



# Great Rivers' Energy Program Heats Up: Great Rivers Files Suit Against Empire District Electric Company Over Solar Rebate



*Voters intended Proposition C to apply to all regulated utilities. Empire District Electric Company in Southwest Missouri appears to not want to use solar energy and is exempted from the law.*

***Under a law the state legislature passed in 2008, Proposition C applies to all regulated utilities but Empire!***

# Letter from the President:



## Great Rivers Turns Eight!

On August 1, 2010, Great Rivers will be 8 years old. Although the year 8 is not a significant milestone, it feels like one to me. That is because it means we have survived for an appreciable number of years. We are no longer in our infantile stage. We can look back at tangible successes. Without our work, there would be fast-food restaurants where a park now stands in Rolla. There would likely be an enormous levee in Jefferson City, a gap in the Katy Trail, more coal-fired power and fewer opportunities for renewable energy sources, and lost floodplains and wetlands habitat. We drafted two state laws, the net metering and renewable energy laws, and the charter amendment that passed in the City of St. Louis protecting parks. We are currently working on many issues concerning energy, air quality, protection of rivers, wetlands and floodplains, and public health, which are detailed later in this issue. There is a great need for our services all across the state of Missouri.

In our article on page 3, we devote space to the book that recently was published on the work of our founder, Lewis C. Green. Two former St. Louis Post-Dispatch reporters and editors, Pat Tummons and Florence Shinkle, generously donated a great deal of time to poring through boxes full of legal documents and correspondence on Lewis' work. Their work culminated in the book, "A Force for Nature: the Environmental Litigation of Lewis C. Green," published by Reedy Press. This book is informative and interesting and brings back memories of hard fought battles.

Lewis devoted his last years to founding Great Rivers Environmental Law Center. As we go forward in our ninth year, we thank all of the people who have generously donated time and funds to enable us to carry on this work. The future of Great Rivers depends on continued support and efforts of hundreds of people.

Kathleen Henry

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## Board News

Board member Matthew P. McCauley is Chairman and CEO of Galen Insurance Company, which provides insurance for doctors and is physician-owned and locally-focused. The company has relocated to 6822 Delmar Blvd., across from the City Hall in University City.

**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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# Former St. Louis Post-Dispatch Writers, Pat Tummons and Florence Shinkle, write book on founder of Great Rivers: “A Force for Nature: The Environmental Litigation of Lewis C. Green”

The book contains an introduction by Ted Heisel and foreword by Eliot Porter.



*The following is a review of the book, “A Force for Nature: The Environmental Litigation of Lewis C. Green.” This was first published in the Webster-Kirkwood Times in the January 29-February 4, 2010 issue, and is reprinted here with permission of Webster-Kirkwood Times, Inc.*

## YES, INDEED, A FORCE OF NATURE

by Don Corrigan

Back in the fall, St. Louis County Council voted to rezone land near the confluence of the Mississippi and Missouri rivers for yet another Taj Mahal casino development.

Councilmen representing Times readers divided on the project. Steve Stenger voted for it. Barbara Fraser voted against it. Rezoning literally paves the way for 8,000 parking spots, a golf course; oh yeah, and a towering temple for black jack anchored on 400 acres of elevated floodplain.

Attorney Lew Green would have had a thing or two to say about this, if he were alive today. Green, often cited as the St. Louis region’s first public interest lawyer for the environment, waged many battles on behalf of nature – and people. After all, human beings are a part of nature.

Green didn’t always win his fights, such as keeping development out of Earth City and the Chesterfield floodplains. Of course, he was vindicated by Mother Nature when she decided to break a few levees and cause billions of dollars in damage – much of it recovered thanks to taxpayers and higher insurance premiums.

If Green were here now, he’d advise those opposing the latest gamble for gaming on a floodplain to mount a public relations campaign, to vote out of office those council members who voted for the rezoning, to litigate the project on every possible ground through the highest level of court.

During his own life, Green did all those things on behalf of clean air, clean water, and unspoiled land for the citizenry to enjoy. A new book by authors Florence Shinkle and Patricia

Tummons details many of his now historic fights to save our environment. It’s titled, “A Force for Nature.”

Green, who raised his family in Kirkwood from 1961-1976, caught the attention of Gov. Warren Hearnes in 1965 and was named the first chairman of the Missouri Air Conservation Commission. This agency adopted clean air regulations for St. Louis, once known for its fog of coal smoke.

After leaving government, Green battled over sulfur emissions from power plants and destruction of state wilderness areas. If you like Queeny Park, you’ll like the new book’s chapter on his 20-year fight to save that land for public use. If you are still laughing at the idea of building a publicly-funded stadium for Bill Bidwill in Missouri Bottoms’ mud, you’ll like the chapter on that political football.

Tributes at the end of “A Force For Nature” will attest to Green’s love for law that can make life better. One colleague from the Harvard Law Review days of the 1940s points out that features for the publication, which Green developed, are still in existence.

Green’s lasting legacy is Great Rivers Environmental Law Center, directed by his daughter and Webster Groves resident Kathleen Henry.

(See more on Green and battles for the environment at: [doncorrigan.com](http://doncorrigan.com).)

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# GREAT RIVERS' ENERGY PROGRAM

## Great Rivers Files Suit against Empire District Electric over Solar Rebate

*Great Rivers Says Empire's Exemption is Illegal*

At the November, 2008 election, Missouri voters passed Proposition C, the Renewable Energy Standard, with 66% support. The ballot initiative set renewable energy targets for the state's investor-owned utilities. In addition, the utilities are required to meet 2% of their targets with solar energy, and to offer a rebate to customers who want to install their own solar panels.

But in May, 2008, at the end of the legislative session, Joplin-based Empire District Electric had preemptively slipped a bill through the legislature that declared it exempt from the solar energy requirements of Proposition C. When the solar rebate went into effect at the beginning of 2010, Empire was not offering the incentive to its customers. In their corner of the state, benefits conferred by the voters are being denied.

On March 15, 2010, Great Rivers Environmental Law Center filed suit in Cole County Circuit Court to strike down the Empire exemption. "Empire tried to thwart the will of the voters in advance," said Henry Robertson, attorney at Great Rivers. "Unfortunately for them, their law is useless. The legislature doesn't have authority to amend an initiative before it's voted on. Even if it did, this law was repealed by the passage of Prop C, which says Empire has to offer the rebate."

Great Rivers represents Jim Evans, a retired school teacher from Republic, and Kelly Cardin, a Springfield fireman, both Empire customers who want to put solar panels on their property. Power Source Solar of Springfield, an installer of small solar and wind systems, is also a plaintiff. The defendants are Empire and the

Missouri Public Service Commission, the agency charged with enforcing Prop C. The declaratory judgment suit asks the court to declare the Empire exemption invalid and order Empire to abide by Prop C.



*Empire resists FREE FUEL for its energy production. AmerenUE is no fonder of FREE FUEL than is Empire. Utilities in New York, New Jersey, Florida and California are using free fuel in their solar plants. This Department of Energy photo shows a utility-owned solar plant in California that powers 10,000 homes. The receiver, located atop the tower, collects energy focused from about 2,000 sun tracking mirrors called heliostats. The energy can be stored to produce power when needed by the utility grid.*

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# GREAT RIVERS' WATER QUALITY PROGRAM

## Suit to Protect the Ozark National Scenic Riverways

On behalf of the L-A-D Foundation, in 2009 we filed suit against Shannon County for its violations of the federal Clean Water Act. Over the course of two months Shannon County deposited huge amounts of sediment

into Big Creek and the Current River, destroying the natural habitat. Shannon County's actions will threaten Big Creek and the Current River for years to come. Great Rivers is suing to require Shannon County to repair the harm.

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# FLOODPLAIN PRESERVATION PROGRAM

## Great Rivers Files Suit to Prevent “Blighting” of Floodplains

Another of our region’s local governments has blighted just under 100 acres of floodplain, because, in that municipality’s view, the undeveloped floodplain does not generate sufficient revenue. The City of St. Charles plans to raise the land out of the floodplain and develop it. According to the Development Plan, the Redevelopment Area satisfies the requirements for designation as a “Blighted Area” because of factors which include its location within the 100-year flood plain, lack of basic infrastructure, and large areas of standing water and ponding that provide habitat for mosquitoes and mosquito-borne diseases.

In February 2010, Great Rivers, on behalf of **Great Rivers Habitat Alliance** and the **Adolphus Busch Revocable Living Trust**, brought suit against the City. The suit seeks a judgment declaring that the property within the redevelopment area is not “blighted” within the meaning of the Urban Redevelopment Corporations Law, and enjoining the City from proceeding further with its abatement of taxes within the redevelopment area.

## Great Rivers Serves a Notice of Intent to Sue to Protect Endangered Species

On December 3, 2009, Great Rivers Environmental Law Center served a notice of intent to file a citizen suit on behalf of the **National Wildlife Federation** and **Great Rivers Habitat Alliance** against the Federal Emergency Management Agency (FEMA). For years, FEMA’s implementation of the Flood Insurance Program in Missouri has violated the Endangered Species Act (ESA). FEMA’s implementation of the Flood Insurance Program sets eligibility rules for communities that want to participate in the flood insurance program and allows floodplain development to occur where it otherwise would

not. FEMA’s actions fail to limit development in high-risk floodplains and fail to consider the impacts of development on environmentally sensitive lands. FEMA takes these actions without consulting with the U.S. Fish and Wildlife Service on the potential effects to listed endangered species such as the pallid sturgeon and interior least tern.

## Great Rivers’ Levee Suit Before the 8th Circuit

Great Rivers’ suit on behalf of **Great Rivers Habitat Alliance** and the **Adolphus Busch Revocable Trust** against FEMA over a huge urban levee in St. Charles County is before the US Court of Appeals for the 8th Circuit. The suit alleges the levee fails to meet FEMA’s own design requirements. Still, FEMA revised its flood map to show that the land behind the levee is protected from the 100-year flood.

The nation’s financial losses from floods continue to climb. At last count, FEMA was more than 18 billion dollars in debt to the US Treasury.



*How will the Great Blue Heron fare when the region’s floodplains are all paved over?*

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# LAND USE PROGRAM

## Preservation of Boonville Lift Bridge

Great Rivers has been serving as a consulting party in a National Historic Preservation Act (NHPA) process intended to avoid or mitigate adverse impacts to the Boonville Lift Bridge. On Feb. 8, 2010, the Coast Guard

sent notice of Union Pacific’s intent to transfer ownership of the Bridge to the City of Boonville, and suspended the NHPA process. Although there is no final word, it looks as if the Bridge will be saved.

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# BRIEF UPDATE ON OTHER PROJECTS

## AIR QUALITY AND PUBLIC HEALTH PROGRAMS

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### **Lawsuit Regarding Coal-Fired Pig Iron Ore Smelter**

On behalf of the **Concerned Citizens for Crystal City**, Great Rivers continues its litigation against the City of Crystal City. We filed suit in November, 2007, alleging that city officials violated Missouri's Open Records, or Sunshine Law, and several other statutes, when it entered into a lease with a company that plans to develop a coal-fired pig iron ore smelter. The citizens are opposed to the smelter because it was negotiated in illegally closed meetings and will emit pollutants that will cause respiratory problems, asthma, and global warming. In November, 2009, the trial court dismissed the case because our client would not release the identities of people who have posted messages anonymously to the forum on the website that deals with the smelter. We appealed the case in December, 2009, to the Missouri Court of Appeals, Eastern District, and filed the brief in May, 2010.

### **Review of Permits on Existing Coal-Fired Plants**

Great Rivers continues its work on existing coal-fired plants. The existing coal fleet is the largest producer of toxic waste in the United States, causing 24,000 premature deaths, 500,000 asthma attacks, \$3.8 billion in health care costs, and putting 1 in 6 women at risk for mercury poisoning. There are many plants in Missouri that emit thousands of tons of pollutants that cause cancer, asthma and global warming.

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## **ENERGY PROGRAM** *Continued from page 4*

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### **Drafting Energy Efficiency Rules**

In 2009 the Missouri legislature passed SB 376, which aims to change electric utility incentives away from generating more power and toward making it profitable for them to help their customers use less energy. If done right, this can be a win-win for customers and the utilities. It is important to enlist the utilities under the banner of efficiency because of their access to capital and expertise. They can help customers with things like energy audits, appliance rebates and building retrofits.

Great Rivers is now engaged in rafting rules to submit to the Public Service Commission. Together with the **Natural Resources Defense Council** (NRDC) and the **Sierra Club**, and in close consultation with the Missouri Department of Natural Resources' Division of Energy, Great Rivers' attorney Henry Robertson has been writing comments on PSC proposals, submitting alternative language, and participating in workshops held at the PSC.

Great Rivers and its partners are the most active participants in this rulemaking. If our aggressive approach pays off, the PSC will adopt a rule that strikes the right balance between protecting ratepayers and giving the utilities incentives that will make them take efficiency seriously. When customers save energy their bills go down; utilities are entitled to a small share in these bill savings

if they made them possible. Utilities also avoid the risks and rising costs that go with building new coal and nuclear power plants.

We'll all breathe easier as a result. Efficiency is not as sexy as renewable energy, but it is vital to getting society beyond fossil fuels to a future where conservation is valued and renewable energy can entirely replace fossil fuels and nuclear power.

### **Intervention in AmerenUE's Integrated Resource Plan**

On behalf of the **Mid-Missouri Peaceworks, Missouri Coalition for the Environment, NRDC and Sierra Club**, Great Rivers intervened in the Missouri Public Service Commission in its proceedings concerning AmerenUE's Integrated Resource Plan. PSC rules require electric utilities to file these comprehensive IRPs every three years. An IRP says what demand the utility thinks it will need to meet over the next 20 years and how it intends to use new generation and efficiency to meet it.

Great Rivers' attorney Henry Robertson is pressuring AmerenUE to do more with energy efficiency, to make sure it is honoring its commitments under the Renewable Energy Standard, and to monitor its plans (suspended but not cancelled last year) to build a Callaway 2 nuclear plant.

### **Legislation**

#### **Proposition C: Bringing Renewable Energy to Missouri**

In early 2010, the Public Service Commission finalized its rule to implement Proposition C, the Renewable Energy Standard. The public comment period ended April 5 followed by a hearing before the PSC on April 6. Henry Robertson filed comments on behalf of the **Missouri Coalition for the Environment** and **Renew Missouri**, and he is pressuring the PSC to implement the rule according to the voters' intentions.

The Missouri Department of Natural Resources also was required to make a rule implementing Proposition C. DNR held back its long-overdue rule till the end of the 2010 legislative session, when the legislature added animal waste and thermal depolymerization (the reduction of organic waste to oil under heat and pressure) to the list of "renewable energy sources" passed by the voters.

Great Rivers will continue to pressure DNR to protect the environment in implementing Prop C. We are especially concerned about a number of applications to build wood-burning power plants in Missouri. Unless these are done on a suitably small scale they could result in the devastation of our forests and pollution of our air.

#### **Bill Drafted by Great Rivers**

In late 2009, Great Rivers drafted two bills dealing with energy efficiency, one to encourage the use of Combined Heat and Power (CHP), one for an Energy Efficiency Resource Standard. Both were introduced but did not pass at the end of the session, in May, 2010. Great Rivers also helped revise a bill to enact a statewide building energy efficiency code.

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

**Contributions received October 1, 2009 - April 30, 2010**

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*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:*

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# Great Rivers Thanks Adolphus Busch for Another Successful Cocktail Party!

On June 5, 2010, over 100 people attended a cocktail party at the Busch Family Mansion. The mansion and grounds were lovely to stroll about on a warm summer evening. Great Rivers thanks Adolphus Busch for his generous hospitality in allowing us to hold an event at that special setting.



*Board member Yusha Sager, with his wife Helen and her sister, Mary Patton, pose with the Clydesdale, Matt, at the Busch Family Mansion.*

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