

The Kentucky Conservation Committee

Guardian

A Review of Kentucky's Commitment to Protecting
Its Environment and Conserving Its Natural Resources



P.O. Box 1152, Frankfort, KY 40602

Fall 2001

Secretary Bickford Outlines Environmental Cabinet's Top 10

Speaking before an audience of over 40 at the KCC Annual meeting, Natural Resources and Environmental Protection Cabinet Secretary James Bickford expounded on the top 10 priorities for the cabinet. The issues within the top 10 are not ranked in any order, he cautioned, but they do get reviewed several times a year to keep the list current. Below are his top ten items with a summary of his comments.

Illegal dumping: "We're still after it," Bickford proclaimed proudly, noting that 5 years ago dumps never appeared in the newspapers. That's not so any more, the public awareness of the issue has been raised considerably. He predicted 3-5 solid waste bills will be filed in the next legislative session. Since 1997 5000 dumpsites have been investigated, 1200 have been cleaned up. Recent county surveys have found a lot more dumps than were previously known. The state is still using cameras to catch dumpers and they are still searching dumps for evidence.

Last March the Governor started the "Certified Clean County" project. Counties with curbside garbage collection and enforced payment can apply to the state for funds to pay 75% of cleanup costs for illegal dumps. \$4 million is available for the program. So far, 21 counties have submitted applications.

He noted that waste tires are a primary breeding ground for mosquito carrying the West Nile virus. The waste tire cleanup program has cleaned up 8 million tires.

Slurry Ponds: These are a major problem, the Secretary admitted. Immediately after the Martin County disaster, the cabinet started to review all the slurry ponds in the state. He related that 85 inspections have been completed out of 117 ponds identified. 16 ponds were found to need some remedial work. 13 Notices of Violation (NOVs) were filed. Inspectors are looking at the dams and at underground mining near the ponds. The cabinet is requiring the remediation and closure of all unused ponds, according to the secretary.

CAFOs: (Concentrated Animal Feeding Operations, or factory farms) "We've about worn that one out." Bickford lamented, "There is not a lot of sympathy in the legislature for what we're trying to do. What happens to the manure is the problem. It is inconceivable to me that if you have a corporate owner of these pigs you can't hold them accountable for the waste." The cabinet will not bring the issue up before the legislature, he signaled.

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President's Message

I am happy to report that the state of the organization is healthy. We have survived the first annual session with our treasury intact thanks to the addition of new members and the generous contribution of existing members. It is gratifying to see that kind of support.

We have taken one small step this summer toward a more consistent presence in Frankfort by funding a lobbyist to attend interim committee meetings. The board feels that this is important for raising the profile of KCC. It gives us a chance to influence legislation in its formative phase before the mania of the actual session starts.

I extend my thanks to all board members, our lobbyists, and other activists who have made being president of KCC a real pleasure this past year.

Don't miss Kentucky Voices Nov. 16. It's *always* fun. See page 3 for details. -Ray

KCC's Top Ten Legislative Priorities

1. Smart Growth Legislation
2. Funding for Environmental Education Master Plan
3. Mandatory Curbside Garbage Collection/ Illegal dump cleanup
4. Regulation of CAFOs (Factory Farms)
5. Container Deposit Program
6. Stop Slurry Ponds
7. Straight Pipe Elimination
8. Campaign Finance Reform
9. Renewal of Tire Disposal Fee Program
10. Tax Reform/ Pollution taxation

Smart Growth Hailed as Key to Kentucky's Future

Crit Luallen, Assistant to Governor Patton, has been directing the Governor's task force on Smart Growth. Ms. Luallen spoke September 15 at the KCC annual meeting about the task force and the Governor's vision for Kentucky. What follows is a summary of her comments.

"Smart growth will be one of the state's more important issues over the next decades", she began. The recent events of Sept 11 highlight how important it is that we focus on who we are and where we're going. The issues we focus on will determine the quality of our life and our economic prosperity, proclaimed Ms. Luallen

The Governor began to focus on smart growth as the result of trying to make the best of the time he has as governor, she relayed. As the first two-term governor, he is the first governor able to work on issues that take long term effort. At the beginning of his administration, he wanted to launch long term strategies that will pay out beyond his term of office, according to Crit.

Education was an early priority. After dealing with that he turned to early childhood development. These issues came first because they have tremendous impact on the future of the commonwealth. His next goal was to link economic development to the new economy and build knowledge based jobs. The next phase of his plan is environmental. The governor is committed to cleaning up dumps and implementing mandatory garbage collection.

...environmental issues, across the board, can no longer be seen as optional. We must look at the economy and corresponding environmental changes...

"The environment has to be on equal footing with the economy," Ms. Luallen professed. New technology allows business to go where there is good quality of life, where there is unique character, where there is greenspace and responsible agriculture. In order for States to grow successfully, quality of life is critical. So in the Governor's plan, she claimed, examining how growth will affect the environment is critical.

In forming the Smart Growth Task Force, different perspectives were important. Therefore, a variety of stakeholders were brought together to form the task force. 230 volunteers served on the five subcommittees comprising diverse geographies and interests. Each subcommittee has had at least five working meetings, she explained, focussing on various aspects of Smart Growth.

At numerous public hearings around the state, the Task Force heard more support from ordinary citizens than opposition from property rights advocates, claimed Luallen.

The task force is also looking at what other states have done. Commenting on the popularity of smart growth, she noted that 83% of 29 states with referenda to support smart growth passed those referenda in the last election

The subcommittee reports will be compiled into a final

report for review in Oct. The final report will be presented at the Shakertown Round Table on Nov. 13. The Round Table has decided to devote this year's meeting to the issue of Smart Growth.

For the next legislative session the Governor is looking for some short term goals, however, this is a long term effort, Ms. Luallen qualified. He wants to elevate the issue of quality growth to the top level of importance in public policy, but she cautioned that the current budget situation will not allow the bold moves that some other states have made.

"Government is about the hearts and minds of the people we serve."

There are a few bright spots, intoned Luallen. \$25 million in tobacco settlement money has been set aside to help preserve agricultural land. The Renaissance KY program, a voluntary program to revitalize downtowns, has 73 communities on board. Current grant requests exceed the amount available.

One of Kentucky's challenges is that the smart growth issues vary from one part of the state to another, she observed. In the east, the emphasis is on preserving natural areas. In the cities the issue is sprawl. In central and west KY the issue is preservation of farmland and small family farms. We need strategies to help every part of the state, claimed Luallen.

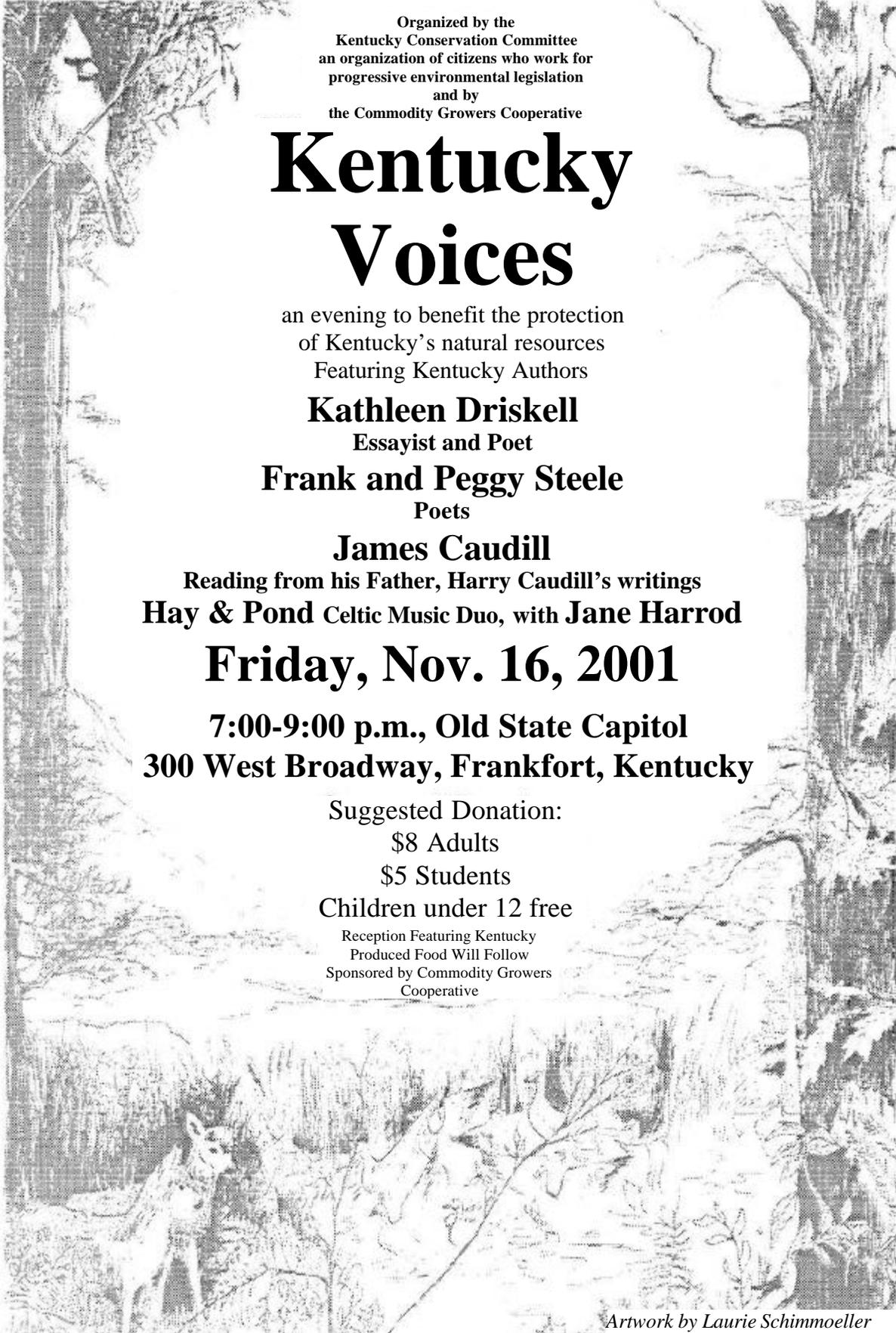
The aging of the population demands that we design communities where local services are readily available.

Ms. Luallen offered the following thoughts on the issue of growth:

- There are 25 counties in KY that have no planning. There are only 26 that have combined city and county planning.
- KY has the second highest rate of growth in the nation in terms of acres per person. If we know that, then we need to plan for it. We are developing land at a rate that is out of sync with the population growth.
- Unplanned growth costs taxpayers money to provide service to scattered growth. A study from the University of Kentucky is due soon (has since been released).
- Opponents of smart growth fear that local control will be lost and property rights will be lost.
- One of the key strategies will be for the state to help those communities that want to plan and to think more earnestly about how state decisions affect local growth (Like highways).
- Smart growth is a tough issue with the legislature. They are not hearing about it from their constituents. There is also some fear of what it might mean. However, there are some changes that can be made without legislation, through administrative policy.

Wrapping up her talk, Ms. Luallen stated that the most important message is that environmental issues, across the board, can no longer be seen as optional. We must look at the economy and corresponding environmental changes, and we must make sure Kentucky realizes that environmental issues are key to moving forward.

"Government is not about programs, legislation, or budgets. Government is about the hearts and minds of the people we serve."



Organized by the
Kentucky Conservation Committee
an organization of citizens who work for
progressive environmental legislation
and by
the Commodity Growers Cooperative

Kentucky Voices

an evening to benefit the protection
of Kentucky's natural resources

Featuring Kentucky Authors

Kathleen Driskell

Essayist and Poet

Frank and Peggy Steele

Poets

James Caudill

Reading from his Father, Harry Caudill's writings

Hay & Pond Celtic Music Duo, with Jane Harrod

Friday, Nov. 16, 2001

7:00-9:00 p.m., Old State Capitol

300 West Broadway, Frankfort, Kentucky

Suggested Donation:

\$8 Adults

\$5 Students

Children under 12 free

Reception Featuring Kentucky

Produced Food Will Follow

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Artwork by Laurie Schimmoeller

Legislators Wrangle Over Environmental Issues

Louisville Courier-Journal Editor David Hawpe moderated a panel discussion at the 2001 KCC annual meeting with panelists Sen. Dan Kelly (R), Majority Floor Leader; Sen. Marshall Long (D), Minority Whip; Rep Joe Barrows (D), Majority Whip; Bob DeWeese (R), Minority Caucus Chair. What follows is a summary of the discussions.

David Hawpe opened the session by noting that environmentalism and conservation are bipartisan issues. The greatest environmental president was a Republican – Teddy Roosevelt. Pres. Nixon (R) created the EPA. Hal Rodgers (R) has waged a campaign against illegal dumps and straight pipes. We shouldn't make assumptions about party affiliation, he warned.

Brownfields

Senator Kelly recapped the Brownfields bill that passed in the last session. Brownfields are key to growth management, he noted. The question is who bears the risk.

On a flip chart he drew a picture of a continuum with developers on one end and the state government executive branch on the other. Points along the continuum represent the relative risk born by the two parties, shifting from developer to government as one moves along the continuum.

Describing the progress of the Brownfields bill, he showed how Bob Leeper introduced a bill which put the risk heavily on the government. It was modified many times until it moved the risk totally to the developer. Then it shifted back a little to the government.

In the end, Sen. Kelly thought there was still too much risk born by the developers for the bill to do any good. The purpose of brownfields legislation is to encourage redevelopment by relieving the developer of risk. This bill does not strike the right balance, he said.

Sen. Long strongly disagreed, claiming that its success will depend on how the regulations are written. He expressed confidence that the NREPC will draft a good set of regulations and that it will work. The cabinet has until summer 2002 to promulgate the regulations.

Solid Waste

Senator Long proclaimed that we need to clean up illegal dumps. The real problem is the money to clean them up. The current budget shortfall will have a big impact on what the legislature is able to do, he cautioned.

Rep. DeWeese agreed, "Everyone wants a clean state, financing it is the problem. We cannot produce an unfunded mandate on the counties."

He went on to predict that solid waste control, mandatory garbage collection, and the bottle bill will come back up. The legislature must find creative ways of financing to pass these bills. Stricter enforcement and education are needed to keep the problem from reoccurring, DeWeese claimed.

Rep. Barrows explained that the lack of progress in the last session was because not enough groundwork had been done ahead of time. That does not preclude the legislature from taking action in the future, he said. Legislators dislike uncertainty, they want specifics. Barrows felt the executive branch was in too much of a hurry to push these solid waste issues through. December or January is too late to put things on paper, especially in a short session, he complained.

Smart Growth

Senator Long predicted that the acceptance of the smart growth initiative will vary from county to county. Shelbyville, which is growing rapidly, will support smart growth initiatives. Owen county, which does not see itself as having growth problems, and would welcome some economic growth, fears the possibility of zoning. Again, it will not be possible to handle a lot of far reaching legislation like land preservation because of the budget problems, Sen. Long conceded.

Rep DeWeese added that smart Growth will be an important issue in the following years. His district (Jefferson County) is the victim of uncontrolled growth. Better planning of infrastructure is needed, he emphasized. However, people are afraid politics will run planning boards, which means that the people with the money will get their own way in planning and zoning.

The issue of smart growth, David Hawpe volunteered, has generated the most impassioned letters-to-the-editor he has ever seen on any issue.

Annual Legislative Sessions

Rep. Joe Barrows delivered a report card on annual Sessions. "Don't read a whole lot into the first one," he suggested. The first session was a trial session.

Annual sessions will change the dynamics of the legislature, he predicted. The ebb and flow, the whole pace was foreign to the legislators, this time. Experienced legislators were not expecting many bills. Additionally the agenda was not set because of the short notice. With the approval of annual sessions in November, there was not time to plan and prepare for a session.

In the future he expects odd year sessions to pick up small items that got pushed aside in the crush at the end of the longer, even-year session. Rep DeWeese agreed.

Legislators wanted to stay away from the budget this time, but he thinks it will be fair game in the future. This will especially be true in dealing with Federal funds because the Federal fiscal year does not begin until October. In the spring, the legislature is simply guessing what the federal allocations are going to be.

Also Rep. Barrows expects that the odd-year session will replace the special sessions that the governor used to call. The legislature always felt held hostage by the special sessions, he noted.

The short session is not the place for new complicated issues, chimed in Rep DeWeese. Rep DeWeese thinks the odd year session better balances the power between the executive and legislative branches.

CAFOs

Sen. Long proclaimed strong bipartisan support in the legislature for the Legislative Research Commission (LRC) in the governor's lawsuit against the LRC. This lawsuit claims that the regulatory oversight laws are unconstitutional. The legislators believe it is imperative to the proper balance of power that the legislative committees be able to veto executive branch regulations. Meanwhile, the situation on the CAFO regs is stymied, Long acknowledged. The Governor keeps promulgating new regulations that the legislature rejects.

Sen. Kelly confessed that he is one of the strongest opponents to the CAFO regs. He believes the Farm Bureau's approach is

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Top 10 continued from pg 1

The latest regulation was attached by the Joint Interim Agriculture and Natural Resources Committee once again, which essentially means the regulation will die next April. Bickford promised, however, the only way the cabinet will back off is if the judge orders them to. He was referring to a constitutional challenge filed by the Governor's office to the practice of legislative committees vetoing regulations.

Cleanup and close old landfills: 617 locations for old landfills are on file. The Cabinet has investigated 534 of them. Properly closing them is going to be very expensive, the Secretary predicted.

Straight Pipes: (Untreated Sewage) Regionalizing water and sewer districts is key, according to Bickford. "The water districts tend to be little fiefdoms that are difficult to mess with." The Governor wants to supply potable water across the entire state within 20 years, but water delivery implies there is also the need for a sewer. He noted that providing sewer is much more expensive than drinking water.

Secretary Bickford cited the NASCAR racetrack in Gallatin County is an instructive example. Three towns now have sewer service that never would have unless the track had come. The cabinet cut a deal to regionalize the waste water system and build a sewage treatment plant as part of the permit for the track.

The PRIDE program, which he proudly proclaims credit for forming with U.S. Rep. Hal Rogers to clean up illegal dumps, has moved on to straight pipes, the Secretary announced. A loan program was started a while back for installation of septic systems. It turns out the default rate on these loans was 50% because the folks that needed the loans to install the systems were mostly very poor, according to Bickford. Therefore, Hal Rogers obtained the money for a grant program to pay for the poorest folks' septic installations. A HUD program determines eligibility.

The strategy is for the cabinet to issue a Notice of Violation to homeowners with straight pipes and then to tell them about the grant program. In the past, they have not pursued many of the straight pipes for fear of going after the poor. The grant program makes progress more achievable. More recently, the Secretary said, they have discovered that many of the poorest people are renters. In these cases, they will be going after the landlord.

Prepare for the 2002 General Assembly:

Secretary Bickford flagged the following issues of interest to the cabinet regarding the next legislative session:

- Larry Clark has prefiled the Governor's solid waste bill from 2001.
- With the budget shortfalls and the no tax stance of the legislature, other revenue sources like an advance deposit fee and tipping fee increases must be found to fund environmental initiatives.
- One of the items they would like to fund is Environmental Education
- Out of state garbage has increased by 400 percent since

1993 while Kentucky produced garbage has increased only %15. Kentucky's average tipping fee is \$6 lower than our neighboring states.

- Associated Industries of Kentucky and the Chamber of Commerce will be trying to get rid of the Hazardous Waste disposal fee, which fund hazardous waste cleanup.
- The Scrap tire bill expires next year and must be renewed.
- The CAFO issue is a big question mark.

Fall Forest Fire season: The pine beetle damage in Kentucky is frightening, according to Secretary Bickford. There are multi-acre patches of damage all around eastern Kentucky. Fire is a bad potentiality, the fall fire season could be disastrous, he warned. These dead trees almost explode and very destructive crown fires start, Bickford said. Fire fighters are becoming harder to hire, most have been absorbed by an increase in coal mining activity.

Paducah Gaseous Diffusion Plant: The Cabinet is working with Federal Department of Energy and Kentucky's federal legislators. The cleanup requirements have been outlined with a plan targeting 2010 for completion. The Department of Justice and the EPA are helping keep the work on track. In response to a question, the secretary stated that it will be up to the courts to decide how much cost is born by the various contractors that have operated the plant.

Power Plants: 24 new power plant permit requests have been submitted to the cabinet. 16 are for merchant power plants (they sell electricity outside the state), reported Bickford.

The Secretary pointed out that Kentucky is ideally located for merchant power plants. Many of the major natural gas lines cross the state, there is abundant coal, and Kentucky is in close proximity to a large share of the country's population. He noted that while there is a nationwide need for increased generating capacity, Kentucky has no such need.

The problem, according to Bickford is that each application is reviewed concerning the local impacts to air, water and waste. There is no regional or statewide analysis of the combined impact. He also noted that merchant plants are not subject to Public Service Commissions review.

The Governor has formed a task force to inventory all power plant emissions and build a statewide model. The effect of the new plants will be analyzed with this model, according to the Secretary, but he was not specific about how the analysis would be used.

Simultaneously, the Governor directed the Public Service Commission to investigate the effect of these new plants on the power grid and how it impacts the ability to deliver power to Kentucky homes and businesses. Under the Energy Policy Act, the Federal Government has guaranteed open access to the power grid.

Reports from the Public Service Commission and power plant task force are due in December.

Legislators cont from pg 4: correct: the large operations are necessary to have enough product to attract the processors. Enforcing the existing regulations on clean air and water is the answer. The regulations represent a strategy to run the processors out of the state and this is not going to fly. He thinks we can reasonably regulate CAFOs if we accept them.

Rep. Barrow was pessimistic on the CAFO issue. It's not politically possible to pass legislation from the environmental viewpoint Each chamber is blocking the other.

Mark Your Calendar

Nov. 16 – Kentucky Voices. KCC's annual Fund raiser. Hear Kentucky authors live. 7:30 PM Old State Capitol, Frankfort.

Nov 26 –Dec. 6 Daniel Boone National Forest Public Meetings on revision of the forest plan, Various Locations contact Rick Wilcox 859-745-3156

Jan 25- 27 -- Sierra Club Environmental Activist and Outings Leader Training, Jabez, KY 859-255-7946

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