



HIGH SIERRA HIKERS ASSOCIATION

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WINTER 2007-2008 NEWSLETTER

Court Victory for Muir-Adams !!!

On October 30, 2007 a federal court ruled in favor of the HSHA in our lawsuit against the U.S. Forest Service (USFS) for mismanagement of the John Muir and Ansel Adams wildernesses. The court ruled that the USFS's 2005 plan for regulating commercial packstock operations in the Muir-Adams is unlawful because the plan failed to place adequate limits on commercial packstock enterprises and because it would allow continuing harm to these magnificent wildernesses. This is an enormous victory for all who care about these vast areas in the heart of the High Sierra.

The long road to justice

For decades, USFS resource specialists and rangers have documented the harm caused by excessive commercial packstock operations in these two wildernesses. Throughout the 1990s the HSHA implored the USFS to address the degradation of meadows, trails, campsites, and solitude being caused by the commercial enterprises. We specifically requested—over and over again—that the USFS conduct environmental studies before renewing permits to the 20 commercial pack stations that operate in these areas. We were ignored at every step.

Then in January of 2000, a Stanford law professor sent a letter to the Regional Forester on behalf of the HSHA, detailing the violations of law and requesting a reply. One of the fundamental issues was that the USFS is required by the National Environmental Policy Act (NEPA) to analyze and disclose the potential environmental impacts before renewing the commercial outfits' permits. But the agency had never done so, and was steadfastly refusing to discuss the issue. The USFS did not respond to the professor's letter, and continued to issue permits to commercial

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Please Renew for 2008

Please use the coupon on the back page to send your membership dues for 2008. This will save us the time, paper, and postage of sending a reminder. Please be as generous as you are able. We need funding at this time to continue our work on behalf of the High Sierra.

HSHA Wins Appeal of Stanislaus Grazing Plan

On October 15, 2007, USFS Deputy Regional Forester Beth Pendleton ruled in favor of the HSHA in our appeal of a major cattle grazing plan issued by the Stanislaus National Forest. The Stanislaus NF (located just north and west of Yosemite National Park) decided in July of 2007 to issue 10-year permits for numerous commercial cattle grazing operations throughout the forest, including the popular Emigrant and Carson-Iceberg wildernesses. The plan failed to address many issues raised by hikers, such as water pollution, harm to wildlife, deposition of cow manure in popular campsites, and the proliferation of annoying cowbells. We assembled a coalition of groups to challenge the plan, and our detailed 80-page appeal was filed in September 2007.

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packstock operations with no meaningful environmental analysis or limits. So after many years of being completely stonewalled, in the winter of 2000 we notified the Regional Forester that we intended to sue unless the agency addressed the issues. Even then, we were ignored.

To sue or not to sue ?

The decision to file a lawsuit was something that we struggled with for many years. We only wanted to have the commercial enterprises regulated by reasonable limits and controls sufficient to protect the wildernesses from harm. We did not want the courts to put the packers out of business. But if a court found in our favor on the legal issues, it might do just that. (For more background, see the 1997 essay at our website titled “To Sue or Not to Sue”: www.highsierrahikers.org/essay_tosue.html.)

Finally, having exhausted all other options, in April of 2000 the HSHA filed a lawsuit in U.S. District Court alleging that the USFS had violated NEPA by issuing permits to numerous commercial packstock companies without first completing the legally required analyses of the environmental consequences. Our lawsuit also alleged that the USFS had violated the Wilderness Act by allowing excessive and harmful commercial activities in the John Muir and Ansel Adams wildernesses. We made very clear in all of our pleadings that we wanted the court to order the USFS to place reasonable limits and controls on the packstock businesses—not to shut them down.

Our day (years) in court

After reviewing the evidence, the district court (in June 2001) found “disturbing evidence of environmental degradation from stock usage,” and ruled that NEPA had been violated. But the district court denied our Wilderness Act claims, opining that the USFS had broad discretion under the Wilderness Act to decide how much commercial use is necessary and how much degradation by commercial outfits is allowable. The court then held additional hearings, and in January 2002 ordered the USFS to prepare a comprehensive “environmental impact statement” (EIS) by 2005 to evaluate and consider options for controlling the harm caused by the commercial packstock companies.

We were pleased with the district court’s ruling regarding NEPA, but we were dismayed that the judge dismissed our Wilderness Act claims. The important distinction is that NEPA is simply a “procedural” law—it requires only that federal agencies evaluate and disclose the environmental conse-

quences of their actions (in this case, the harm caused by issuing numerous permits to commercial packstock companies). NEPA does not require the agencies to actually choose the least harmful actions. The Wilderness Act, on the other hand, is a substantive law. It requires federal agencies to limit commercial activities in any designated wilderness to those that are truly necessary, and it also requires the agencies to control all uses of wilderness in order to preserve the wilderness character.

Because we were convinced that the Wilderness Act had been violated, we took the extraordinary action of filing a federal appeal. In December of 2004, a panel of three appellate judges decided unanimously in our favor. The appeals court ruled that the USFS had in fact violated the Wilderness Act by allowing degradation of the wilderness character, and by allowing unnecessary levels of commercial activity. For example, the evidence was clear that many visitors had employed commercial packers simply to circumvent trailhead quotas (i.e., they essentially bought wilderness permits from the packers when they couldn’t get one from the USFS). The appeals court concluded, in part, that it is unlawful for the USFS to allow commercial outfits to profit from the desire of some visitors to circumvent the trailhead limits.

For many years the USFS has argued that the Wilderness Act is ambiguous and that its language permits the agency to allow, and even to promote, commercial enterprises in wilderness even if the wilderness environment is degraded. The USFS’s lawyers repeated such arguments throughout the appeals court proceedings, but those arguments were ultimately rejected by the court. Specifically, the USFS argued that preserving the wilderness environment is only one of several goals of the Wilderness Act, and that the courts should allow the USFS latitude under the Act to promote recreational and commercial uses, even if such uses cause degradation of the wilderness. The appeals court responded:

“...Congress intended to enshrine the long-term preservation of wilderness areas as the ultimate goal of the Act...The Wilderness Act twice states its overarching purpose. In Section 1131(a) the Act states, ‘and [wilderness areas] shall be administered for the use and enjoyment of the American people *in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character*’...Although the Act stresses the

importance of wilderness areas as places for the public to enjoy, it simultaneously restricts their use in any way that would impair their future use *as wilderness*. This responsibility is reiterated in Section 1133(b), in which the administering agency is charged with preserving the wilderness character of the wilderness area.”

The USFS then attempted to convince the appeals court that the agency’s “Needs Assessment” (which was hastily drafted in 2001 in an attempt to rationalize existing levels of commercial packstock use) was sufficient to justify the current (or even higher) levels of commercial packstock activity. But that Needs Assessment simply concluded, with no real analysis, that the permitted level of use was the “necessary” amount. The appeals court was not fooled:

“When the Forest Service completed the Needs Assessment it examined independently three topics related to the need for commercial services: the types of activities for which commercial services are needed, the extent to which current permits are being used, and the amount of use the land can tolerate. All of these are relevant factors to consider when determining how much, if any, commercial activity is appropriate in a wilderness area. However, at some point in the analysis, the factors must be considered in relation to one another. If complying with the Wilderness Act on one factor will impede progress toward goals on another factor, the administering agency must determine the most important value and make its decision to protect that value. That is what the Forest Service failed to do in this case...When the Forest Service simply continued preexisting permit levels...it elevated recreational activity over the long-term preservation of the wilderness character of the land...The Forest Service’s decision to grant permits at their pre-existing levels in the face of documented damage resulting from overuse does not have rational validity.”

In the end, the appeals court made clear that the Wilderness Act imposes substantive requirements on an administering agency, that preservation of the wilderness character is paramount, and that the USFS must limit commercial packstock operations to types and amounts that are truly necessary.

The appeals court also upheld the district court’s 2002 decision regarding NEPA (i.e., requiring the USFS to prepare an EIS by the end of 2005 to evaluate the harm caused by the packstock businesses). The appeals court then returned the case to the lower court, with instructions to remedy the violations of the Wilderness Act and NEPA. (Note: All of the court decisions summarized above are available for viewing at our website, under the section titled “Resources.”)

The 2005 plan—USFS remains defiant

On December 27, 2005, after three years at the drawing board and just days before the court-ordered deadline, the USFS released its new plan for managing commercial packstock companies in the John Muir and Ansel Adams wildernesses. It was a complete fraud. Instead of honestly evaluating the damage caused by commercial packtrains and proposing limits and controls to protect the Muir-Adams wilder-

“...each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.”

— *Wilderness Act of 1964*

nesses, the USFS’s new plan once again downplayed and attempted to rationalize all of the past and ongoing harm caused by commercial packstock operations. Even worse, the USFS approved a long list of new giveaways to the commercial packers, including such things as removing all limits on the number of clients served by the commercial outfits, increasing the total number of stock animals permitted for each outfit, allowing local managers to permit the commercial outfits to expand even further over time with no upper limits, removing all trailhead quotas for commercial packstock groups, increasing commercial group sizes from 20 to 25 animals per group, and even allowing commercial packtrains to haul firewood into alpine areas that are closed to campfires (so their clients can enjoy campfires in areas where the general public cannot).

We learned from the paper trail that most or all

of these egregious proposals came from the commercial outfitters themselves—and the USFS went along for the ride, as it has done for decades, to give the packers what they want. Never mind the damage that they cause to natural resources. Never mind the impact on hikers. Never mind the legal mandate to protect America's wilderness from exploitation by commercial enterprises. Never mind the court orders. The USFS has remained hell-bent on adopting a plan that heavily favors the commercial packstock industry, at the expense of everyone and everything else.

In February of 2006 we filed a 124-page appeal of the new plan. Our appeal described in great detail how the new plan violated NEPA, the Wilderness Act, and the previous court orders. But in June 2006 the USFS's Regional Forester brushed aside our appeal and upheld the new plan.

In the absence of any willingness by the USFS to address the issues, we had no choice but to return to court. In August of 2006 we amended our earlier lawsuit to challenge the new plan. HSHA volunteers then spent much of the next year conducting research, drafting legal arguments, and attending hearings. In September of this year, after both sides had filed several rounds of briefs, the district court held a hearing on the merits of our challenge. During the hearing the judge expressed concern that the new plan allowed for substantial growth in commercial packstock operations without a clear strategy to address the past, present, or future harm caused by commercial packstock operations. However, the judge did not issue a decision at the hearing, and we had to wait for a written ruling.

Victory for wilderness !!!

On October 30, 2007 the court issued a 32-page ruling, finding in our favor on nearly every issue. The court found that the USFS has allowed "severe degradation due to excessive commercial stock use," and that the agency has violated the Wilderness Act and NEPA in many respects. The court will next consider our request that it order specific measures to address the violations of law. All who have supported the HSHA in this multi-year endeavor deserve to celebrate these enormous steps forward.

The most fundamental issue raised in our lawsuit is that the USFS has illegally permitted commercial outfits to harm these wildernesses. For example, the 2005 plan brushed aside concerns about commercial packstock grazing in sensitive high-elevation meadows, and it allowed commercial grazing to continue even in areas with badly eroded meadows and degraded streams—including areas that the USFS itself had determined were "severely" degraded. The

court concluded:

"Allowing grazing in a meadow that already suffers severe hydrologic function alteration is inconsistent with Defendants' obligation under the Wilderness Act. Defendants' conclusion that packstock should not be restricted from all areas with degraded streams and meadows is contrary to the Wilderness Act."

The 2005 plan also allowed commercial packstock to graze in key habitat for the Yosemite toad without taking a "hard look" at the harm that would be caused to this imperiled species. (The Yosemite toad, which exists only in the central Sierra Nevada, has declined by at least 50% in recent decades. In 2002, the Fish & Wildlife Service determined

Packstock and Water Quality

Horses and mules produce about 33 pounds of manure and 18 pounds of urine per-animal per-day (*see* Lawrence et al. 2003). This means that a single group of 25 stock animals on a one-week trip produces nearly **three tons** of manure and **400 gallons** of urine that are left behind in the wilderness. A study in 2002 by professors from the U.C. Davis School of Medicine found that about 20 percent of packstock manure samples collected along the John Muir Trail contained pathogenic (i.e., disease causing) organisms (*see* Derlet and Carlson 2002). And a follow-up water sampling study documented disease-causing bacteria in Sierra Nevada streams and lakes frequented by stock animals (*see* Derlet and Carlson 2006). The researchers concluded that horses and cows are causing significant pollution of Sierra Nevada waters. They also found that streams and lakes in areas frequented by backpackers, but not livestock, almost never contained pathogenic bacteria.

References

- Derlet, RW and JR Carlson. 2002. An Analysis of Human Pathogens Found in Horse/Mule Manure Along the John Muir Trail in Kings Canyon and Sequoia and Yosemite National Parks. *Wilderness and Environmental Medicine*, 13:113-118.
- Lawrence, L., JR Bicudo and E Wheeler. 2003. *In: Proceedings of the Ninth International Animal, Agricultural and Food Processing Wastes Symposium*, pp. 277-284.
- Derlet, RW and JR Carlson. 2006. Coliform Bacteria in Sierra Nevada Wilderness Lakes and Streams: What Is the Impact of Backpackers, Pack Animals, and Cattle? *Wilderness and Environmental Medicine*, 17:15-20.

that the Yosemite toad is warranted for listing under the Endangered Species Act, and identified packstock as a cause of its decline.) The USFS's plan did contain a provision saying that commercial packstock were prohibited from grazing in Yosemite toad breeding areas, but the adjacent habitat areas were still open to grazing, and there was nothing to prevent livestock from entering the supposedly "closed" areas. In other words, the rare toad's critical habitat was closed to grazing on paper only. The plan relied on the commercial packers to monitor their stock animals and somehow keep them out of the "closed" areas, but provided no details about how this might be done. The USFS even admitted that packstock would likely drift into the closed areas "even under close management." The court concluded:

"Relying on the packstock operators to monitor their stock to exclude them from breeding habitat despite the reality that even close management will not prevent drift of stock into that sensitive habitat does not constitute an adequate discussion of mitigation measures or the requisite hard look at this issue."

Throughout the process leading up to the 2005 plan the HSHA and others repeatedly raised issues about water quality. The USFS collected no water samples in the area and failed to analyze other available scientific evidence, but brazenly concluded that commercial packstock have no significant impacts on water quality. (See sidebar titled "Packstock and Water Quality.") After reviewing the evidence, the court concluded that "the Forest Service failed to take a hard look at water quality issues" and that the agency's "examination of water quality issues, including monitoring and enforcement, is inadequate."

The 2005 plan also allowed commercial packstock companies to haul firewood into alpine areas that are closed to campfires, so their clients could enjoy fires where nobody else is permitted to do so. This was a stunning reversal from the USFS's earlier plans, which strictly prohibited importing firewood and denied such exclusive privileges for the packtrain companies. The USFS previously acknowledged, in several plans, studies, and other venues, that packing firewood into closed areas would have numerous serious effects and should not be allowed. For example, any commercial packstock clients that wanted a campfire could simply claim that the wood in their fire (or on their firewood pile) was imported, even if it wasn't. It would be difficult or impossible for rangers to enforce the requirement that no wood be

collected from the local area for these fires. (For enforcement action to be taken, a ranger would have to actually observe a commercial packer or client collecting a piece of local wood and putting it in the fire.) Other wilderness visitors would also see the commercial fires and smoke, and be confused and/or emboldened to have their own fires, further depleting downed wood in the "closed" areas. And hauling in firewood would require even more stock animals. But perhaps the biggest concern is that importing wood from outside the wildernesses would likely introduce harmful weed seeds and/or plant pathogens. This latter concern was raised by the superintendents of adjacent Yosemite, Sequoia, and Kings Canyon national parks, and by the U.S. Environmental Protection Agency, all of which strongly opposed the USFS's firewood hauling plan. For example, the superintendent of Yosemite National Park wrote:

"We feel it would have serious ecological and experiential impacts because it is unlikely that use of the fires in the closed areas could be limited only to the intended parties with packed-in wood. Moreover, it is possible that non-native fungal pathogens, insects, seed and other invasives might be brought in with the wood."

The USFS's own environmental study admitted:

"Under this alternative, there would be a moderate risk of the introduction of pathogens and/or weed seeds on firewood brought in from outside the wilderness and increased unauthorized gathering of wood and campfires by non-packer clients...If pathogens or weeds were introduced, the effects would be long-term, moderate to severe, and although beginning locally, could easily become widespread."

Why the USFS reversed its long-standing policy on this issue to allow campfires only for the commercial outfits is anybody's guess. We're guessing it has everything to do with the USFS's desire to cater to the commercial outfits, and its apparent unwillingness to regulate the commercial packstock companies to protect wilderness resources. In the end, the court ruled that the special campfire privileges for commercial outfits were unlawful, concluding that:

"Taken alone, the fact that the Forest Service changed its policy does not demonstrate a violation of NEPA or the Wilderness Act.

However, the specific change here was arbitrary and capricious in violation of NEPA and of the prohibition in the Wilderness Act on commercial services except 'to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.' Packing in firewood and coal will increase stock usage and loads, causing further damages to the wilderness...The Forest Service failed to adequately consider warnings from adjacent wilderness areas about the dangers of its proposed campfire policy and improperly relied on adaptive management to control the campfire policy. This demonstrates that the Forest Service failed to take a hard look as required by NEPA at changing the elevational campfire closures."

Another issue addressed in our lawsuit is the failure of the USFS to limit commercial enterprises to types and levels that are truly "necessary," as required by the Wilderness Act. For example, the USFS has for decades allowed commercial packers to sell their services to visitors who simply want to evade trailhead quotas. (Over the years, many backpackers discovered that if they could not get a wilderness permit from the USFS because the quotas were full, they could easily hire a commercial packer to gain access. These visitors do not "need" packstock to enjoy the wilderness; they simply employ commercial services to circumvent the trailhead quotas.) In addition, the commercial packers have offered ever-increasing numbers of "day rides" to visitors who simply want to ride a horse but don't necessarily seek a wilderness experience. This has resulted in severely eroded, horribly dusty conditions in the first few miles of many wilderness trails where day rides are conducted. (The USFS has received numerous complaints about the condition of these trails, but has ignored them. We have long suggested to the USFS that commercial day rides should be operated outside of designated wilderness areas, but the USFS has to date ignored such suggestions.) We also challenged the unregulated, increasing commercial practice of hauling bulky, heavy, unnecessary luxury items, which requires ever-more stock animals simply for the excessive comfort of pampered commercial clients.

In an effort to defend all of the current types and levels of commercial packstock use (and in a blatant attempt to justify even further increases in commercial packstock use) the USFS's 2005 plan contained a new "needs assessment" that purported to analyze

and determine the types and levels of commercial packstock services that are truly necessary in these two wildernesses. The so-called "needs assessment" was a bogus piece of work that shamelessly advocated for more commercial packstock services. The judge was not fooled. The needs assessment was so full of basic mathematical errors and unsupported conclusions that the court found it to be "arbitrary and capricious."

One foundation of the USFS's "needs assessment" was a survey of group leaders who had hired commercial packstock, asking whether their group truly needed commercial packstock to experience the wilderness. Even though many of the group leaders indicated that they did not need commercial packstock to visit the wilderness, the USFS ignored that finding. Even worse, there was much evidence of deliberate tampering with the survey. For example, one survey recipient typed on the survey form:

"If you know of anyone else who would like to support the packers, please spread the word and the survey with info...I would say, feel free to copy this on your printer, fill it out and mail it in anonymously."

Similarly, another recipient stated on the survey that:

"I will keep in touch with this issue and do everything I can to support the Pack Stations. I have emailed this survey to about 30 who use the Pack Station services."

After weighing the facts, the court dismissed the survey, concluding: "This apparent ballot-stuffing makes it impossible to rely with even minimal confidence on the accuracy of the results." The court found other faults with the survey as well. For example, the court concluded that "the survey confused 'need' with the desire to pack in excessively heavy optional items that could not be carried in by even the fittest backpacker." The court cited numerous public complaints about commercial pack groups with cases of beer, hard liquor, radios, tables, ice chests, chairs, rafts, and holding "night time parties that are similar to a Raider tail gate party" in the wilderness areas. While the court (and the HSHA) acknowledged that packstock services can be necessary for people who are unable to hike or carry necessary gear, such extravagances (and the packstock used to transport them) are hardly "necessary" for visitors to experience the wilderness. The judge concluded:

"Most importantly, the Forest Service's deci-

sion to count all persons with equipment too heavy or bulky to carry on foot as "in need of" commercial pack services was arbitrary and capricious. This category includes people seeking to transport items such as large radios, heavy floats and bulky furniture, that are unnecessary for wilderness travel and, indeed, incompatible with the wilderness experience of other people who seek to enjoy the 'outstanding opportunities for solitude' and areas 'where the earth and its community of life are untrammelled by man' that Congress mandated."

In sum, the court concluded that the new plan was unlawful because it violated both the Wilderness Act and NEPA in numerous respects. This latest court decision (*High Sierra Hikers Association et al. v. Weingardt et al.*) can be viewed on our website at: www.highsierrahikers.org/courtdocOct2007.pdf.

What happens next ?

The struggle is far from over. In the months ahead we will continue to seek a settlement with the USFS. Lacking a settlement, the court will require more briefs and hold additional hearings as it considers what to do about the years of lawbreaking by the USFS. This will require thousands more hours of research and preparation by our legal team and other volunteers. We remain hopeful that a reasonable settlement might be reached, and if not, that the judge will issue a meaningful injunction ordering the USFS to implement limits and controls on the commercial packstock enterprises as needed to protect these magnificent High Sierra wildernesses from further harm, and to repair at least some of the damage from past years. You can help us by renewing your membership today using the coupon on the back page.

Many thanks !!

We are especially grateful to our attorneys Pete Frost of the Western Environmental Law Center and Julia Olson of Wild Earth Advocates, without whom this victory would not have been possible. We encourage all HSHA members to consider joining and/or supporting WELC in addition to the HSHA. For more information, please see www.westernlaw.org.

Final note

This court decision affects commercial packstock operations only. It does not affect persons who visit these wildernesses with their privately owned stock animals.

Support the HSHA

There are many ways you can support the HSHA. Here is a partial list:

Renew your membership for 2008. Simply return the coupon on the back page with your tax-deductible donation. (We'll send a letter acknowledging your donation unless you specifically ask that we do not.)

Employer match. Some employers match charitable contributions (even for retired employees), and some will even double or triple your tax-deductible donation to the HSHA. Check with your employer about their procedure for matching donations. Our IRS Taxpayer Identification Number is 94-3361931.

2007 IRA distributions. Congress has approved a tax break for charitable contributions from individual retirement accounts. Normally, money disbursed from your IRA is treated as income on your taxes. But in 2007, if you use an IRA distribution to make a charitable gift, the amount can be excluded from your adjusted gross income and will not increase your taxes. Check with your accountant or tax preparer for further details.

Bequests. Naming the High Sierra Hikers Association in your will, trust, or other estate plans will assist us in pursuing our mission in the years to come. What better legacy can you leave for the High Sierra? It's as simple as adding a statement to your will such as: "I give the sum of \$___ to High Sierra Hikers Association, Inc., a charitable organization (Calif. nonprofit corporation C2077019; TIN 94-3361931; www.highsierrahikers.org), to use as its board of directors determines."

► STANISLAUS GRAZING: Continued from Page 1

In her decision, Pendleton reversed the grazing plan and sent the Stanislaus NF back to the drawing board, citing insufficient analysis of impacts to wildlife and saying "the record does not support the elimination of additional alternatives suggested by the public for consideration."

The Stanislaus NF must now prepare a new environmental analysis that honestly portrays the impacts of these grazing operations and that considers reasonable alternatives as suggested by hikers and others. Hopefully, the Stanislaus NF will now address the issues so that further conflict will not be necessary. We will track this issue and keep our members informed. Stay tuned !!!!!

Yes! I would like to join the HSHA.

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The HSHA is an IRS-approved 501(c)(3) non-profit association dedicated to educating its members and the general public about issues affecting hikers and the High Sierra. Our goal is to preserve, protect, and restore wilderness in the High Sierra for its inherent value as well as for the enjoyment of present and future generations. The HSHA is run entirely by volunteers. There is no paid staff and no office. Our operations are funded solely by private donations, which are welcome in any amount. Donations to the HSHA are tax-deductible to the full extent of the law. Basic membership is \$25/year. Our mailing list is confidential.

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GREAT NEWS!!