

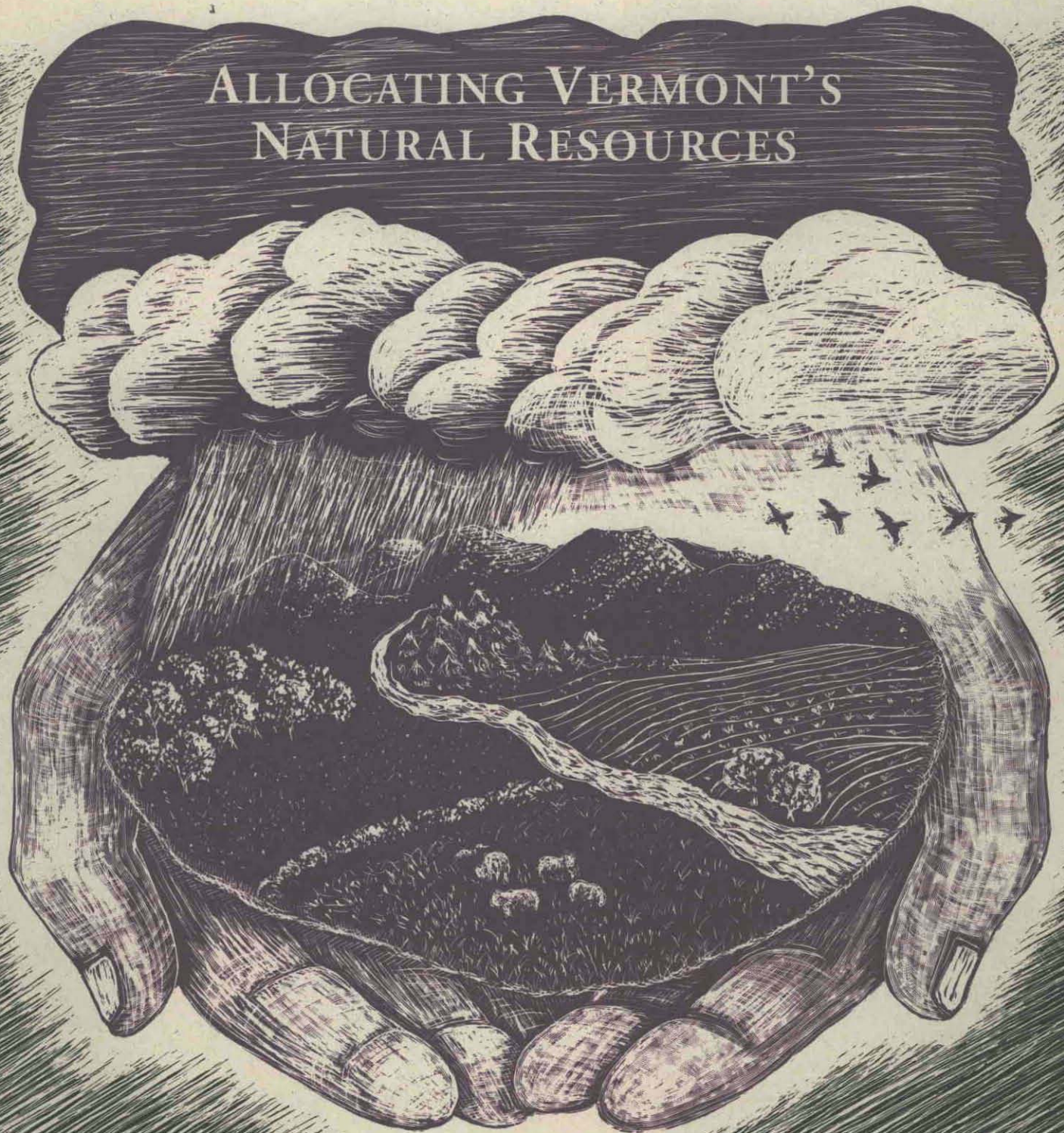
VERMONT

Environmental Report

Published by the Vermont Natural Resources Council

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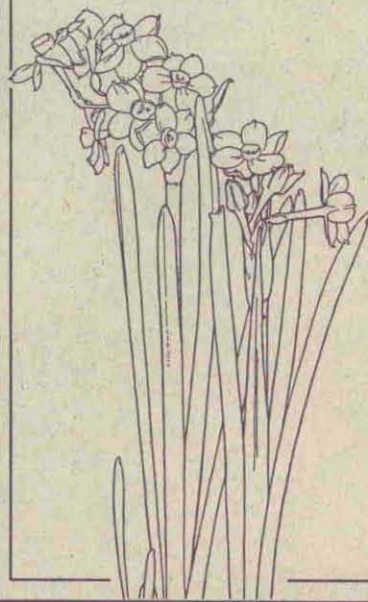
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VERMONT

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Published by the Vermont Natural Resources Council

Fall 1993



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The Vermont Natural Resources Council 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 work on issues including land use, forestry, agriculture, water, energy, wastes, and growth management.

VNRC is the Vermont affiliate of the National Wildlife Federation.

ALLOCATING VERMONT'S NATURAL RESOURCES



Resource Allocation

13

Environmental Success Breeds Difficult Challenges

If there weren't a healthy natural environment to fight over, the Sugarbush ski area water withdrawal fight wouldn't have happened. But when resources are valuable, it's never easy to decide who gets what. Vermont is likely to continue to face difficult resource allocation decisions. By Will Lindner

A Community Divided

16

Human Faces Behind the Sugarbush Dispute

Disputes on resource allocation often get bogged down in technical terms such as "February median flow." But behind the disputes are people who must continue to live with their neighbors despite the difficult stands they take on inflamed public policy issues. Here are interviews with five Mad River Valley residents. By Amber Older

The Inside Word

4

Point of view by Executive Director Ned Farquhar

Vermont Perspective

5

Updates on current Vermont environmental issues

VNRC Recommends

21

A radio program our staff thinks is worth a listen

VNRC News and Notes

20

Hellos, goodbyes, thank-yous, and a report on our Annual Meeting

A LOOK BACK, A LOOK AHEAD

Vigor and Vision Characterize VNRC

Ned Farquhar, Executive Director

In early October, between appointments, I had a brief moment of peace and quiet in the driveway of a hill farm in southern Vermont. I paused to look up at a deep blue sky framed by flame-red sugar maples. Directly overhead passed a honking flock of international leaf-peepers — more than a hundred Canada geese. It was calm, it was lovely, and it was most certainly Vermont.



No photograph or magazine or calendar could have captured this Vermont peace, the view, the simultaneous warm and cold of autumn. Like many other Vermonters every October, I had a unique experience that I appreciated and will remember quite happily.

Another one like it: the memory of six autumns (unfortunately spent mostly indoors) in VNRC's effort to preserve Vermont for future generations. I will leave VNRC in January knowing that we have done much to protect Vermont's natural resources. We have tried to do it in ways that provide sustainable economic opportunity for Vermonters, that stabilize the human place in nature, and that protect Vermont's unique working landscape.

These efforts are more important than ever. VNRC provides a powerful, valuable vision for Vermont's future. In the economic difficulty of our times, as policy-makers scramble to address serious economic concerns, VNRC is often the only organization standing between the swinging pendulum and Vermont's environmental heritage and community character.

Standing in that dangerous place between pendulum and policy, VNRC takes some shots and makes some people mad. But we stand with thousands of Vermonters who treasure Vermont and share the long-term vision for protecting the state's lands, forests, water, and wildlife. And to the policy debate we bring a special Vermont sense of what is important and what needs to be done.

Leaving VNRC, I am proud of the commitment and ability of the organization's excellent staff. I am heartened by our Board's intense support for protecting Vermont's natural resources. Above all, I am revitalized — as I was by the dependable flight of Canada geese on a crisp autumn day — by the vigor and vision shared by VNRC's members and supporters throughout the state.

With thanks, I'd like to say goodbye as VNRC's Executive Director, and ask one last favor: stay informed, be active, and support VNRC. Without your help, Vermont could be just a pleasant memory — a photograph or a magazine or a calendar. Our children deserve better.



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PROPERTY TAX REFORM

Might It Be A Reality Next Year?

The House Ways and Means Committee has been busy this summer honing Speaker Ralph Wright's proposal for restructuring education funding, unveiled last winter, into a fully conceived and workable bill. The result of the committee's effort, H.541, represents a sweeping and complex reform that could prove as important for its impact on land use as for its effects on education and property taxes.

"The property tax is encouraging bad land use decisions," said Jim Shallow, VNRC's Program Director for Forests, Wildlife, and Public Lands. "VNRC is looking at whether H.541 will reconcile the conflicts between land policies and tax policies in Vermont."

Shallow said that while the state talks in its planning and land use laws about conservation, growth centers, and

preserving open spaces and resources, its tax policies achieve the opposite. Land owners are propelled by the demands of local property taxes (assessed largely to pay for schools and roads) to subdivide and sell their holdings; towns are forced into competition to attract development of almost any kind to bolster their grand lists.

Continued on next page

PROPERTY TAX BILL FOR WORCESTER		VERMONT	
TAXABLE VALUES	DESCRIPTION	RATE	TAX
REAL 119,600	TOWN	1.740	2,081
INV. 0			
EQUIP 0			
CONTR 0			
TOTAL 119,600			
EXEMPTIONS CONTRACTS			
TOTAL TAX DUE			\$2,081
PAYMENT DUE 11/15/93			\$2,081
HOMESTEAD			

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THE TAX IS DUE NOVEMBER 15, 1993
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ACT 250 TINKERINGS

'Big Fix' Is Not A Gutting

After years of being threatened, promised, and debated, permit reform and reform of the Act 250 process appear on the verge of becoming reality. The good news is that, from VNRC's standpoint, the proposals currently at the head of the class focus largely on procedures where reform is needed, and do not eviscerate Vermont's foremost development law.

At the end of the summer, Democratic Gov. Howard Dean and Republican Lt. Gov. Barbara Snelling both announced schemes to change the way Vermont's agencies, courts, and citizen boards review major developments in the state. VNRC has long expressed its conviction that Act 250 needs little or nothing in the way of reform. Statistically, the Act 250 review process results

in few project denials or delays.

More in need of reform, the Council and others have suggested, are permit and appeals procedures linked to the state Agency of Natural Resources. VNRC's Deputy Director for Policy, Stephen Holmes, therefore was pleased to note that the Dean and Snelling proposals tamper little with Act 250; instead, they seek efficiency by eliminating a variety of routes for appeal of Agency permits and by simplifying appeals procedures.

But while Snelling's proposal is more respectful of Act 250 than it might have been, given the heat put on Republicans by the property rights movement, Holmes still finds Dean's preferable. The difference is in the realm of safeguarding public involvement in the Act 250 hearing process.

Under the Snelling plan, permits granted by departments of the Agency of Natural Resources would be binding in Act 250 hearings. Dean's proposal,

on the other hand, continues to treat Agency permits as technical certifications — in essence, recommendations to the district environmental commissions that hear Act 250 cases.

Holmes said the Dean approach was safer on both environmental and democratic grounds. "The Agency has not always made the best decisions — for example, in storm water or waste water permits," he said, "so we have resisted efforts to make their permits binding."

"I think the movement on the part of both proposals toward efficiencies in the ANR is a good thing for the state of Vermont," he continued. "There are also, in both, minor changes in Act 250 we have no quarrels with."

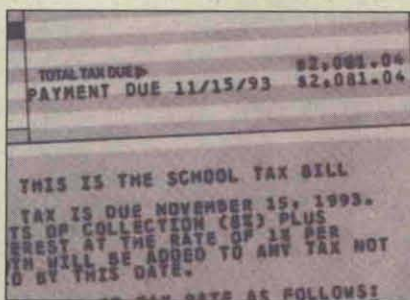
"But we take issue with any proposal that would limit citizen involvement with the Act 250 process, as the current Snelling proposal does. In making Agency permits binding, you have effectively cut off any citizen debate in Act 250. And that is not a good thing." **WL**

Continued from previous page

"It looks like the Ways and Means bill will alleviate that conflict," Shallow said. "From the figures I've seen that the Joint Fiscal Office put together, most Vermonters will see a decrease in their total tax bill — property and income taxes combined. It's the type of innovative approach Vermont has needed for years."

Under current funding plans, cities and towns are responsible for the major portion of the cost of education. They pay this cost with a property tax, based upon the fair market value of all real estate in their communities. The General Assembly determines each year, under political and economic pressures, how far the state will go to assist the communities in the form of aid to education, special education funds, property tax rebate programs, and reimbursements under the state's Current Use law.

The Ways and Means proposal would eliminate residential property taxes for education and shift full responsibility to the state for the cost of



teachers' salaries, benefits, and pensions. The money would come from a local surcharge on the income tax so that people would pay according to their abilities rather than on the value of residential property they own (which taxes a life necessity — shelter — and can be a misleading indicator of wealth). Towns would set their own school budgets for costs beyond teachers' contracts, collecting a locally approved income tax surcharge.

Further, the proposal would create a statewide property tax on commercial and industrial real estate, vacation homes, and privately held land exceed-

ing the two acres around a primary residence. Farm and forest land of 25 acres or more could be appraised at use value, rather than market value, if enrolled in a land-management program — replacing Current Use. That statewide fund would be used to assure that every town is able to meet minimum spending standards per pupil.

VNRC's Policy Committee invited John Freidin and Paul Cillo, two architects of the Ways and Means proposal, to discuss the bill, and heard from VNRC attorney and former legislator Seth Bongartz about earlier attempts to reform education funding.

"Most of the members liked what they heard of the Ways and Means plan," said Stephen Holmes, VNRC Deputy Director for Policy. "I think they felt that shifting much of the property tax burden to income taxes was a much fairer way to go."

The VNRC Policy Committee will make its final recommendation as part of VNRC's legislative platform, to be issued in November. **WLJS**

SPEAK UP FOR THE WOODS

Northern Forest Study At Important Point

September 16 marked an important turning point in the formation of decisions that eventually could determine the fate of 26 million acres of forest in Vermont and its neighboring states of Maine, New Hampshire, and New York. On that date the Northern Forest Lands Council, created by Congress in 1990 to propose policies to conserve the wooded tracts in their traditional uses, issued its "Findings" and "Options." Now, according to Brendan

Whittaker, Director of VNRC's Northern Forest Project, the public gets its chance to weigh in.

The deep forests across the four-state region have come increasingly under threat of fragmentation from haphazard development and poor management as an array of forces — rising land prices, escalating property taxes, and corporate philosophies based on quarterly returns — has forced individual and corporate landowners to consider paring their holdings. Two million acres of those forests are located in Vermont, principally in the northeastern section of the state. Seeking an antidote to unplanned use and development of these lands, Congress appropriated \$1.275 million for a comprehensive Northern Forest Lands Study. The "Findings" and "Options"

represent the conclusion of that three-year study and the start of policy formation.

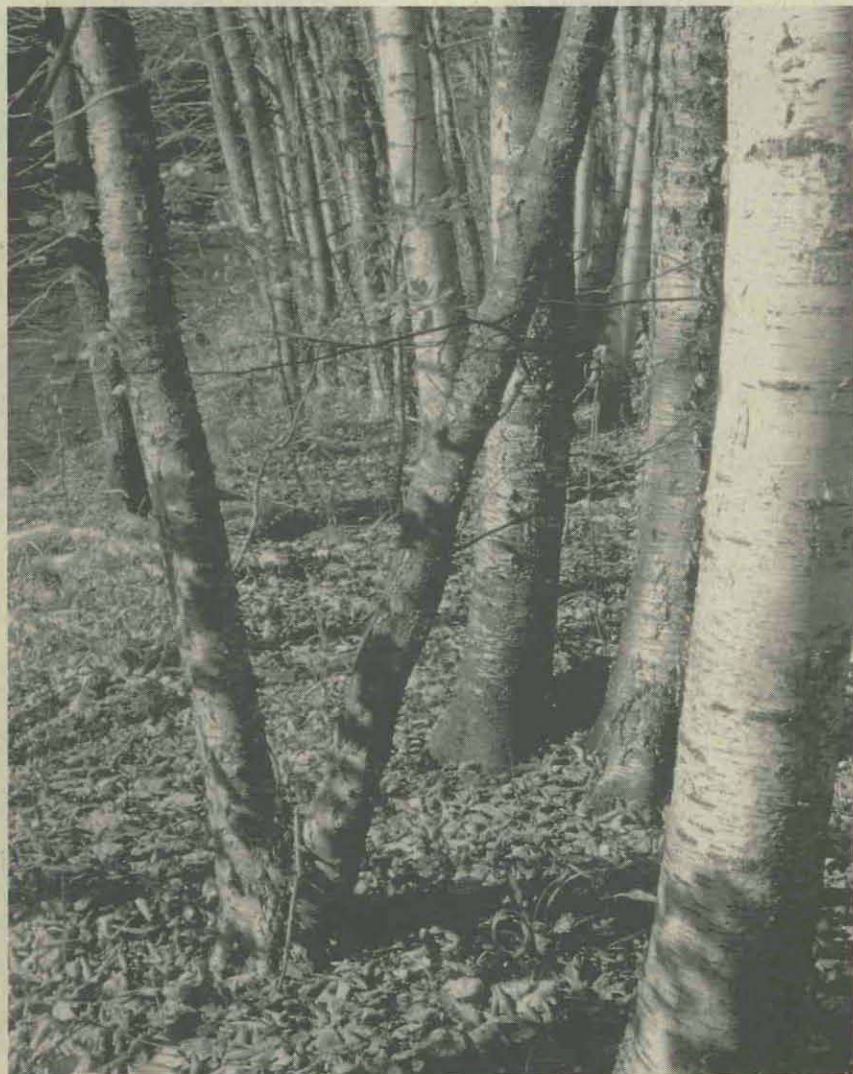
Whittaker, one of Vermont's four appointees to the NFLC, defined the "Findings" as "points of fact" determined by the study. Looking into matters both scientific and sociological, the NFLC examined the effects of such diverse factors as tax policies, tourism, existing land conservation strategies, logging, and other commercial uses to gauge their influence on the vast northern forests. For wider comparison, they accumulated similar data on tracts elsewhere in the world.

The "Options," said Whittaker, represent potential responses to those findings. "They are a whole range of things we can do to address the conditions that the facts show. Some of these are mutually exclusive, but are on the table for discussion and consideration."

The end product of the NFLC's work will be recommendations to the governors of the four states and to the U.S. Congress. Jim Shallow — Forests, Wildlife, and Public Lands Program Director for VNRC — said that with release of the "Findings" and "Options" an important "winnowing process" has begun. "The Council will be taking all the options and narrowing them down," he said, "and the results will be reflected in the final recommendations."

Shallow described the autumn weeks as an informal period for public reaction. Formal public comment will come this winter on the Council's draft recommendations, and will include hearings and forums where people can communicate with, and try to influence, the Northern Forest Lands Council. The draft recommendations are to be published in December.

"The message we're trying to get across now is that this is an important period of time for people to look at these 'Findings' and 'Options,' to figure out which ones they think are best for maintaining large forest tracts, improving forest stewardship, and promoting healthy local economies. This will help the Council come up with good draft recommendations for the public to review in the winter. It's really an opportunity for everybody." **WL**



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A 'SLOW GO' FOR SUNBOWL

Project Limited, Watershed Protected

In August, when the District 2 Environmental Commission issued its long-awaited decision on Stratton Corp.'s Sunbowl project, VNRC was pleased to learn that the commission agreed it would be reckless and unwise to risk polluting the pristine Kidder Brook watershed. While the commission awarded an Act 250 permit for a small part of the project, the development of residential units and recreational facilities will be confined to a Class B watershed that feeds the Styles and Brazer brooks.

The Sunbowl project, as originally framed by Stratton, was an enormous addition to the resort's current facilities. It called for construction of 498 units of residential second homes, a new 18-hole golf course and clubhouse, a swimming and tennis club (with 90 parking spaces), plus 210 additional parking spaces for winter skiers. It

would have spread over more than 1,000 acres that included the watershed for Kidder Brook, the first Vermont brook to be reclassified to Class A under Vermont's Pristine Streams law.

However, the Vermont Agency of Natural Resources imposed limits on water supply and stormwater discharges before Act 250 hearings concluded, and VNRC urged the commission to protect the mountain watersheds even further. In the end, the commission held Sunbowl to a first-stage development of 58 residential units and limited the golf course expansion to an equivalent of five holes. It held out the possibility, based on satisfactory results in the first phase, of future amendments that would broaden the permit.

"They made a strong distinction between the Class A and Class B watersheds," said Stephen Holmes, VNRC's Deputy Director for Policy, noting that no development was approved in the Kidder Brook watershed. "But they didn't allow all the (requested) development within the Class B watershed, either. Over 260 second homes could have been developed there. (The commission) said: 'We don't think that

makes sense, from both stormwater and water supply perspectives. Until you can demonstrate that the impacts won't be detrimental even to a Class B stream, we're permitting only a small portion of the proposal.'" Holmes noted that the commission took the innovative approach of requiring higher monitoring standards, usually reserved for Class A waters, for the Class B streams due to be affected by the project.

Despite the restrictions, the decision was received amicably by all parties. Stratton officials said they had expected a 10-year phase-in of the Sunbowl project anyway, and were prepared to prove its environmental merits before going forward.

"This is a clear victory for the environment and for the coalition of citizen groups who brought forth valuable evidence used by the commission in making its decision," Holmes concluded. He gave a large share of the credit to the four groups that forged the coalition with VNRC early in the process: Stratton Area Citizens Committee, Conservation Society of Southern Vermont, Friends of the Winhall River, and Stratton Mountain Freeholders.

WL/SH

SURFACE WATER POLICY

How Well Can Canoes And Motorboats Coexist?

It has been said that the right to self expression in this country might be defined as the point where one person's fist ends and another's nose begins. Try as we might, we don't all get along, and our modes of expression and enjoyment are not always compatible.

"Different strokes for different folks" applies to recreation on Vermont's beautiful lakes and ponds, as well. Some favor the feathered stroke of a canoe paddle in mirror-still waters; others love the whine of a two-stroke outboard as it churns up the lake, with a

skier skimming wildly behind. The two exercises, as enthusiasts of either will attest, do not readily coexist. Nor does fishing, the great equalizer, always bridge the gap.

Vermont's Water Resources Board is now in the preliminary stages of drafting a policy for the public use of surface waters around the state, an attempt to balance the desires of motorboaters with those of "quiet users."

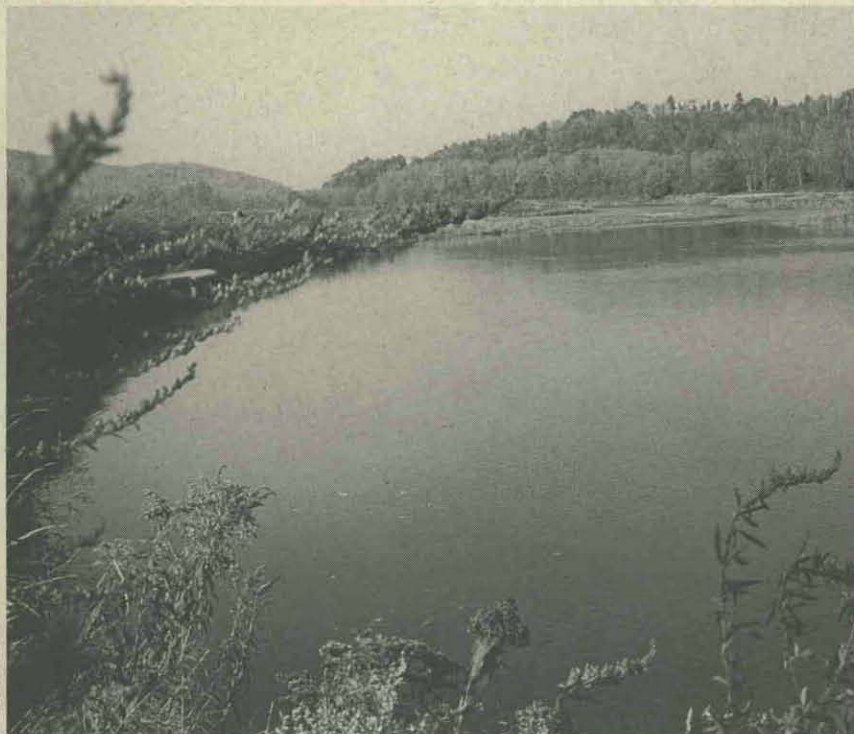
"At this point, it's only a figurative

testing of the waters, just an attempt to see what's out there," said Chris Kilian, VNRC's Water Program Director. The board, he said, was collecting information that will evolve into rules designating some waters as quiet use areas and others for unrestricted recreational use.

"They haven't initiated the rule-making process yet," Kilian said. For now, VNRC is monitoring the process, hoping that "quiet uses" can be protected and enhanced. WL



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VROOM! VRAN!

New Coalition To Monitor Rivers

Take the Vermont Natural Resources Council, mix it with the national citizens-action group, River Watch Network, and add water. The result: the Vermont River Action Network (VRAN).

This new entity is now well along in its organizing stage. It was created when VNRC and the River Watch Network together received a \$245,000, three-year grant in December 1992 from the Jessie B. Cox Charitable Trust, headquartered in Boston. The goal is to establish a statewide network of groups that will get up-close-and-personal with their local rivers.

"The idea is that, basin-by-basin, these groups will learn to analyze the current water quality (of the rivers) and develop a vision for the potential quality of those basins," said Chris Kilian, Water Program Director for VNRC. "Then, based on that information, the groups will proceed with specific targeted actions — petitions perhaps,

or collaborative planning processes — to upgrade, protect, and restore water quality."

River Watch Network, which operates in 11 states, grew out of a citizens movement that started in Vermont in the 1970s. Working in an inclusive, non-confrontational manner, an aggregation of citizens, schoolchildren, industries, property owners, and others along the shores of the Ottauquechee River took a proprietary interest in the waterway and launched a successful effort to bring the river back from its advanced state of degradation. River Watch Network now is based in Montpelier.

As VRAN begins organizing around the state, five rivers are targeted for special emphasis: the Deerfield, Clyde, Winooski, Passumpsic, and central Vermont's Black River.

"We've made substantial progress implementing VRAN and initiating efforts to organize local groups," said Kilian. But he noted that VNRC's main role will come after the groups have begun collecting data and formulating plans. VNRC will help them build coalitions to turn their plans into action, in hopes that VRAN will be a going concern at the end of the grant period. **WL**

WATER POLICY ROUNDTABLE

Agreed: Solution Is Difficult

VNRC has joined a host of other parties and individuals interested in the uses of Vermont's waterways through a series of meetings convened by Chuck Clarke, Secretary of the Agency of Natural Resources. Chris Kilian, VNRC Water Program Director, said that while the group comprises an impressive array of players in Vermont's in-stream policy debate, it is not clear what the discussions, begun in August, are intended to accomplish.

"The goal appears to be to have an in-stream flow policy agreed upon by the stakeholders in the debate," said Kilian. The "stakeholders" are many: conservationists, recreational users and sportsmen, as well as the hydro-power industry, ski resort companies eyeing water withdrawal for snow-making, municipalities that use streams and rivers for public water and sewage systems, and hydromechanical users (a varied class consisting primarily of industries). One participant, said Kilian, has been allowed to represent the public at the meetings.

"We're trying to work in consensus — which means each of the interests has veto power — to address a lot of the issues that have been cropping up in litigation," said Kilian. "We're starting to see a lot of conflict between certain uses. We're trying to come up with a policy to meet the needs of those around the table. In general, people are listening to one another, but it's a difficult task at best."

Whatever the group accomplishes — be it a joint policy statement on in-stream flow use, proposals for rule-making by the Water Resources Board or the Agency of Natural Resources, or something else — it is shooting to finish its work in mid-November. Kilian said conservationists were trying to narrow the focus to things they could reasonably expect to be resolved by that time.

Continued on next page

DAM RELICENSING CONTINUES

Essex Hydro Site Is Scrutinized

VNRC continues to be active in the relicensing process for hydroelectric dams in Vermont. A new license is good for 30 to 50 years, and though it is awarded by a federal agency (the Federal Energy Regulatory Commission) a license can be obtained only if power projects are granted "401 Water Quality Certificates" from the Vermont Agency of Natural Resources. Those certificates signify compliance with Vermont's water quality standards.

Relicensing represents a rare opportunity to have the dams' effects on river ecosystems fully considered. Currently, VNRC is focusing on the state's issuance of 401 Certification for Green Mountain Power's Essex No. 19 power dam on the Winooski River, where the key issue is ensuring adequate flow for fisheries and other aquatic life.

"In this case, we're talking about restoration," said Chris Kilian, VNRC Water Program Director. "The dam has been there for more than 70 years and has operated in a manner that has damaged the river. We're trying to help restore basic levels of water quality."

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While Kilian credited the Dean administration for convening these face-to-face discussions among frequent adversaries, he noted a void in leadership that the administration should be filling.

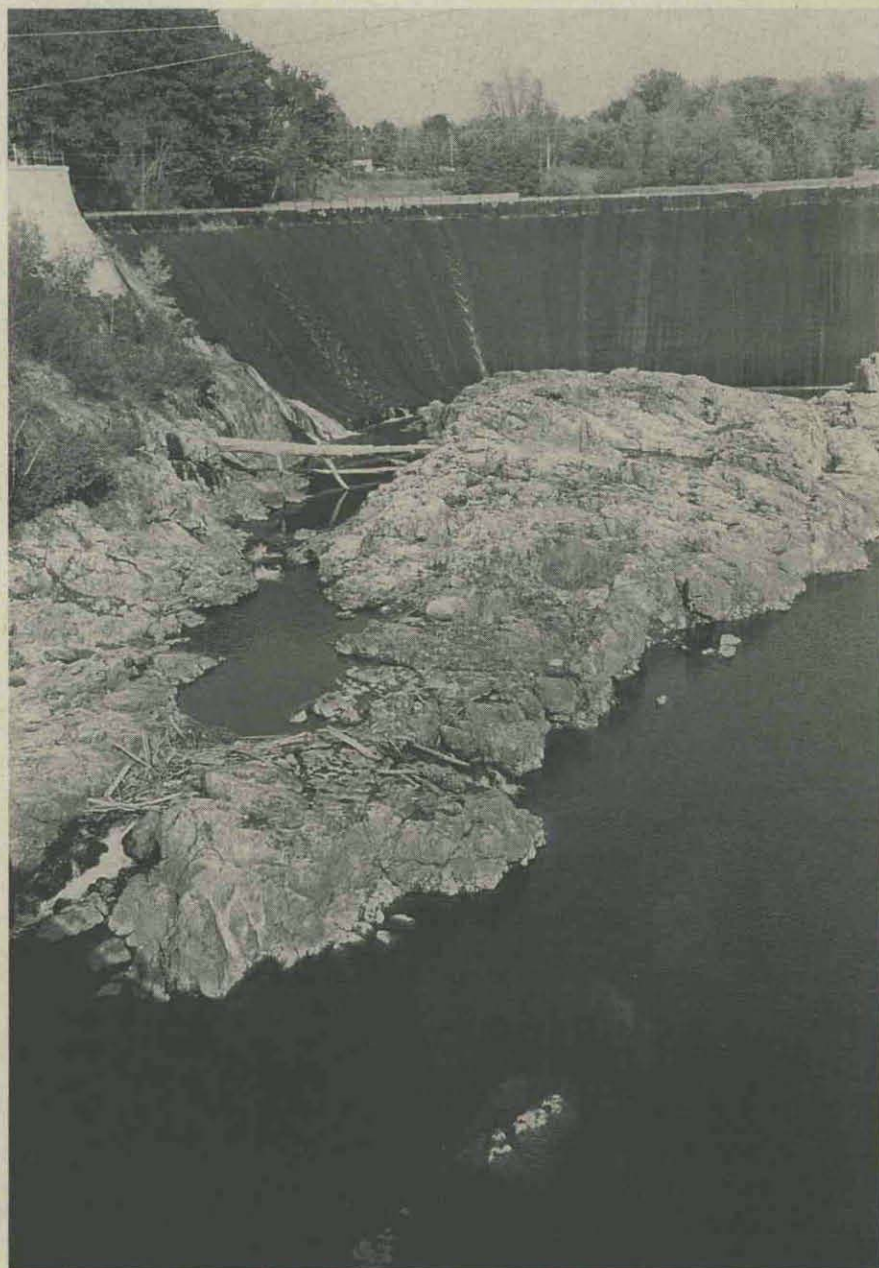
"Essentially the Governor said, 'Everybody get in the room and try to solve these problems and it's going to be really hard,'" said Kilian. "That's not the way public process normally works. There has to be some articulation of a policy direction, and some directing of the debate by those public officials who have been given the authority to protect the state's natural resources. We're hoping that the agency will fill that role." **WL/CK**

Key points on the river are areas below the powerhouse and in the bypassed river reach. In the bypass, controversy has arisen over what level of flow should be required to restore and maintain existing and potential uses such as fishing and other recreational activities. The utility has objected to providing basic levels of restoration, preferring to continue taking advantage of the river for production of power during peak demand periods. That practice requires wide fluctuations in flow, as the utility ponds most of the river water for later release through its turbines.

Kilian also cited other locations where VNRC has spoken out in relicensing cases. Among them is the Central Vermont Public Service Corp. dam on the Black River in Cavendish. There, VNRC has requested that flow be restored to Cavendish Gorge, which currently is bypassed because of the power dam. Kilian said the gorge had been recognized as an important natural resource in Vermont and should be restored to a natural state.

Decisions on the Essex No. 19 and Cavendish dams are expected this fall.

WL/CK



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A MESSAGE ON TRAVEL

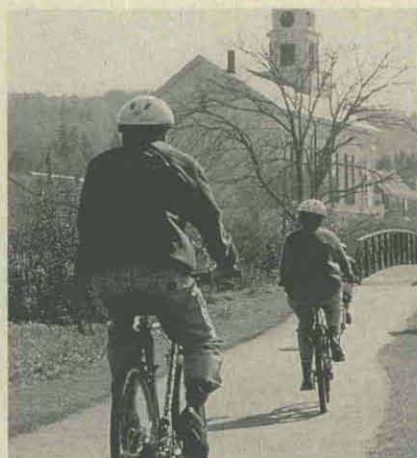
Sustain A Region's Uniqueness

As property patterns change in Vermont's Northeast Kingdom and development pressures increase, VNRC has sought to encourage the view that there is economic advantage to be gained in preserving the "Kingdom" as it is. Brendan Whittaker, VNRC's Northern Forest Project Director, and Jim Shallow, Forests, Wildlife, and Public Lands Director, carried that message to Vermont's new Commissioner of Tourism and Travel, Bobbi Maynes, when they met with her this summer.

They discussed the relationship of tourism to the northern forest economy. "We gave her our thoughts of why we think tourism will be an important component of the economy in that region," said Shallow. "If we're going to be promoting tourism we should do it in a way that's in sync with the rhythms and the flows of the place . . . not have major resort-type development, but

things that promote the unique characteristics of that area, use what's there and try to promote that."

Many of Shallow's and Whittaker's suggestions involved recreation (biking, snow sports, hiking, visiting Victory Bog), but not all of them. Vermont's national reputation for craftsmanship might tie in well with the tourist industry, Shallow said. Particularly, sawmills and furniture companies whose products are widely respected might benefit from tourist interest, which would en-



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courage investment that sustains, rather than destroys, the region's cultural and economic traditions.

Shallow said Commissioner Maynes was receptive. They discussed the sensitive issue of the state's tourism efforts needing to be convincingly fair to all geographic and economic sectors. They discussed the idea of turning highway rest stops into "gateways" to regions of the state, with displays indicating things of interest . . . and in season.

"I was impressed with her knowledge about these issues," said Shallow.

To illustrate the crossroads the northern forests may be facing, Shallow offered his own definition of "tourism" and "travel." A traveler, he said, goes into an area to experience it for what it is. A tourist, on the other hand, wants a place where everything is provided for him and he might not have to connect with the local culture at all . . . the "Club Med" phenomenon, Shallow calls it.

In the interests of the northern forests in the Northeast Kingdom, VNRC is promoting the notion of the "traveler" more than the "tourist." **WL**

KNOCK, KNOCK

Wal-Mart Wants In

In the last days of summer, several months of speculation that the giant national discount chain, Wal-Mart, planned a renewed effort to establish a store in Vermont began to take on an aura of reality. In September the District 6 Environmental Commission received application for an Act 250 permit from "The St. Albans Group," a partnership of Poquette and Bruley Realty, of St. Albans, and Wal-Mart Stores Inc., of Bentonville, Ark.

Hearings began Oct. 5, with VNRC requesting party status in order to raise several important issues pertinent to the proposal. That initial request was denied, leading VNRC to weigh alternatives for presenting its information to the panel.

The 156,000-square-foot Wal-Mart store is targeted for a 44-acre segment of the former Yandow dairy farm, about a mile north of downtown St. Albans on Route 7. The site, outside city limits in St. Albans Town, is directly across from the St. Albans Drive-In Theater.

"(The project) should have a full fiscal and retail impact analysis," said Stephen Holmes, VNRC Deputy Director for Policy. Such an analysis would gauge the likely effect of the discount store on public investments and existing businesses both in St. Albans and St. Albans Town. "We're also going to be looking at those impacts relative to other small towns in Franklin County," Holmes said, "because we think a Wal-Mart will have a ripple effect on towns and businesses around the county."

VNRC expresses other concerns about the proposal, too. Among them is the potential impact of stormwater run-off from the development onto a

Class 2 wetland located near the development site, as well as on the Stevens Brook, which runs through the 107-acre property. A third issue is the plan's conformance to local and regional plans, and its possible impact on historic resources.

The paramount concern, however, is what a Wal-Mart could do to the economic balance of the St. Albans area, and a disturbing vision of a community impaired by development that is at odds with the traditional Vermont concept of natural (or designated) growth centers.

"At this point, VNRC is not entirely opposed to Wal-Mart," Holmes said. "We would, however, challenge Wal-Mart to do business differently in the state of Vermont. The company's reputation has been to locate these large discount stores — like the one proposed here — just outside of downtowns throughout the country, and experience has shown (it) has had negative impacts on the existing downtown areas." **WL**

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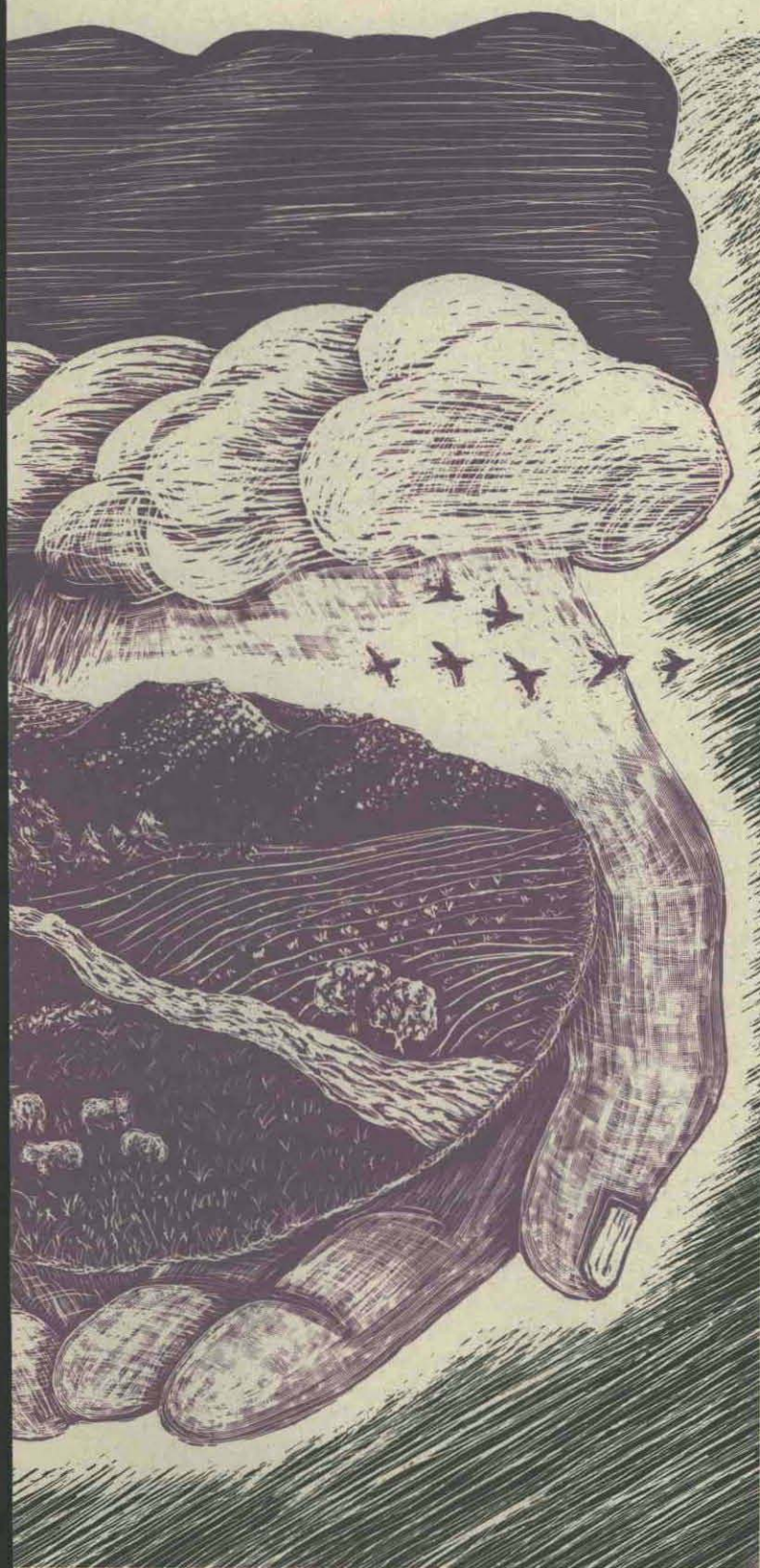
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RESOURCE ALLOCATION

Environmental Success Breeds Difficult Challenges

By WILL LINDNER

When Sugarbush ski area of Warren came to agreement in May with VNRC and three other conservation organizations over a plan to pump water from the Mad River for snowmaking, it was the culmination of a dialogue that had been, by turns, divisive and creative over a two-year period. The final accord was more than an accommodation with the ski resort designed to maintain the ecological integrity of the valley waterway; conservationists and state agency officials alike hope it was the first brick in a new framework for the future setting out consistent evaluation of the needs of businesses and the environmental impacts of their proposals.

Yet one seasoned observer looked to the past to understand the Sugarbush affair. The fracas that divided the valley, that put officials at the Vermont Agency of Natural Resources at odds with their technical staff, and that inflamed the litany holding economic and environmental interests are mutually exclusive, was the predictable result of progress on the environmental front that he had watched for decades.

Fifteen years ago Brendan J. Whittaker stood at Gov. Richard Snelling's side at a press conference, being introduced as the new secretary of Vermont's Agency of Environmental Conservation (forerunner

to the ANR). Eager reporters tried to size up the new appointee, a forester from Brunswick, who had been the state's Energy Director.

It was 1978, and the burst of environmental activism that followed the U.S. withdrawal from Vietnam and the Arab oil embargo was still pulsing through Vermont. Act 250, passed by the Legislature in 1969, had given citizens a means to influence growth in their towns. Former Gov. Deane Davis's 10-year program to clean up the waters of the state had made a significant, positive impact; federal and state governments were drafting laws and regulations to regain clean air and water, and programs had been in place since the Roosevelt Administration to protect Vermont's secondary-growth forests and help them thrive. Skiing was a major industry here, as was autumn tourism, and Vermont's leaders had come to appreciate the link between the state's environment and its appeal to tourists and to industries looking to relocate or expand.

So the reporters asked the new secretary to discuss the coming challenges as Vermont pursued its environmental mission.

Whittaker, who is now Field Director for VNRC's Northern Forest Project, recently thought back to that day.

"What I said," he recalled, "was that we had made major progress to that point in cleaning up the water, and were making progress cleaning up the air and managing the forests of the state. Vermont was getting its natural resources into very good shape.

"So I saw on the horizon that the next big issue would be allocation between competing good uses for those resources. Of course, we had no idea, at that time, about (snow-making proposals from) Sugarbush and Killington, of bear habitat . . . But with every step we made, the resources were getting more and more attractive. And the more successful we are in Vermont and the nation in cleaning up our resources, the more coveted they become and the more the issue becomes allocation."

Had the Mad River today been in the condition of, for example, the Connecticut River 25 years ago — an

unswimmable disgrace — its waters would not be coveted for snowmaking. It is testimony, said Whittaker, to Vermont's environmental ethic and to the impact of legislation such as the Pristine Streams Law and the Current Use program (with its mandated forest-management component) that the state's natural resources are worth fighting over.

Government's Role: Protecting A Public Resource

That, according to VNRC staff members and others with strong conservationist credentials, is where state government comes in. For almost uniquely among natural resources, rivers are viewed — east of the Mississippi, at least — as public resources. Jonathan Lash, another former Vermont Secretary of Natural Resources and now President of World Resources Institute in Washington, D.C., said that while tradition in the American West allocates water uses by seniority among claims — a social vestige of westward expansion — "In the East the waters are the waters of the state. It enables the state to protect certain uses and values."

Legal experts on riparian rights (laws pertaining to waterways and shorelines) say the degree of regulation in the East varies from state to state, and the correlative claims to a capricious resource leave such rights constantly open to interpretation.

"By its nature, water resources are a changing common resource that depend for their value . . . on no individual demanding too much for private uses," said John Echeverria, general counsel to the National Audubon Society and author of *Rivers At Risk* (Island Press). "Private advantages available through the use of water are well recognized, but private uses of public resources have to be maintained under periodic control to make sure they remain consistent with the public interest. This has been true since the Roman era, and is established in English Common Law.

"The fundamental starting point in the Mad River (dispute) was . . . how

the public can make the best use of the public resource."

While that may be true, it does not simplify the debate. Lash noted that, worldwide, arguments over the allocation of resources routinely pit interests that can be construed as public against one another. Sugarbush and its supporters, advocating license to withdraw water below February median flow — an established minimum deemed safe for aquatic biota — had their own public interest claim.

"There was disagreement over how society wanted to use this resource," Lash said. "Sugarbush was saying society wants the economic benefits accrued from the making of snow."

Douglas Racine, VNRC board member and former state legislator, was a member of VNRC's team in negotiations to end the impasse short of a court battle. In that role he witnessed the supremacy of economic factors not only in representatives of the ski resort, but in many members of the public as well.

"The sense you got . . . was that if they thought about the environmental impact at all they didn't really factor it in," Racine said. "And this is true whether it's a ski area making snow, a hydro power project impounding water to generate power, or a developer trying to put condos on the side of a hill. It comes down to a matter of personal values, and if personal values do not include protection of the environment the economic benefits become even more commanding. In that sense, I think one of the functions VNRC has to serve is in education."

Dean's Decision: Politics Over Process

VNRC Executive Director Ned Farquhar said the competition of values was visible in the Agency of Natural Resources itself. Although the agency's technical staff had testified in Act 250 hearings against Sugarbush's request to withdraw water below February median flow (sometimes referred to as "FMF"), their superiors awarded permits for the proposal.

Despite that agency rift, the buck stopped, Farquhar said, at Gov. Howard Dean's desk.

"In Sugarbush the governor just basically took a walk on the issue of coming up with good processes for balancing conflicting interests, and as a result it was extremely important for us to press for a process to get some balance," said Farquhar. "VNRC, as an organization, believes Vermont should conserve its natural resources, and the state's rules should do that. But lacking policy and process, the same thing will happen again and again and again."

The incident was a step backward, said Farquhar. Vermont's tradition had been of conserving and looking for alternatives, but "the Dean administration did not stay in the mainstream of Vermont policy."

Tim Burke, a Commissioner of Environmental Conservation in the Snelling administration who now serves as Executive Director of the Adirondack Council in New York State, seeks to avoid judgments, but said: "When I was there there were intense discussions between the DEC water quality staff and Sugarbush, and the water quality staff was completely aware they were the stewards of a resource that belonged to the people of the state of Vermont."

Adds Chris Kilian, VNRC Water Program Director, "Our position has been that when the state attempts to allocate (public) resources to private users there is a trustee requirement that only the minimum allocation is made to achieve a purpose, and also that there are minimum levels that cannot be compromised."

The Sugarbush case was settled with a resolution that maintained February median flow for the Mad River and instituted provisions to prevent the resort from wantonly depleting the river to that level, but also increased permitted withdrawals from the Clay Brook and allowed a larger snowmaking storage pond. Now Kilian has proposed a broad test for future allocation requests. It would demand that applicants prove they needed the quantities they proposed for their projects, require them to investigate alternatives, permit only the lowest withdrawal necessary, and

protect a sacrosanct minimum flow in all waterways.

With the Sugarbush resolution, Farquhar is guardedly optimistic. He credited current ANR Secretary Chuck Clarke, who mediated the negotiations, for the state's new efforts to fashion a water use policy with input from a working group that represents varied interests in the waters of the state (see "Vermont Perspective," this issue).

Clarke, too, is putting faith in the water policy talks, and claimed that the Sugarbush affair was a learning experience for his agency. The case proved that the agency must learn to conduct better needs and alternatives analyses on projects, he said, though he believed the agency's study of alternatives was better than its assessment of Sugarbush's needs.

"By the time we finished, I think we were much more sophisticated as an agency on making needs analyses concerning water than we were going in," said Clarke.

Tough Choices in Other Resource Areas

While the Sugarbush case provides an object lesson on resource allocation, tests in realms other than water withdrawals are sure to come. Among them is the relicensing of hydropower dams by the Federal Energy Regulatory Commission (FERC), which presents a rare opportunity for the state to examine the effects of existing dams upon the waterways they span. Dams are relicensed by the federal government for 30 to 50 years and must obtain certificates of compliance with state water quality standards (see "Vermont Perspective," this issue). To VNRC's Kilian, this is a main chance to strike a blow for reclaiming the public's interest in dozens of waterways.

"When we talk about existing hydro, we're talking about resources that have been over-allocated," Kilian said. "We gave too much to an industry, basically, and it's causing damage. We're talking about reallocating a resource now to ensure that what should be in the naturally occurring ecosystem is in there."

For the public's interest lies not just

in the amount of water allocated; it concerns the ecological quality of that water, as well. Burke, of the Adirondack Council, said that was the theory behind Vermont's Pristine Streams Law. It is resource allocation of another kind, regulating not what is taken from a waterway but what goes into it.

"The ecosystem also is a resource that belongs to the people," said Burke. "The public has a right in the preservation of that water as an intact ecosystem."

Grappling with the allocation of the Mad River, the players in the dispute were grappling with the future — a future made possible, as VNRC's Whittaker observed, by a past of accomplishments in environmental protection.

But even where conservation has been ignored, allocation decisions are more crucial each day on a planet with a growing population and finite natural resources. Lash, of the World Resource Institute, sees allocation at issue between Israel and its neighbors with competing interests in the Jordan River; between the governments of Southern Hemisphere nations eager to plunder their tropical forests and prosperous northern countries that want those forests preserved. In the U.S., allocation issues arise in debates over how our national forests should be used — for timber, wildlife habitat, or recreation. In Vermont they arise over proposals to designate certain lakes and ponds off limits to motorboats, and over who gets pollution rights to the air in Rutland.

Abundant claims and conflicting demands will prevent simple solutions to these dilemmas. But the answers can be found in jealous preservation of the public's interest in commonly held resources, consistency in government policy, and the diligent search for alternatives, so that when we allocate our natural resources we do not allocate them to death.

☞ Will Lindner, formerly an editor at the *Times Argus* of Barre-Montpelier, writes freelance articles on environmental issues and other subjects. He works with the PressKit communications group of Montpelier.

Throughout the widely publicized Sugarbush ski area water withdrawal dispute, human faces and voices in the Mad River Valley were often forgotten. The following excerpts are taken from interviews with five of the many individuals who stood up and spoke out during the debate. Their actions and support were important in reaching the settlement this summer. Their words and experiences reflect more than just the diversity of conservation-minded folks in the valley. They also confirm that, whether as carpenter, restaurateur, engineer, or inn-keeper, environmental protection affects every member of every community.

Ann Day has lived in the valley since 1954. Both she and her late husband, Frank, were professional ski instructors, working at several resorts in the area. Today, Ann owns the Knoll Farm Country Inn in Fayston, where she was also town auditor for nearly 30 years. She writes a weekly column, "The Nature of Things," for the Valley Reporter.

"We felt all right about Sugarbush in the early days. We knew the owners socially, and although they weren't Vermonters, they fit well in the community. There were no condominiums in the '60s — Waitsfield was still Waitsfield.

"When Frank died in the '70s, I realized how much the land value had increased over the years, due primarily to Sugarbush.

There was a lot of growth and development at that time. Sugarbush said the expansion would help everyone, but actually it's really hurt us at Knoll Farm. People get upset when they see how built up the area has become. When people

come to Vermont, they expect a rural, quiet atmosphere. This used to be a

A Community Divided

The Human Faces Behind Sugarbush

By

Amber Older

Photos by

Sarah Seidman



Ann Day

dirt road with no traffic — it felt like we were in the country. But the more it gets built up, the more it becomes less and less like Vermont.

"When I first heard about the proposal, my concern was not the river, but the expense and drain on the community to keep that development going. In many ways, I think what we do at Knoll Farm can be considered a model for Sugarbush's development. We stay within our means, we strive for quality, not quantity, and when the snowfall is bad, we get innovative, not commercial. We always try to stay in harmony with the land, the community.

"Snowmaking isn't going to make or break this community — it depends on what we do to the environment in the future. I'm a big believer in foresight, in seventh generation. That means taking care of the land. We wouldn't have got into this mess if we could just talk to each other. My main wish and hope is that people will recognize each other's faith, differences, and goals and talk to each other — I guess we all have to change somewhat."

As founder of American Flatbreads and a biologist by training, George Schenk empathized with both sides during the Sugarbush dispute. A resident of the valley since 1985, the restaurateur experienced first-hand the effects of the boycott aimed at local business people who opposed Sugarbush's proposal.

"I stayed out of the Sugarbush dispute for a long time. I really struggled with it. From a business perspective, I knew snowmaking would be positive in terms of the community's economy. But as a biologist, I felt the water withdrawals would have a negative impact on the river. I was very torn. I enjoy my neighbors and believe they should have opportunities to succeed. But I also feel responsible for our non-human neighbors and want to safeguard them.

"It wasn't until May that I intellectually made a decision about the issue. It culminated in a letter to the editor in the Valley Reporter — I call it

"Statement 133" because there were 133 signatures expressing their opposition to the proposed development. As a result, I had phone calls from business friends asking, 'Is this a current reflection of your views?' After several heated discussions, we decided to agree to disagree. When the boycott was called in a subsequent letter, the major effect was that a party of 150 cancelled because of my signature. There have been some difficult times because of the statement, but I'd sign it again.

"I'm not anti-Sugarbush or snowmaking — but we need to do this together. I think we have a child-like relationship with the environment. Right now, we're stumbling and crawling — we're not there yet. There's a dichotomy that the nature system is at once very large and strong, and it's also very fragile and delicate. It's all about respecting each other as humans and non-humans in the same environment. That's our opportunity now — to find this very delicate balance."

Johnny Gallagher has lived in the valley all his life. Of the area's many changes, the Sugarbush dispute was perhaps the most heartfelt; as the son-in-law of the former head of the Vermont Ski Area Association, Gallagher felt the battle within his family as well as his community. Gallagher is a design engineer for Pulmac, a company specializing in environmentally friendly pulp and paper equipment and operations.

"I've seen a lot of changes over the years, good and bad. The valley used to be a farming town, and the Mad River ski area was like a ski club — most people didn't even know it existed. It created very little traffic. But that changed in the late '60s. More lodges were built, inns and bars opened — nothing was open year-round before that time. Now, I think the owners of Sugarbush are out of touch with the community — their plans don't really fit with the valley.

"It's been particularly hard for me



George Schenk

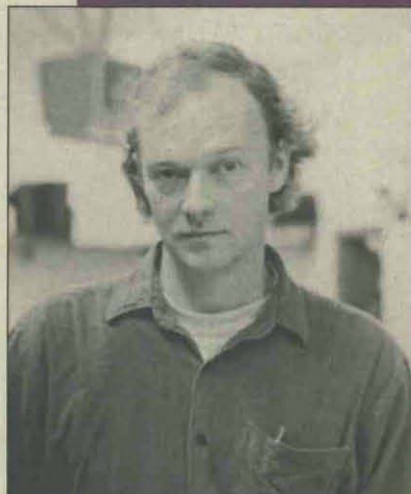
because the dispute caused a major rift in my family. There were a lot of hurtful, personal attacks. The problem was that Sugarbush presented all these confusing and very complicated figures as black and white — but all scientific approaches have grey areas. Sugarbush blinded people with numbers, polarized the community, and became very antagonistic. You were either for or against Sugarbush. It was terrible.

"I'm not particularly happy with the agreement. Sugarbush just wants to keep growing and growing. And that will take away the valley's rural character. We're being swept away by money that is out of proportion with the area. Most people feel like the situation is resolved — the feeling is, 'Let's get this uncomfortable situation over with.' But we don't really know what we have won.

"It would be very hard for me to move from the valley. I like the climate, the habitat, the community. But the fights on both sides will continue. And I'll get involved again, even though it's emotionally exhausting. If it brings too much sadness, I might have to move. You can't change people's minds — they have to change their own minds."

Jito Coleman, the chief engineer at Northern Power, has lived in East Warren since 1975. An avid outdoors person, Coleman is a former ski coach who has always supported the ski industry. His opposition to the Sugarbush proposal rested largely on the belief that the mountain is moving beyond its means.

"Sugarbush's masterplan is for massive growth that's going in the wrong direction. It's been fought by the local community since it was conceived in the late '70s. That kind of growth is not what the community needs — it taxes the resources of the community. What makes sense to people around here is to have a solid industry that's functional, provides jobs, but doesn't necessarily become bigger. We say, 'Make a great ski area



Johnny Gallagher

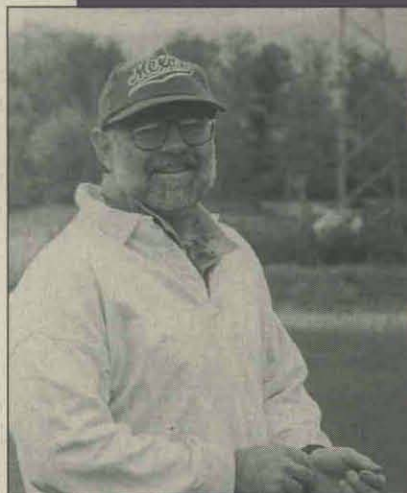
— but use the resources you already have.

"The keystone to Sugarbush's plan was water. Without water, they couldn't make the vast amounts of snow that would sell the real estate. If there's no snowfall, people won't come skiing, so they need to supplement natural snow with artificial stuff — for which they use water. So, that was the place to fight. Sugarbush didn't talk about their future development plans; only about the water they needed for the current mountain. But they obfuscated the facts. How much water did they really need? That's what we fought for.

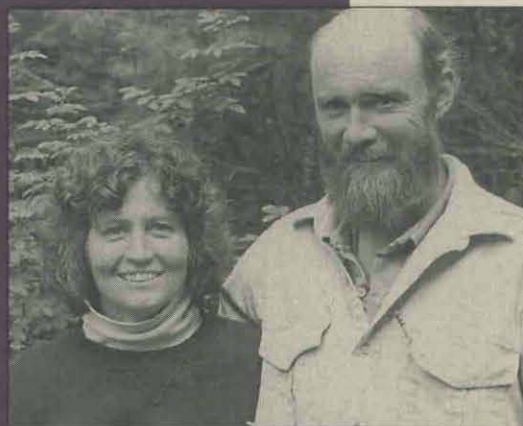
"There are still a number of objections in the community to the way the project's going forward. We still have the project; the pond is bigger than it was before; there is still a growth potential because Sugarbush still hasn't justified the water withdrawal. That gives them all the growth potential they need — which means we're just going to have to fight again. On that level, we lost because we didn't control any of their growth and development. So, we'll just have to fight again next time it comes around.

"We're all really tired. We're interested in healing the local community because a lot of personal relationships were wounded. But the Environmental Impact Statement and Act 250 are still grinding along. And without opposition, developers will get more, not less. It's a continuous thing. If you don't have the energy to keep fighting, you're giving it to them on a silver platter. Grassroots organizers will come out of the woodwork again and help. I expect the whole thing to heat up again."

Harrison Snapp, who has lived in the valley since 1972, worked at Sugarbush when he first arrived in the area. He is now employed by the Bent Hill Settlement, toiling at what he calls the "gracious end of carpentry." Along with his wife, Valerie, Snapp was an active spokesperson against the Sugarbush proposal.



Jito Coleman



Harrison & Valerie Snapp

"When this whole thing hit the papers, my gut reaction was, 'This is a really stupid idea.' It seemed senseless, even without knowing anything about it. As the whole process continued, a lot of people became hooked right away, feeling that we needed snowmaking. That was the dichotomy — between those who didn't buy it, and those who did.

"Sugarbush had a big facade. It presented what seemed to be legitimate facts and figures which indicated that water withdrawals wouldn't hurt anything. But no one knew anything about these numbers. Slowly, I began to learn about how the recording of these numbers wasn't a straightforward process. Certain studies show certain things. All the engineering stuff impressed people — but I kept thinking, 'What about the biology of the river?'

"There are industries that use this water, there are homes that use this water, and there is the habitat that this water maintains. The habitat is a priority for me. Any business or development that wants to use it as a resource should make it their priority not to hurt that stream. We tried to bring that out, and the emotions just got in the way. Things got vicious.

"We were depicted as 'environmentalists,' totally opposed to Sugarbush. What we opposed was the amount of water they wanted. I ski, I love the mountain — but no one should be able to ask that much from a natural resource.

"This is the Mad River, the main resource of the area.

I felt good about what we did, and I'd do it again. For now, we're ready to let wounds heal. Waitsfield is a good town, a good community — it's more than just a ski town."

☞ Amber Older, of Burlington, is a freelance journalist who worked this summer at VNRC as office manager.

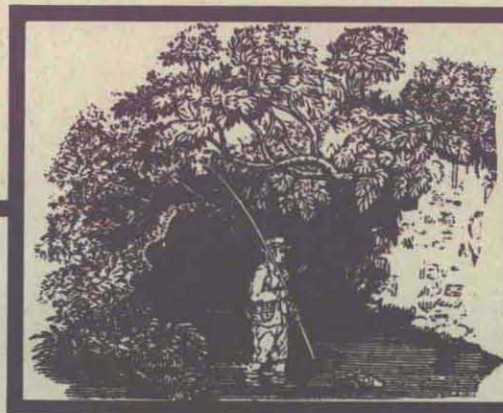


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COMINGS & GOINGS

Welcome

We're happy to welcome **Jennifer Ramming** as a part-time Development Associate.

Jennifer is no stranger to VNRC; she's been working as our Grassroots Coordinator.



Thank You

Willem Jewett, a third-year law student at Lewis and Clark's Northwestern School of Law in Portland, Ore., interned with VNRC this past summer, helping VNRC Water/Wetlands Program Director and Staff Attorney **Chris Kilian** on hydroelectric dam relicensing issues and the Haystack-Mt. Snow Act 250 case.

Dana Palmer, VNRC's Middlebury College summer intern, worked with Forests, Wildlife, and Public Lands Program Director **Jim Shallow** and North Woods Project Field Director **Brendan Whittaker** mapping key areas within the Northern Forest project area. Dana was also an invaluable assistant on numerous small projects around the Montpelier office.

Best Wishes

Dinsmore Fulton, Deputy Director for Membership and Development, has moved on to become Development Director for the Vermont Symphony Orchestra. We wish her the best of luck in her new position.

Board Members

Five members of VNRC's Board of Directors were re-elected at our Annual Meeting Sept. 18. They are **Sarah Muyskens** of Burlington, **William Roper** of Middlebury, **Mark Schroeder** of Belvidere, **John Meyer** of Calais, and **George Hamilton** of Marshfield.

Elected chair at a subsequent board meeting was William Roper, a Middlebury attorney specializing in environmental and land use law. Elected vice-chair was Katherine Vose.

VNRC is grateful to the following individuals for their valuable service on our Board: **Mollie Beattie**, **Richard Carbin**, **Tony Clark**, **Jane Difley**, and **Greg Riley**.

To those re-elected, we're glad you're back; to those leaving, we hate to see you go; to our new officers, thanks for taking on the responsibilities of a leadership role at VNRC.

BULLETIN BOARD

Environmental Law Conference

The 15th Annual Environmental Law Conference, sponsored by the Vermont Law School and VNRC, will take place Friday, Dec. 10 from 8:30 a.m. to 5 p.m. at the law school in South Royalton.

This year's conference focuses on Act 250, Vermont's development control law.

White House Fellowships

The White House Fellowship Program offers an inside look at the workings of the federal government in Washington.

White House Fellows serve for one year working as full-time, paid assistants to cabinet secretaries or to other top-level executive branch officials. Fellows with an interest in environmental policy have the chance to work with figures such as Bruce Babbitt, Carol Browner, Katie McGinty, Tim Wirth, and Vice President Al Gore. (Wirth himself was a Fellow in 1967-68.)

Along with their individual work assignments, White House Fellows participate as a group in an education program, which centers around a series of off-the-record meetings with top-level government and private sector leaders. Applicants are judged on the basis of their professional, academic, and other accomplishments, and upon their demonstrated interest in public service. The program and selection process are nonpartisan.

To obtain a copy of a brochure describing the program, and an application, contact the President's Commission on White House Fellowships, 712 Jackson Place NW, Washington, DC 20502 (telephone, 202/395-4522).



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Books for the young naturalist in our upstairs kid's room.

VNRC RECOMMENDS



LIVING ON EARTH

A weekly environmental news broadcast Mondays at 6:30 p.m. on Vermont Public Radio, 88.7-FM in Rutland, 89.5-FM in Windsor, and 107.9-FM in Burlington.

Our past recommendations in this column have been for books. This time around, we're recommending a radio program.

Vermont Public Radio has just added a nationally acclaimed weekly broadcast of worldwide environmental conservation news called "Living on Earth." It airs Mondays at 6:30 p.m.

We've been urging VPR to air "Living on Earth" since we first heard about it a year-and-a-half ago. It was already on public radio stations in Maine, New Hampshire, and Massachusetts; also, it costs VPR nothing extra to run the show since it comes free with the "news package" of "Morning Edition" and "All Things Considered." Currently, 246 stations nationwide carry "Living."

Great thanks are due the new VPR manager, Mark Vogelzang, who comes to Vermont from WHYY in Philadelphia and who arranged for the Vermont premiere of "Living on Earth."

— Brendan J. Whittaker

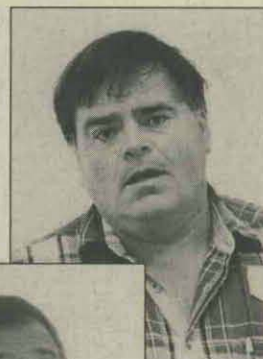
ANNUAL MEETING

Three hundred people filled a tent at Burlington's Waterfront Park for VNRC's Annual Meeting Sept. 18. The featured speaker was the nation's top environmental protection officer, EPA Administrator **Carol Browner**, introduced by U.S. Sen. **Patrick Leahy**, D-Vt.

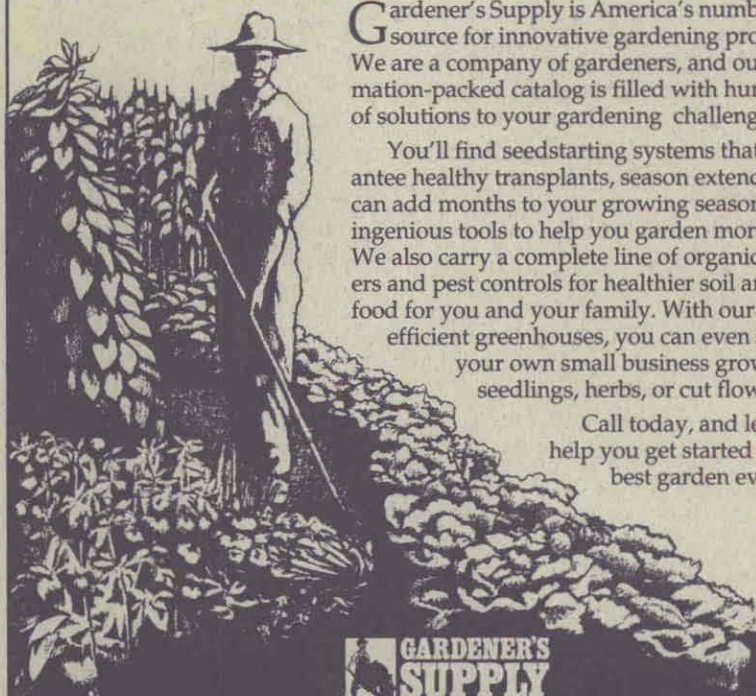
Awards were given to several people who were instrumental in 1993 for helping protect and conserve the natural resources of the state and nation. Given the VNRC Policy Award was Vermont Attorney General **Jeffrey Amestoy**; the VNRC Special Conservation Achievement Award, **Carol Browner**; the VNRC Citizen Award, **Gerald Tarrant**; the VNRC Conservation Achievement Award, U.S. Fish and Wildlife Commissioner **Mollie Beattie**; and the VNRC Award for Outstanding Service and Dedication, **Sarah Muyskens**.

Given a special walking stick for his years of service as VNRC Executive Director was **Ned Farquhar**, who is leaving in January to take on other pursuits.

Above right, EPA Administrator Carol Browner, featured speaker at VNRC's Annual Meeting. Right, Leonard Buchanan (top) of Vermont Federation of Sportsmen's Clubs, who was honored for his group's work with VNRC; Gerald Tarrant, who received the VNRC Citizen Award. Below, VNRC Executive Director Ned Farquhar with his going-away present from Board Chair Sarah Muyskens. Photos by Melissa Cunningham.



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Luncheon Speaker:

John Ewing, President, Bank of Vermont,
"Act 250 and Vermont's Economy and Quality of Life."

December 10, 1993

9am - 5pm

Chase Community Center, Vermont Law School
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