

GREAT
RIVERS



Fall 2007

REPORTER

Great Rivers Environmental Law Center
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Great Rivers Environmental Law Center Prevails in Missouri Court of Appeals on Buehler Park Case

Court Restores Citizens' Rights to Preserve Public Parks



Residents of Rolla gather in Buehler Park to celebrate the victory!

Great Rivers Prevails over Army Corps' Proposed Super-Levee

Corps Can No Longer Refuse to Evaluate the Cumulative Impacts of Levees on Flood Heights



The Missouri River at Jefferson City will remain free-flowing for now.

Letter from the President:



An Unusual Year

In the last newsletter, we reported on a court victory we had over the Public Service Commission and Kansas City Power and Light. That was a "David versus Goliath case," starting with me up against 16 attorneys at the administrative hearing and ending with Henry Robertson against multiple attorneys before the Court of Appeals.

In this newsletter, we report two important court victories received in the past few months. The first is the victory in the Buehler Park case, where a state court resurrected a doctrine last seen in 1910 in the Missouri courts, restoring the rights of citizens to preserve public parks; the second is a victory over the Army Corps of Engineers, where a federal court for the first time held that the Corps must consider the cumulative impacts of levees and other flood control structures on flood heights.

Bruce Morrison, General Counsel of Great Rivers and partner and associate of my father, Lewis Green, for 15 years, had this to say about Great Rivers' three court victories this year:

"Lewis would be proud that Great Rivers has won three times in the past few months. But he would be puzzled over the string of victories. He would remind us that the public interest environmental lawyer usually comes out on the losing end. Lewis used to say he would receive an average of one victory every two years."

In these cases our clients could not afford to pay market rates for legal services; instead, our clients have held fundraising picnics and parties to raise money to support us. The victories were made possible by all our donors, and we are very grateful for your help. The most easily visible evidence of your support can be seen by taking Highway 44 to Exit 184, driving three blocks, and getting out of your car in Buehler Park in Rolla. It is a lovely park.

Kathleen Henry

Board News

Great Rivers welcomes former **Senator Wayne Goode** to our Board. Wayne was a former state senator and representative for forty-two years. In 1963, he successfully sponsored the legislation establishing the University of Missouri at St. Louis. He introduced many excellent environmental bills in his decades of service in the Missouri General Assembly, including the 1990 Omnibus Solid Waste Bill and the Hazardous Waste law. Since he retired from the Senate in 2004, he has continued his tradition of public service by serving on the boards of several nonprofit environmental organizations in Missouri.

Great Rivers also welcomes **James Shrewsbury** to our Board. Jim was the 16th Ward Alderman of the City of St. Louis from 1983 to 2002, and President of the Board of Aldermen from 2002 to 2007. During his term, he led the opposition to the resolution to build Holcim concrete plant in St. Genevieve County, MO; he sponsored Green Building legislation; and he sponsored and passed a bill to ban burning of medical waste in the City of St. Louis. He now practices law in the City of St. Louis, specializing in trusts and estate work.

In June, board member **Ken Midkiff** published a book entitled, *Not a Drop to Drink: America's Water Crisis (and What You Can Do)*. This is a must-read for everyone concerned with the imminent crisis of America's water supply.

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' LAND USE PROGRAM

Great Rivers' Victory in Appellate Court Preserves Historic Buehler Park in Rolla

On Tuesday, August 7, 2007, the Missouri Court of Appeals for the Southern District reversed the judgment of the trial court in a suit filed by Great Rivers Environmental Law Center on behalf of Citizens for the Preservation of Buehler Park. The Court of Appeals directed the trial court to declare Buehler Park to be a public park, and to grant an injunction to prohibit the City of Rolla from doing otherwise. This victory represents the culmination of 10 years of litigation. The first two Buehler Park suits (Buehler I and II) resulted in a court opinion stating the residents lacked standing to sue; the next two (Buehler III and IV) resulted in a court opinion stating that the users of public property can sue to uphold that use. *This is the first*



time a Missouri court has decided this issue in this way since 1910.

Dan Woodward, a well-known Missouri artist, donated a painting to Great Rivers Environmental Law Center in recognition of its work on behalf of the Citizens for the Preservation of Buehler Park. The climbing structure in the park is in the shape of a dinosaur, and

Mr. Woodward titled the picture "**A Dinosaur Saved From Extinction**" to commemorate the close call this dinosaur would have had with destruction in the event the City of Rolla had been able to sell Buehler Park for development into restaurants. To bid on this picture, call or email Great Rivers at dottie@greatriverslaw.org. ❖



GREAT RIVERS' FLOODPLAIN PRESERVATION PROGRAM

District Court Agrees with Great Rivers that Corps' Environmental Agreement is defective

On May 24, 2007, the United States District Court for the Western District of Missouri ruled that an Environmental Assessment prepared by the United States Army Corps of Engineers for a proposed levee in Jefferson City, Missouri, is defective. The Court found that the assessment prepared by the Corps of Engineers failed to evaluate the cumulative impact of the levee combined with other flood control structures that currently flank the Missouri River.

In 1998, the Corps proposed constructing a 1,000 year levee along the northern bank of the Missouri River in Jefferson City. The levee was to have been 4.7 miles long with a height ranging from 15 to 23 feet.

According to papers filed with the court, two hundred years ago the Missouri River, along with its adjoining wetlands and floodplains, contained one of the continent's most complex

and diverse ecosystems. By the late 1970s, the Lower Missouri River (735 miles) had been channelized and its natural floodplain ecosystems almost completely converted to agricultural or other uses. Today, the Lower Missouri River is lined with levees and other flood control structures for most of its length.

Great Rivers Environmental Law Center filed suit in 2003 on behalf of the Sierra Club challenging the Corps' proposed levee. The suit alleged that the Corps was required by federal law to evaluate the cumulative impact of flood control structures on flood heights, rather than look only at the incremental

impact of the proposed levee. Four years and three court challenges later, the district court agreed with Great Rivers. *This is the first time any court has said that the Corps must look at the cumulative impacts of levees and other flood control structures on flood heights.* ❖



The Missouri River near Jefferson City

Lewis C. Green Environmental Service Awards Dinner held on September 27, 2007 at the Top of the Met

In 2006, the Board of Directors decided to honor the founder of Great Rivers Environmental Law Center, Lewis C. Green, by presenting awards to individuals who have shown long-time commitment to the preservation of the environment. The first Lewis C. Green Environmental Service Awards were presented in 2006, and this year the Board presented the second annual Awards.

The 2007 awardees are: *(pictured accepting awards)*

Kay Drey

Kay Drey has championed a wide range of progressive causes. She has taken on the nuclear power industry, advocating for the protection of the general public, workers, and the environment from the hazards of nuclear energy and radioactive waste. She serves on the board of directors of the Nuclear Policy Research Institute, home of the "Beyond Nuclear" project that works for a future without nuclear power and nuclear weapons. Kay also was a co-founder of the Green Center, which introduces children to the joys of woodland, prairie, and wetland environments on 26 acres in the heart of University City. She has been active with the Missouri Coalition for the Environment for several decades. Kay describes herself as a champion of lost causes, but those who know her also know of her many significant victories. Kay has comforted the afflicted and afflicted the comfortable for practically her whole life – and that doesn't even count her violin playing.



Leo and Kay Drey accept their award from Senator Wayne Goode.

Leo Drey

Leo Drey began acquiring timberland in the southern Ozark Mountains for reforestation and conservation in 1951. His holdings eventually grew to nearly 160,000 acres, the largest private landholding in the state and larger than Missouri's entire state park system. The project, known as Pioneer Forest, is sustainably managed through the harvesting of trees selected individually, with no clear-cutting, thus preserving the forest's ecological integrity. Leo founded the L-A-D Foundation, turning over to it most of his land holdings in 2004. Years before the National Park Service became involved in protecting Ozark streams, Leo was front and center in the fight to protect the watersheds of the Current and Jacks Fork rivers. He was one of the founders of the Open Space Council and the Missouri Coalition for the Environment. He funded the Natural Areas Survey for Missouri and the Natural Streams Act campaign and worked tirelessly to preserve the Show-Me State's natural treasures for future generations. Greer Spring, Grand Gulf, and Dillard Mill are all areas that would have or could have been lost to developers, but for Leo's generosity and foresight. The late John Wylie, a Conservation Department natural history chief, once said of Leo, "Yes, there is a Santa Claus for natural areas in Missouri. Every now and then, Santa, in the form of Leo Drey, reaches deep into his bag of goodies and pulls out another jewel to present to the people of Missouri."



Operation Clean Stream



Robert Rubright, Chairman of the board of directors of the Open Space Council, accepts the award for Operation Clean Stream from Steve Mahfood.

Operation Clean Stream celebrates its 40th birthday this year, and is one of America's longest and largest ongoing river restoration projects. The annual event attracts nearly 2,000 volunteers from various age groups and backgrounds to the Meramec River and its tributaries including the Big, Bourbeuse, Courtois and Huzzah Rivers. Furthermore, agencies and organizations at the local, state and national levels have recognized this program as a key environmental event in the St. Louis Region. The event also serves as a public campaign for educating area citizens on the value of clean water and our responsibility to area rivers and streams. Clean Stream's publicity and physical activities have galvanized the community into reclaiming the Meramec Watershed as a regional conservation and outdoor recreation resource. Operation Clean Stream is a program of the Open Space Council. Robert Rubright, President of the Open Space Council since 1999, accepted the award on its behalf.



Tom Schlafly delivered a moving tribute to the late Honorable Thomas F. Eagleton.



Brief Update on Other Projects

Energy Issues

AmerenUE's Twenty-Year Plan

We are still participating in the stakeholder meetings on AmerenUE's twenty-year plan, or Integrated Resource Plan (IRP). On behalf of four nonprofit groups, we are monitoring Ameren's commitment to evaluating energy efficiency programs, renewable power options (especially wind) and the potential costs of future global warming regulation by Congress. The four groups are: the Sierra Club, Missouri Coalition for the Environment, Mid-Missouri Peaceworks and ACORN. In late 2006, Ameren was forced to concede that its original IRP was inadequate. In a settlement with us and other parties, it agreed to draft a whole new plan and to include stakeholders in the process.

KCPL Power Plant Settlement

In March, our clients, the Sierra Club and Concerned Citizens of Platte County, reached a settlement with Kansas City Power and Light (KCPL) allowing the utility to build its latan 2 power plant in Platte County, but requiring KCPL to greatly expand its wind generation and energy efficiency activities. Great Rivers remains vigilant in monitoring the progress of this Collaboration Agreement.

KCPL has publicly announced its dedication to helping its customers save energy. Legislative action will be key to their progress since, under traditional utility ratemaking, utilities lose money by selling less electricity. KCPL is preparing draft legislation to get the Missouri General Assembly to remove this disincentive and make it profitable for KCPL and other regulated utilities to offer efficiency programs to their customers.

Great Rivers is studying this issue of incentives and other legislative approaches to efficiency. We can trust KCPL to look after its own interests, but we will be prepared to assert the public interest if conflict arises.

Public Health Issues

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. The case is under submission in the federal district court in St. Louis.

Water Issues

KCI Motor Sports Park

The Kansas City Aviation Department is pursuing public and private development on 53 square miles around Kansas City International Airport, an area characterized by wetlands. A company called FastTrack LLC applied to the U.S. Army Corps of Engineers for a permit to dredge and fill wetlands for a Motor Sports Park described by its consultant as "a high performance motor sports country club."

On behalf of local opponents to the development plans, Great Rivers filed comments with the Corps and Missouri DNR calling on them to address the wetlands, energy and cumulative impacts of the race track.

Missouri River Floodplains in St. Peters

Flood damages in the United States now approach \$6 billion annually. The National Flood Insurance Program is essentially bankrupt—\$18 billion in debt to the US Treasury. More and larger levees are increasing the frequency and severity of flooding. Great Rivers believes that the position taken by the Association of State Flood Plain Managers—that "levees should not be used as a means to allow the development of currently undeveloped flood prone land,"—is sound public policy. The City of St. Peters is the latest community in our region to build a massive levee in order to develop the floodplain. Great Rivers is working to ensure that this new levee poses no adverse impact to St. Peters' neighbors.

The Truth:
Floodplains are a vital part of our environment and their flooding a natural occurrence



The Word According to Government:
Floodplains are unnecessary to our environment and present us with unlimited sources of revenue

Land Use

Milam Landfill

Great Rivers represents American Bottom Conservancy and Sierra Club in their effort to stop Waste Management from building a landfill within 2,000 feet of the Cahokia Mounds World Heritage site and onto land protected by a levee. The hearing was held in August and the case was submitted in October, 2007.

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

Contributions received May - September 2007

INDIVIDUAL CONTRIBUTORS

Marlyn Adderton	Mike & Susan Darcy	Frank Hackmann	Richard Lageson	Jim Nyberg	Jacqueline Stevens
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Emilie Brandhorst

Agnes Chouteau

Leo & Kay Drey

IN HONOR OF:

**A Partnership with
Concerned Citizens of
Platte County**

Barbara Fredholm

A Very Good Year!

Leo & Kay Drey

Leo & Kay Drey

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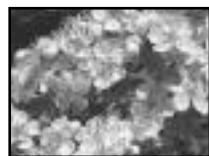
Saving Buehler Park!

Ross & Karin Melick

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:

New Growth Circle

A Three-Year Commitment at any Level Above \$7,500



Hawthorn Blossom

Each of our giving levels represents a Missouri state symbol reminding us of the natural beauty and diversity of our environment. On March 16, 1923, Governor Arthur M. Hyde signed a bill naming the **white hawthorn blossom** the official state floral emblem of Missouri. Known as the "red haw" or "white haw," the hawthorn (*crataegus*) is a member of the great rose family, which resembles the apple group. The hawthorn blossoms have greenish-yellow centers and form in white clusters. More than 75 species of the hawthorn grow in Missouri, particularly in the Ozarks. (RSMo 10.030.)

- 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**

SPONSORS

<i>Flowering Dogwood</i> (\$15,000 and higher)	<i>Channel Catfish</i> (\$1,000-\$2,499)	<i>Mozarkite (\$500-\$999)</i>	
Louise Green	Carol Dowd	Mary & Evan Appelman	Elisabeth Hair
Nat & Elizabeth Robertson	Paul & Deborah Fleischut	David & Nancy Bedan	Jordan & Connie Heiman
<i>Flat-Nosed Paddlefish</i> (\$5,000-\$7,499)	Frances Green	Leona Lee Bohm*	James & Vergean Joiner
Leo & Kay Drey	Joe & Yvonne Logan	Jutta Buder	Richard & Virginia Quick
<i>North American Bullfrog</i> (\$2,500-\$4,999)	Tom (Yusha) Sager	Susan Flader	Mark & Lynn Sableman
David & Joan Bohm*	Speer Law Firm, P.A.	Wayne & Jane Goode	Jim & Doris Wilson
	Midge Tooker		

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

FOUNDATIONS, CORPORATIONS AND ORGANIZATIONS

AEP River Operations	P. Wayne & Jane B. Goode Foundation	Saint Louis Council on Environmental Health & Safety	Sierra Club – Missouri Chapter
Citizens for the Preservation of Buehler Park	Christine Gempp Love Foundation	Seed Fund of the Greater Saint Louis Community Foundation based on the recommendation of Tedford and Margaret Lewis	John S. Wallach, P.C.
Citizens to Protect Forest Park	Newman, Bronson & Wallis		Wild Canid Survival & Research Center
Coffey & Associates	Open Space Council		
Earth Share of Missouri	Sandy Rothschild & Associates, Inc.		

There's Still Time!

Donate today and help us meet our goal for 2007!

If you are **70½ or older**, you have an exciting way to help:
The Pension Protection Act of 2006, IRA Charitable Rollover.

On August 17, 2006, President Bush signed into law the Pension Protection Act (PPA). Included in this legislation was a two year IRA charitable rollover, allowing individuals age **70½** and older to make direct transfers of up to **\$100,000 per year in 2006 and 2007** to the charity or charities of their choice, **without having to count the transfers as income.** (Consult a tax advisor for a detailed explanation of this provision.) ❖



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