification in 1994 to hydroelectric facilities on the Lamoille River—Fairfax Falls, Clark Falls, and Milton Falls, and the Peterson Dams—owned by Central Vermont Public Service (CVPS). In late November, 1995, VNRC and CVPS submitted legal briefs and provided arguments before the Water Resources Board concerning these facilities.

“CVPS wants these [hydroelectric] projects to be assessed as if they have the same status as the geologic processes that caused the Lamoille to flow in the first place,” observed Christopher

Kilian, VNRC Staff Attorney and Water Program Director.

Three VNRC fisheries experts and five state witnesses, specializing in hydrology and ecology, uniformly questioned the validity of the studies provided by CVPS. This, according to Kilian, “begs the question whether the ANR had enough information to support granting a certification in the first place.”

VNRC considers the permit to be inconsistent with ANR’s minimum flow policy, and that it is unsupported by data. Consequently, VNRC has voiced strong recommendations that water quality certification be denied on the merits of certain aspects of the



A BLOW TO ACT 250 AND DEMOCRACY

H. 411 Would Diminish Citizen Participation

In 1994 the Legislature passed a major permit reform bill streamlining Act 250 and state agency permit programs. And in 1995 the Environmental Board spent a good part of the year rewriting the entire Act 250 rules. Now, before the ink on the new rules has had time to dry, the Legislature is at it again working on changes to weaken Act 250.

At this summer’s four public hearings on Act 250 rules changes, the Environmental Board heard from scores of Vermonters about the importance of ensuring full citizen participation in Act 250 hearings. Yet ignoring this democratic process, a bill originated from the House (H. 411) that would eliminate the appeal rights of citizens. Under the bill, those who have been admitted as parties to Act 250 because they can “materially assist” the district commission by providing testimony, expert witnesses, and facts about their neighborhoods and towns that might otherwise get overlooked, would no longer be able to appeal to the Environmental Board.

If enacted into law, this change would mean that the only citizens with appeal rights would be adjoining property owners and residents who can prove that the development *affects their interest*, typically a harder test for admittance to Act 250 proceedings. This change will make getting a full and fair airing of concerns more difficult for some neighbors of a project, community and civic groups, and local and statewide conservation and public interest organizations.

VNRC’s Deputy Director for Policy, Steve Holmes, thinks the change will severely diminish Act 250. “Often in Act 250 hearings, two sides of an issue aren’t presented because the

developer and the town or state agree. If materially assisting parties aren’t allowed to go before the Environmental Board to challenge the developer’s studies, information, and arguments, the result may be less informed decisions and a gradual erosion of the public’s faith in the process.”

The bill also contains another ill-conceived component that some developers have been trying to get passed for years: appeals *on the record*. Right now, appeals from district commissions to the Environmental Board are *de novo*, meaning a new hearing is held, where new or additional information is presented to the Board. The development interests have been pushing to have those appeals be based *on the record*, or transcript, produced at the district commission hearing.

Holmes pointed out that this change would also have a chilling affect on citizen participation. “Everyone will have to have a lawyer. The relatively informal, open district commission atmosphere will turn into a courtroom-like proceeding complete with court stenographers transcribing the *record*. Procedural, evidentiary, and other legal arguments will become commonplace, and substantive issues will be given short shrift,” according to Holmes.

“The irony is that the hearings will be more cumbersome for everybody, including the developer. There will probably be more decisions thrown out on legal technicalities, more remands on procedural issues, and more delays,” said Holmes.

At press time the bill was in the House Ways and Means Committee where its fate is uncertain. Please call Steve Holmes at 223-2328 for an update.

project, e.g., fish passage, and that certification be denied for insufficient and inaccurate information. VNRC thinks that the ANR has further work to do.

This case was filed in mid-February; a decision could be made in as early as two months.

ELECTRIC UTILITY INDUSTRY UNPLUGS

What Effects on Efficiency and Rates?

Like the changes in the telecommunications industry, exemplified by the breakup of AT&T and maturing rivalry among long-distance telephone servers, the electric utility industry is now in the midst of major restructuring that will result in increased competition. This will affect the rates Vermonters pay for electricity and the ways that services are delivered.

The massive national and state effort is referred to as *restructuring*, not deregulation. This is because transmission and distribution facilities would continue to be regulated as they have been; only the way in which electric generating facilities are operated will be affected by the change.

VNRC is represented by former VNRC Board member Leigh Seddon as a party to the ongoing Public Service Board (PSB) proceedings convened to restructure the industry in Vermont. The negotiating group comprises representatives of industry, business, utility, environmental, low-income, and other interests, and has been meeting throughout the

winter to forge consensus on what the restructured industry would be like in Vermont. The goal is to have a recommendation in place by this fall that would lay the foundation for action by the legislature in 1997.

In consultation with VNRC's Policy Committee and staff, Leigh will be filing comments toward the end of March for a meeting of the PSB on April 2nd. "VNRC is looking at the role of renewable energy in a restructured electric industry and will be proposing ways to ensure that the development of energy-efficient and environmentally-appropriate, in-state energy sources continues in a competitive marketplace. These are the key elements for an energy strategy that protects our environment and sustains our economy," Seddon indicated.

CHURCHES AND THE ENVIRONMENT

A New Coalition Makes Gains

In this time of harsh political attacks on environmental values, from some members of Congress and the political right, conservation advocates are being advised to broaden our base of support. Hence, Bren Whittaker, VNRC's Northern Forest Project leader has worked with The National Religious Partnership, headquartered in New York City, for the past three years. The Partnership is a coalition of a broad array of American religious bodies dedicated to advancement of environmental principles.

In early February this year, one segment of the Partnership, the Evangelical Environmental Network (EEN), brought *Noah's Ark* to Capitol

Hill, lobbying Congress to *strengthen*, and not gut or weaken, the Endangered Species Act which has been under severe attack from the right. *Noah's Ark*, in actuality, is a set of principles from the evangelical churches, which use the ancient biblical story of the saving of all species from the Flood: "Bring two of every living thing..." (on board Noah's Ark).

The EEN environmentalists met with members of Congress, and also Department of Interior Secretary Bruce Babbitt. At a subsequent press conference it was reported there was "standing room only." The Washington, D.C., events received national media coverage, with VNRC affiliate the National Wildlife Federation calling the whole effort "the first home run we've had in a long time—a grand slam!" The editor of *Green Cross Magazine* noted that following the event, they had huge demand from around the country for the "Noah's Ark" edition, which they distributed while in Washington.

These events attracted attention. Congressmen Young (R-Alaska) and Pombo (R-California), sponsors of a bill to effectively kill the Endangered Species Act (ESA), issued an angry letter, bringing in the American Farm Bureau and other ESA opponents. The Young-Pombo response also told the Evangelicals they should stick to religious issues only. In a subsequent response to their outburst, a professional group of North Carolina clergy stated that the ESA had very much to do with ethics and morality, and that these subjects, the congressmen would surely agree, were proper issues of religion.

Bren Whittaker has secured





EARTHLINGS NEEDED

VNRC would love to have your volunteer assistance during the Earth Day Celebration on April 19th.

Please call VNRC's Earth Day Coordinator, Jeff Meyers at (802) 660-8013, or VNRC at (802) 223-2328.

extra copies of *Noah's Ark*. These are available (limited quantities) by contacting VNRC's Stacie McNary at 223-2328.

INFORMATION AGE PUSHES DECISIONS

The siting of telecommunications facilities is beginning to get significant air time in the state house and in other forums around the state. Three bills are under active consideration in the legislature. These range from a bill to make it easier for cellular communications facilities to be sited on public lands and buildings, to one eliminating radio waves emitted by radio broadcast towers from Act 250 consideration as air pollution, to a third limiting the role of local government in regulating two-way telecommunications facilities. Three conferences

are being held this year in Vermont to address the public health, natural resources, land use, aesthetic, and other effects of telecommunications towers and associated facilities.

VNRC Deputy Director for Policy, Steve Holmes, a panelist in the "Technology and the Environment" conference held on January 19, 1996, has been tracking the issue in the legislature. "Rather than plunging into fragmented regulatory fixes that may not benefit the state in the long term, we need to develop a better understanding of the health and environmental impacts of these facilities first and then develop a statewide siting strategy, hopefully with the industry, state regulators, and public interest representatives at the table," Holmes said. "The industry has been pushing hard, and the state is moving too fast, without an overall strategy on this issue." Stay tuned as VNRC delves further into this issue.

WE WILL MISS LOWELL KRASSNER

Many Vermont conservationists knew—and truly loved—the inimitable Lowell Krassner, who unexpectedly died in January at the age of 59. Lowell was an environmental activist for decades, working mostly on forest and public lands issues, especially the campaign to protect wilderness in the Green Mountain National Forest. Although he was most loyal to the Vermont Chapter of the Sierra Club, he was someone every environmental activist in the state came to know well.

Lowell had the irreverent, almost sacrilegious humor that typifies a certain breed of conservationist. (Thoreau himself had a streak of it when he let it out.) At meetings of the Vermont Alliance of Conservation Voters, which he helped start in the 1980's and was helping to rehabilitate at the time of his death, Lowell provided hilarious commentary on the efforts of Vermont politicians trying to gain environmental endorsements despite questionable past activity.

Like many other Vermont conservationists, Lowell hated being indoors when there was any reason to be outside. He hiked and canoed and skied throughout the state, cloaking under a

mantle of outdoor recreation the serious diabetic condition that was unknown to many of us until his death.

It needs to be said that Lowell and Diane received region wide recognition at the New England Environmental Conference in 1989, that the Vermont House of Representatives passed a resolution in his honor after his death (cosponsored by Rep. Mary Sullivan of Burlington and Rep. Carl Reidel of Ferrisburgh), and that both of Vermont's U.S. Senators sent representatives to his memorial service, held in the parlor of the Burlington Unitarian Church in February.

At the memorial service, Lowell's wife Diane Geerken, family, and friends, shared heartwarming stories in his memory. He was a sparkling personality, a committed activist, a knowledgeable and savvy political organizer who worked with policy makers of all stripes. His laughter and outlook will be missed by all of us who know and loved him. We were lucky to know him, and future generations will thank him for his tireless (never humorless) work on behalf of Vermont's environment.



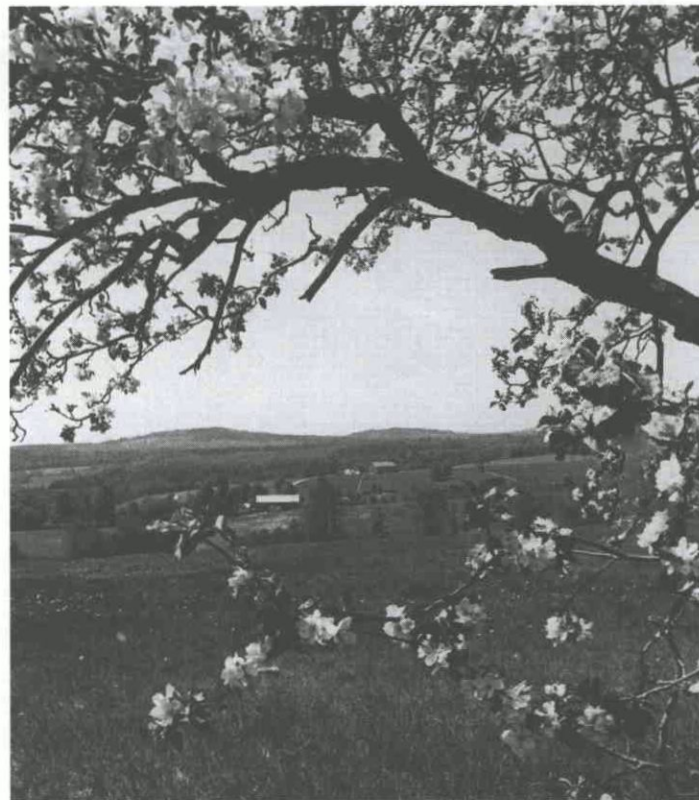
A tribute by Ned Farquhar, past VNRC Executive Director

CITIZENS' CONGRESS DEVELOPS FORESTS VISION

Recently Washington, D.C., has not been a place of environmental vision; however, a recent citizen gathering shed light on the many areas of agreement for restoring our country's forests to ecological health. The Seventh American Forest Congress brought together 1,400 individuals from around the United States in a democratic exercise aimed at developing a common vision and principles of stewardship for our country's forests. Unlike past forest congresses, this Congress was a citizen-focused event acknowledging

for the first time that the grassroots perspective is as important as those of public agencies, private land managers, and industry executives who have traditionally called the shots.

As participants settled down into tables of 8 to 10 people of different backgrounds, there emerged many areas of agreement. "Just as we have seen happen in our living room meetings this event demonstrated that when individuals check their slogans at the door, a common vision of ecological health, community well-being, and a sustainable economy will emerge," said Jim Shallow, Forests and Outreach Director. VNRC will be reviewing the final proceedings and working on how Vermont forest policy can build on the agreements found in Washington, D.C.



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