

GREAT
RIVERS



Fall 2006

REPORTER

Great Rivers Environmental Law Center
705 Olive Street • Suite 614 • St. Louis, MO 63101 • (314) 231-4181 • www.greatriverslaw.org

Great Rivers Environmental Law Center Energy Program Combats Global Warming



**Great Rivers Advocates Renewable Power and Energy
Efficiency before Public Service Commission**

Letter from the President:



Missouri is mostly a “No-Choice” State

In many states, residents have the option to purchase clean energy from their utility company. For example, residents of the states of Washington and Wyoming can spend an extra \$1.95 per month and buy energy generated from wind-powered plants. People in 42 states have similar options available to them.

What options are available to us in Missouri? Not many, unless you live in an area of the state serviced by an electric cooperative, which most residents do not. The majority of Missourians must pay a check each month to AmerenUE or Kansas City Power and Light and know that with each dollar they are paying for the distribution of pollutants that cause global warming.

Coal-burning power plants contribute significantly to climate warming by emitting carbon dioxide. Missouri emits a huge number of tons of carbon dioxide each year, and the drive for four new coal-burning plants in this State will only increase that amount. The Public Service Commission has before it proposals that would give Missourians who must pay electric bills to regulated utilities better options leading towards greener energy choices. (See page 3.) Let's hope the PSC gives these options serious consideration. ❖

Kathleen Henry

Board News

Congratulations to Jim Wilson, Chairman of the Board, on his victory in his work for parents who adopt children in state custody. In 2005, the Missouri legislature and Governor Blunt passed a law eliminating monthly subsidies to these parents in violation of existing contracts. Adoption advocates, represented by Jim Wilson and others, filed suit in federal court to stop the cuts, and the district court held the cuts were illegal. In August, 2006, Governor Blunt withdrew his appeal of the case. **Great work Jim!** ❖

Great Rivers Environmental Law Center

The legal resource for natural resources.
(a 501(c)(3) tax-exempt nonprofit corporation)

Mission Statement

We provide legal services to citizens' groups, organizations and individuals who seek to protect and preserve the environment.

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Lewis C. Green
(1924 - 2003)

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GREAT RIVERS' ENERGY PROGRAM

Great Rivers Intervenes in Missouri Public Service Commission to Promote Renewable Resources and Energy Efficiency

Great Rivers is urging the Missouri Public Service Commission to adopt federal standards that would require regulated utilities in Missouri to step up their reluctant efforts on behalf of renewable resources and energy efficiency.

The federal Energy Policy Act of 2005 (EPAAct) requires every state to consider adopting Congressional standards for interconnection and net metering if they do not already have comparable standards. There are five EPAAct standards that all states must consider: (1) Net metering; (2) Interconnection of home and business generators; (3) Time-of-use based metering; (4) Utility fuel diversification plans; and (5) Improved efficiency of fossil fuel generators.

The Missouri Public Service Commission (PSC) opened a set of hearings in July, 2006, to comply with each of five EPAAct standards. Great Rivers Environmental Law Center intervened on behalf of a coalition of groups advocating clean energy: **Concerned Citizens of Platte County, the Sierra Club, Heartland Renewable Energy Society, Mid-Missouri Peaceworks, Burroughs Audubon, and Ozark Energy Services**, a small company in Joplin that designs and installs small renewable energy systems. Our clients are especially interested in net metering.

Missouri has what it calls a net metering law, but it is not true net metering. In true net metering, if you put solar panels on your home or business to generate your own electricity, most of the time you will not generate enough, but sometimes you



Will the majority of Missourians ever be able to buy their power from these clean sources?

would have power to spare. If you “interconnect” your system to the utility grid, you can get power when you need it and feed clean energy back into the grid when you don’t. With true net metering, a single meter spins backwards or forwards, and you pay the utility for the net amount of electricity you use, over and above what you generate.

In Missouri, however, customer-generators have to pay retail rates to the utility but get credited for their own power at the utility’s avoided cost which is only 20% the retail rate. In addition, the law burdens the customer-generator with

*(See **Net Metering** on page 8)*

Great Rivers Continues its Intervention in AmerenUE’s Integrated Resource Plan *Utilities Must Plan for a Changing World*

AmerenUE filed its 20-year Integrated Resource Plan (IRP) back in December, 2005. It piqued our interest because the entire plan was filed as highly confidential. Great Rivers intervened in the Public Service Commission on behalf of the **Sierra Club, Missouri Coalition for the Environment, Mid-Missouri Peaceworks and ACORN**.

Our attempts to get the documents declassified met with some initial success; Ameren disclosed roughly half of its filing. Subsequent efforts led only to minor disclosures. Finally the PSC issued an order upholding Ameren’s claims to confidential or proprietary status for two classes of documents: (1) reports commissioned from consultants who don’t want to see their for-profit work all over the internet and (2) information that could affect



Ameren’s negotiations for supplies and contract work where the utility, otherwise protected as a regulated monopoly, enters a competitive business environment.

This leaves a substantial mass of material shielded from public view. In particular, Ameren’s intentions regarding its Callaway nuclear plant remain under wraps. Mystery likewise continues to surround Church Mountain, a possible site for mountain-topping and the building of a pumped storage reservoir like the one that ruptured on nearby Proffitt Mountain, sending a wall of water through Johnson’s Shut-ins State Park.

The focus of the IRP proceeding is on whether or not Ameren complied with the regulations for doing such a plan. The various parties filed lists of deficiencies in the IRP. Ours focused

*(See **AmerenUE** on page 8)*

GREAT RIVERS' LAND USE PROGRAM

Great Rivers Continues to Press for Preservation of Parks

Great Rivers Files Amicus Brief on Behalf of Three Former DNR Directors In Opposition to Governor Blunt's No-Bid Giveaway of the Boonville Bridge

On Tuesday, September 5, 2006, Great Rivers Environmental Law Center filed an Amicus Brief in the Missouri Court of Appeals on behalf of three former directors of the Department of Natural Resources (DNR): Frederick Brunner, G. Tracy Mehan, III, and Stephen Mahfood. The bipartisan group is expressing its support for Attorney General Jay Nixon's case against Governor Matt Blunt over Blunt's no-bid giveaway of the Boonville Bridge.

Brunner executed the agreement on behalf of the DNR in 1987. G. Tracy Mehan, III, was director of the DNR when the Katy Trail was opened in 1992. Steve Mahfood was director in 2004 and opposed Union Pacific's efforts to remove the Boonville Bridge. All three shared the same understanding that the Boonville Bridge would remain part of the rail-banked Katy Trail corridor and that the Boonville Bridge was required to be kept available for transportation purposes.

The three former directors join Pat Jones, who, with her husband Ted Jones, donated over \$2 million to the state of Missouri for the creation of the Katy Trail and understood the bridge would remain a part of it. They also join Raye Reynolds, the former official of the Missouri-Kansas-Texas Railroad, who executed the Agreement with the State transferring the Katy Trail's operating corridor to the Missouri Department of Natural Resources.

"Governor Blunt and Union Pacific Railroad schemed to transfer the bridge at the expense of the state's rights," said Jim Wilson, Chairman of the Board of Directors of Great Rivers Environmental Law Center. "Union Pacific Railroad stands to gain millions of dollars as a result of the no-bid giveaway of the state's real estate rights to the Boonville bridge. We think it's significant that three former DNR directors agree that the intent of the Katy Trail donors, Edward and Pat Jones, should be respected and that the Bridge should not be removed."

On September 21, 2006, the Court of Appeals overruled Union Pacific's motion to strike the brief, which will allow the former directors the chance to be heard. ❖



*Katy Trail/Boonville Bridge
Photo courtesy of bridgehunter.com*

Great Rivers' Case for the Preservation of Buehler Park Moves into the Court of Appeals

On September 14, 2006, the trial court ruled that the Citizens to Preserve Buehler Park DO have standing to pursue their claims, but that the language used in the dedication of the land for park purposes did not amount to a legal "dedication." The language does state that the land "shall be used for park purposes only and none other...FOREVER." Great Rivers will pursue the appeal of this interpretation of the language in the Court of Appeals, Southern District.

Citizens to Preserve Buehler Park is a nonprofit organization whose mission is to save this historical park. Buehler Park is named after Henry Buehler, a former citizen of Rolla and the State Geologist from 1908 to his death in 1944. His knowledge of Missouri's wealth of mineral resources turned the State of Missouri's \$15 million mineral industry into a \$75 million industry by 1944. In 1958, the Rolla Chamber of Commerce, seeking to honor Dr. Buehler, deeded Buehler Park to the City of Rolla. ❖

Brief Update on Other Projects

St. Louis Asbestos Case

Great Rivers continues its representation of Families for Asbestos Compliance, Testing and Safety (FACTS), in its legal action against the City of St. Louis and City of St. Louis Airport Authority over the illegal and experimental use of the “wet method” of asbestos abatement.



With the wet method, the asbestos is not removed from the home but instead is left in place while the home is being demolished, potentially exposing people to asbestos fibers released into the air and soil. Within the past few months the attorneys for FACTS completed their evaluation of hundreds of thousands of pages of documents, followed by two weeks of depositions of key witnesses and designated experts. The parties are now preparing to submit the case to the Court on motions for summary judgment. ❖

Proposed Levee in Jefferson City

The battle over the proposed 1,000 year “super-levee” continues. In June, 2006, the U.S. Court of Appeals for the Eighth Circuit returned the case to the District court after reversing that Court’s dismissal of the action. Great Rivers expects to submit the merits of the case to the District Judge in the Spring of 2007.

Even though the Government Accountability Office and scientific experts outside of the Army Corps of Engineers agree that the building of levees causes increased flooding downstream, the Corps persists in issuing permits to itself and developers allowing for new levees to be built. We need to put a stop to this practice. ❖

Preservation of Forest Park

In 2006 the City of St. Louis announced that it would lease to Barnes-Jewish Hospital a part of Forest Park for construction of buildings. A group of citizens resurrected the dormant group Citizens to Protect Forest Park, and they came to Great Rivers for assistance. Great Rivers attorney Henry Robertson drafted the language used on a petition the group is circulating which would call for any sale of park land in the future to be put to a vote of the people before it is sold.

In trying to make revenue by the sale or lease of park land, the City of St. Louis joins the City of Rolla and the Bush Administration, which has proposed selling national

forests to pay for rural schools. This approach is short-sighted and unsustainable as a solution to budgetary problems. ❖

Nuclear Waste at Bridgeton Landfill

The Mallinckrodt Chemical Works in St. Louis processed uranium for nuclear weapons as far back as the early ‘40s. Radioactive waste from this enterprise wound up at various sites in the City and County over the years. In 1973 a large quantity was illegally dumped at West Lake Landfill in Bridgeton, which sits in the Missouri River floodplain. It’s still there.

A Superfund priority site since 1990, the landfill has to be cleaned up. On September 14, 2006, the EPA held a public meeting on its Proposed Plan which would cap the landfill but leave the radioactive waste in place and do nothing to prevent it from leaching into groundwater and running off-site. About 100 people packed the Bridgeton City Council chambers to learn about the plan; many signed up to offer public comments in the limited time after the presentation.

To the EPA this is just *banana radiation*. We naturally absorb a certain amount of background radiation every day of our lives; even bananas give off a certain amount of potassium radiation, they told us. Kay Drey, long-time anti-nuclear activist and Great Rivers board member, detailed the history of this waste, which came from extraordinarily uranium-dense ore from the Belgian Congo and contains some of the deadliest and longest-lived radionuclides known. Henry Robertson spoke on behalf of Great Rivers and questioned the EPA’s decision to treat the site essentially like any other municipal waste landfill.

As we go to press, Great Rivers is working with the Missouri Coalition for the Environment on detailed written comments. ❖



Photos taken by Cheryl Frankfater

Great Rivers Turns Four: A Look at What We Have Accomplished

Great Rivers Continues to Carry on Its Mission as Set Forth by Its Founder, Lewis C. Green

By Kathleen Henry

A reporter once asked me whether I thought Great Rivers was continuing to provide the legal services that Lewis C. Green wished it to when he founded it. I was pleased to answer in the affirmative. Lewis said, **"The environment can't fight for itself. Somebody has got to fight for it."** He founded Great Rivers to carry on the work of Green, Hennings and Henry LLP and to continue to fight for the environment. Great Rivers has been doing just that.

In our first four years, we have provided free legal services to many people and organizations throughout

The following is a list of some of the clients whom we have served in these four years (in alphabetical order):

Association of Community Organizations for Reform Now, Inc.
Burroughs Audubon Society
Linda Chipperfield
Citizens for the Preservation of Buehler Park
Citizens to Protect Forest Park
Concerned Citizens of Platte County
Tom and Barbara Diehl
Earth Share
Families for Asbestos Compliance, Testing and Safety
Former Directors of the Missouri Department of Natural Resources
Gateway Green Alliance
Heartland Renewable Energy Society
Heartwood, Inc.
Katy Trail Users
Mid-Missouri Peaceworks
Missouri Coalition for the Environment
Missouri Group Against Smoking Pollution
Ozark Energy Services
Safe Handling of Waste Managed Environmentally
St. Louis Lead Prevention Coalition
Sierra Club

the State who seek to preserve and protect the environment. We have had several victories in and out of the courtroom. More importantly, we have provided a voice for people seeking justice through the courts whose voices might otherwise not be heard.

Lewis Green was correct in thinking there is a need for Great Rivers in Missouri and we continue to make the case for Missouri's environment.

The Diehls were two of our first clients.

2 February 2006

Ms. Kathleen Green Henry
President
Great Rivers Environmental Law Center
705 Olive St., Ste 614
St. Louis MO 63101

RE: Letter of Appreciation

Dear Ms. Henry:

I don't think most people realize how the good work of Great Rivers can actually save someone's life. You and your wonderful staff have done just that.

Almost two years ago, my family and community were sued by a large, powerful corporation, Fred Weber Inc., in an evil SLAPP suit. The \$5 million suit was designed to shut up everyone who was fighting a proposal for a trash transfer station (and I believe eventual landfill) in the flood plain next to the Meramec River and one by our homes. It was a miracle that somehow the issue caught Great Rivers' attention.

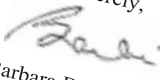
The big corporation didn't expect any resistance. With your entry into the fight, they immediately dismissed out the "John Does". With your excellent help, our community won at every level, even the MO Supreme Court. Then the head of the corporation got word to us this past summer they would appeal to the US Supreme Court because they "didn't care at all about Tom Diehl".

The US Supreme Court has no record of the appeal, so I guess that lawsuit is over. Our neighborhood isn't safe yet and those who weren't scared off are still fighting against trash transfer stations and the proposed legalization of used asphalt dumping in the flood plain.

My family faced complete personal ruin and felt our lives were threatened, but Great Rivers' saved us from that. We are now working to regain our self-confidence and get back up to the level of community involvement we once had.

I especially want to thank Bruce Morrison for his caring and dedication.
We owe Great Rivers a debt we can never repay.

Very Sincerely,


Barbara Diehl
5826 White Pine Dr
St. Louis MO 63129

We extend our heartfelt thanks to our supporters. Without your support, we would not be able to carry on our projects.

Contributions received May 2006 – September 2006

IN MEMORY OF:

Lewis C. Green
Better Business Bureau
Jeanette Oxford

Dr. Edgar Anderson
Dorothy Brockhoff

John Kistner, Jr.
Richard Cummings

James C. Schmitt
Beverly Schmitt

IN HONOR OF:

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Louise Green

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FOUNDATIONS AND ORGANIZATIONS

Citizens for the Preservation of Buehler Park
Eliot Unitarian Chapel
Christine Gempp Love Foundation
Rava Family Fund of the Greater St. Louis Community Foundation, based on the recommendation of John A. Rava
Robert Victor Sager and Beatrice Mintz Sager Foundation

Great Rivers started a Sponsorship program in the Summer of 2006. Sponsors are entitled to certain benefits based on their level of contribution. Our levels are:

- Flowering Dogwood - \$15,000 or Higher**
- Bluebird - \$10,000**
- Hawthorn Blossom - \$7,500**
- Flat-Nosed Paddlefish - \$5,000**
- North American Bullfrog - \$2,500**
- Channel Catfish - \$1,000**
- Mozarkite - \$500**

New Growth Circle – A Three-Year Commitment at any Level Above \$500

Each of our giving levels represents a Missouri state symbol reminding us of the natural beauty and diversity of our environment. For example, on June 20, 1955, the **flowering dogwood** (*Cornus Florida L.*) became Missouri's official tree. The tree is small in size, rarely growing over 40 feet in height or 18 inches in diameter. The dogwood sprouts tiny greenish-yellow flowers in clusters, with each flower surrounded by four white petals. The paried, oval leaves are olive green above and covered with silvery hairs underneath. In the fall, the upper part of the leaves turns scarlet or orange and bright red fruits grow on the tree. (RSMo 10.040.)



SPONSORS

Flowering Dogwood (\$15,000 and higher)
Nat & Elizabeth Robertson

Bluebird (\$10,000-\$14,999)
Louise Green

Flat-Nosed Paddlefish (\$5,000-\$7,499)
Leo & Kay Drey

Channel Catfish (\$1,000-\$2,499)
Evan & Mary Appelman

Mozarkite (\$500-\$999)
Harold Bamberg*
David Bedan*
Henry & Nancy Day
Jim Holsen

**Members of our New Growth Circle—a Three-Year Commitment at any of our Sponsorship Levels*

Net Metering *(continued from page 3)*

expenses for testing, insurance, additional metering, and “all reasonable standards and requirements” the utility sees fit to impose.

Great Rivers’ intervention, if successful, will (1) let homes and businesses generate their own electricity and get full credit for it on their utility bills; (2) result in the adoption of electric rates that reduce demand for electricity by encouraging customers to use it at off-peak times; (3) require utility planners to take account of renewable generating technologies and (4) require utilities to implement more efficient ways to run existing fossil-fuel generating plants. The new rules would create incentives for distributed (home or business based) generation and result in reduced pollution and greenhouse gas emissions.

“We hope the PSC is ready for true net metering in Missouri,” said Henry Robertson, staff attorney at Great Rivers Environmental Law Center. “People who generate their own clean electricity are doing a service to society at great expense to themselves. Net metering will never pay them back, but it’s an incentive.” ❖

AmerenUE *(continued from page 3)*

on their plan for renewable energy—a proposal for 100 megawatts of wind power (it can finally be revealed), a mere pittance by our standards. Most of all, the IRP was deficient in its plan for Demand Side Management (DSM), meaning programs that promote energy efficiency and demand reduction by UE’s customers. Ameren has been forced to commit to doing a more serious job with DSM, though the details remain to be worked out.

A consensus-building process met with limited success; not everyone is satisfied with Ameren’s remedies for the plan’s deficiencies. At this writing the parties will meet to decide whether a hearing is necessary on further steps Ameren must take.

The Public Service Commission will soon begin a rule-making proceeding to revise the IRP rules. We would like to see them give more consideration to climate change—modeling the effects of proposed carbon dioxide regulation on coal-burning utilities—and more equal treatment of renewables and DSM with fossil fuel power generation. Great Rivers expects to be involved. ❖

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