



Great Rivers Files Suits in Air, Energy and Wetlands Programs

- ***Great Rivers Sues U.S. Army Corps of Engineers for Failing to Release Documents on Flanagan South Pipeline and on Mississippi River Wetlands Destruction***
- ***Great Rivers Sues the Joint Committee on Administrative Rules and Governor Nixon on Illegal Rewriting of Renewable Energy Law***
- ***Great Rivers Sues the Department of Natural Resources over Permit Issued to an Asphalt Plant Operator in the Kansas City Area***



Photo courtesy of Times-Union Media

Letter from the President:



New Studies Say Planet Will Be Uninhabitable Within Our Lifetimes if People Fail to Act

Several new studies published in October, 2013, find that the earth will be uninhabitable within a very short time frame if people continue to bury their heads and deny the problem of climate change. The New York Times reported on a study published in the journal Nature that says that temperatures across most of the earth will rise to levels with no recorded precedent by the middle of this century, around the year 2047. The “coldest year in the future will be warmer than the hottest year in the past,” said Camilo Mora, the lead scientist at the University of Hawaii on the study. The research is based on the studies of 39 climate models, and the study looked at temperature changes in specific places. New York City will become uninhabitable by 2047; Beijing by 2046.

Scientists at the Potsdam Institute for Climate Impact Research introduced a study showing that, if global warming is limited to 2 degrees above its recent levels (which it shows no signs of being limited to), a billion people will be subject to increased water scarcity by the end of the century.

And the chairman of the Intergovernmental Panel on Climate Change stated that, “Heat waves are very likely to occur more frequently and last longer. As the earth warms, we expect to see currently wet regions receiving more rainfall, and dry regions receiving less, although there will be exceptions.”

Great Rivers’ work in our Energy Program is vital toward the reduction of greenhouse gas emissions in the state of Missouri. We are pressuring the regulated utilities to use solar and wind and stop their contributions to making the planet uninhabitable. You can help by making a donation to our Energy Program, or by divesting your funds from Ameren, Peabody, and Kansas City Power and Light, by installing solar panels on your house (with the federal and state rebates solar panels are affordable for many people), and by urging the utility executives to own up to their actions and take a stand for the future.

Kathleen Henry

Board News

Great Rivers extends its condolences to Jim Wilson on the death of his wife, Doris, who passed away in October. Doris was a delightful woman who cheerfully accompanied Jim to all of our events. Our sympathies to you, Jim.

Great Rivers Environmental Law Center *Lawyers for the Environment*

(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.

Founding President

Lewis C. Green
(1924 - 2003)

Board of Directors

Richard D. Lageson, Chairman
Joyce Armstrong
David R. Bohm
Beatrice Clemens
Kay Drey
Wayne Goode
Louise Green
Roger Hershey
Nancy Kistler
Ron Kucera
Matthew P. McCauley
Ken Midkiff
Cathy Primm
John A. Rava
Thomas Sager
Ben Senturia
James Shrewsbury
James J. Wilson

Staff

Kathleen Green Henry, President
Bruce A. Morrison, General Counsel
Henry B. Robertson, Staff Attorney
Brook A. Spear, Staff Attorney
Dorothy Roberson, Office Manager

Advisory Law Committee

Richard D. Lageson, Chairman	Francis Oates
Charles R. Abele	Stephen Reynolds
Timothy V. Barnhart	John G. Roach
David R. Bohm	Sharon Turlington
Richard L. Constance	Deborah Wafer
Maurice B. Graham	Patricia L. Wendling
Elkin L. Kistner	Doug Williams
Hugh R. Law	

Office Address

705 Olive Street, Suite 614
St. Louis, MO 63101
(314) 231-4181
(314) 231-4184 (facsimile)
e-mail: khenry@greatriverslaw.org
Website: www.greatriverslaw.org

GREAT RIVERS' FLOODPLAINS AND WETLANDS PRESERVATION PROGRAM

Great Rivers Files Suit Against U.S. Army Corps of Engineers over the Corps' Failure to Release Documents Relating to Mississippi River Wetlands Developments

On behalf of the **Missouri Coalition for the Environment**, Great Rivers Environmental Law Center filed suit in federal district court in Washington, D.C., on September 23, 2013, against the U.S. Army Corps of Engineers over the Corps' failure to release any information relating to several permits the Corps issued allowing permit applicants to destroy wetlands of the Mississippi River Basin.

The Missouri Coalition for the Environment ("MCE") seeks the documents in order to determine whether the permit applicants who were allowed to destroy wetlands actually followed through on their promises to preserve, restore and create compensatory wetlands to replace the public resources that were taken.

MCE filed requests for documents from the Corps under the Freedom of Information Act ("FOIA") in June, July and August of 2013. The Corps released **none** of the documents. "The Corps is required by law to release these documents," said Brook Spear, Great Rivers' attorney for MCE. "People have the right to see whether permit applicants are preserving, restoring and creating the wetlands they say they will."

The Mississippi River is one of America's most endangered rivers, having lost almost all of its wetlands and floodplains to development as well as being the dump for many industrial pollutants.

The Corps' officials responsible were furloughed during the shutdown, causing the trial court proceedings to be delayed.

Great Rivers Works to "Halt the Rapid Loss of Wetlands" in the Mississippi River Corridor

Stop the New Madrid Floodway Project

Great Rivers continues its work against a U.S. Army Corps of Engineers' project that will be a colossal waste of taxpayer funds as well as highly destructive to the environment. The New Madrid Floodway project will waste \$165 million and close the last remaining connection the Mississippi River has to its floodplain in the state of Missouri, increase the potential for flooding in a dozen communities and harm fish and wildlife through the central portion of the Mississippi River. The

U.S. Fish and Wildlife Service is against the project, saying it would cause "substantial...losses of nationally significant fish and wildlife resources." The Environmental Protection Agency stated that the project "could potentially have the largest negative impact on wetlands and streams of any project ever proposed in Region 7."

The significance of this area to wildlife cannot be overstated. The Fish and Wildlife Service says, "About 40,000 ducks (90 percent mallards) and 10,000 Canada geese use the periodically flooded areas of the St. Johns Bayou/New Madrid Floodway project area in late winter. [A]n average of 31 percent (15,400) of Missouri's wintering Lower Mississippi River Valley mallard population occur... in this area... Estimates of duck numbers migrating to southeast Missouri and northeast Arkansas range from 5-9 million... Hundreds of thousands of dabbling ducks (i.e., mallard, gadwall, green and blue-winged teal, northern pintail, American wigeon, shoveler, and American black duck), coots, and geese have been observed at the proposed project area. Wetlands available during these periods provide habitat to maintain birds in peak condition prior to winter and, even more importantly, provide essential dietary components to prepare mallards for reproduction in the spring."

There is no replacement for these wetlands that will perform the same ecological functions.

The deadline for comments is November 25, 2013. Great Rivers is bringing to light the deficiencies in the Corps' plan concerning the economic impacts, habitat destruction and impossibility of mitigating the loss of these resources.



Photo by Alan D. Wilson, www.naturespicsonline.com

The Blue-Winged Teal depends on the Mississippi River wetlands for survival

Great Rivers Files Suit against the U.S. Army Corps of Engineers over the Corps' Refusal to Release Documents Relating to the Flanagan South Tar Sands Pipeline

On behalf of the **Missouri Coalition for the Environment**, Great Rivers Environmental Law Center filed suit in federal district court in Washington, D.C., on August 16, 2013, against the U.S. Army Corps of Engineers over the Corps' failure to release **any information** on the proposed Flanagan South pipeline which will carry diluted bitumen, or "dilbit," across the entire state of Missouri.

According to the Corps' estimates, it has over 50,000 pages of documents relating to the Flanagan South pipeline, yet the Corps refused to give the Coalition even one page of documents until after construction had started on the pipeline.

The Freedom of Information Act requires governmental agencies to release documents to the public. Government is supposed to operate with transparency. Yet the Corps acted in this case as if it was beholden only to the large multi-national corporation Enbridge, the company building this pipeline.

The Flanagan South pipeline is a competitor of the Keystone XL. Flanagan South is the portion of a pipeline that runs from Flanagan, Illinois, southwest of Chicago, to the company's terminal in Cushing, Oklahoma. The entire pipeline will carry dirty diluted bitumen from Alberta, Canada to refineries in the Midwest and Gulf Coast. Keystone will carry 830,000 barrels a day; Flanagan South will carry 600,000 a day initially and then 783,000 a day once it is combined with the Spearhead pipeline, an existing pipeline that runs parallel to the route of the proposed Flanagan South pipeline. The Flanagan South portion does not cross an international border, and does not need State Department approval as does Keystone XL.

Noted environmentalist Bill McKibben, quoting climate change scientist James Hanson, stated that the Keystone XL will be "game over for the climate" if it is built; the same is true for Flanagan South. The reason is that, "the pool of carbon up there in Alberta is the second biggest pool of carbon on the planet, after only the oil fields of Saudi Arabia. We can't burn

it if we're serious about climate change. It's got to stay in the ground." The process of extracting this oil from shale and from tar sands releases in and of itself, independent of the ultimate burning of oil and gasoline, massive amounts of carbon dioxide.

With the three new reports about climate change that came out in October, 2013, it is obvious that if we want to try to maintain a habitable planet, we must leave the oil in the ground. However, this is unlikely to happen given that government seems determined to let the planet become uninhabitable.

Great Rivers Files Suit against Missouri's Joint Committee on Administrative Rules, Governor Nixon, the Public Service Commission and the Secretary of State over the Joint Committee's Improper Rewriting of Proposition C, the Renewable Energy Law

On August 19, 2013, on behalf of the **Missouri Coalition for the Environment, Missouri Solar Applications**, and **Thomas J. Sager**, Great Rivers filed suit in St. Louis County against the Joint Committee on Administrative Rules (JCAR), the Public Service Commission, Secretary of State and Governor, alleging they all played a role in thwarting the proper implementation of the state's Renewable Energy Standard law, passed by voters in the 2008 election as Proposition C. Several members of JCAR have ties to the American Legislative Exchange Council, a conservative group that drafts pre-packaged bills for state legislatures and fails to realize that climate change is serious.

Proposition C, the renewable energy law passed overwhelmingly in 2008 by Missouri voters, requires the state's investor-owned utilities, including Ameren Missouri, Kansas City Power & Light, and Empire District Electric Company, to ramp up their use of renewable energy to at least 15% of the power they sell to their Missouri customers by 2021. Plaintiffs contend that Missouri's Secretary of State failed to publish key provisions of the regulation, allowing utilities to escape building new renewable energy generation and comply instead by buying pieces of paper called "renewable energy credits" from solar and wind projects in faraway places like California.

ENERGY PROGRAM

Plaintiffs argue that the Secretary of State should have published the full rules sent to it by the Public Service Commission, and should not have left out two key paragraphs that JCAR voted to disapprove in 2010. Furthermore, plaintiffs argue that JCAR lacked the authority to interfere with the publication of the Public Service Commission's rules. Great Rivers' attorneys Bruce Morrison and Lewis Green won a similar case on behalf of the Coalition in 1997 when the Missouri Supreme Court ruled that JCAR cannot block the publication of state agency rules.

"Missouri voters voted overwhelmingly for renewable energy in Missouri," said plaintiff Tom Sager.

"Missouri legislators, against the will of the voters, seek to illegally obstruct the development of renewable energy in Missouri. This obstructionism cannot be tolerated."

"JCAR violated the Missouri Constitution when it removed these provisions," said Henry Robertson, a Great Rivers attorney representing the plaintiffs. "The Secretary of State and Public Service Commission signed off on JCAR's unconstitutional action. The missing provisions must be reinserted into the law according to the will of the people."

In their lawsuit, plaintiffs ask the court to declare JCAR's removal of the provisions illegal and restore the law as written and passed by Missouri voters.

Renewable Energy Complaints Proceed through Public Service Commission against Electric Utilities

Under the Renewable Energy Standard (Proposition C) passed in 2008, by 2011 the electric utilities should have been getting a modest 2% of their energy from renewable sources, but they have found ways to dodge the law, like using 100-year-old hydroelectric projects instead of building new wind farms. Empire District Electric even sneaked a bill through the legislature before Prop C passed that would exempt Empire alone from having to use any solar energy.

In January we filed cases (complaints) in the Public Service Commission on behalf of the **Missouri Coalition for the Environment**, the **Missouri Solar**

Energy Industries Association, Wind on the Wires, The Alternative Energy Co., StraightUp Solar and **Missouri Solar Applications** arguing that Ameren Missouri, Kansas City Power and Light, and Empire District are flouting the law through tortured interpretations that make a mockery of the voters' intent. We filed written pleadings, conducted arguments and are waiting for the Public Service Commission's decision on the complaints. No matter which side wins at this stage, there will undoubtedly be an appeal to the courts over this.

Why Is This Issue Critical?

According to the U.S. Energy Information Administration, as of July 2012, Missouri gets 82% of its electricity from coal. This is disgraceful in light of the seriousness of global warming. Missouri utilities need to own up to the reality that their conduct is destroying the planet and quickly implement solar and wind. Since they refuse to change their destructive ways, it is up to you—the consumer, shareholder and advocate—to put solar panels on your roof, divest from these companies, and urge the officers of the companies to build wind and solar generators because people alive today as well as future generations depend on immediate action.



All over the world, including in America, lakes and rivers are drying up. The World Preservation Foundation states that groundwater wells for 3 billion people are drying up. Rivers and lakes drying up in the United States include the Rio Grande, Lakes Michigan, Huron and Superior.

Photo by Vinod Panicker

AIR QUALITY PROGRAM

In addition to the three reports that came out in October that dealt with climate change, also in October the World Health Organization's cancer agency (International Agency for Research on Cancer) issued a report officially classifying air pollution as carcinogenic. Air pollution is already known to raise risks for respiratory illnesses and heart diseases; the International Agency added to those effects lung and bladder cancer.

Great Rivers Environmental Law Center Files Suit Over Asphalt Plant in Kansas City Area

On behalf of **Concerned Citizens for Air (CCA)** and the **City of Grandview, Missouri ("Grandview")**, Great Rivers Environmental Law Center filed suit in Jackson County, Missouri, on October 11, 2013. The lawsuit asserts that the Ideker asphalt plant located adjacent to Grandview at 5600 E. MO 150 Highway in Kansas City, MO, emits pollutants, including nitrogen oxides and fine particulate matter, at levels which exceed safe limits. These pollutants are associated with serious respiratory

ailments and other health issues, especially for children and the elderly. Two elementary schools are located within 4,000 feet of the asphalt plant.

The plant's original permit was issued in June of 2012 by the City of Kansas City, acting as agent for the Missouri Department of Natural Resources (MoDNR). Since then, air quality experts have found emissions which exceed air quality standards.

"MoDNR now is poised to issue another permit for the asphalt plant which fails to meet air quality requirements, putting at risk the health of children and adults living, working and attending school around the plant," said Bruce Morrison, Great Rivers' General Counsel.

The lawsuit asks for the Court to issue a temporary restraining order halting issuance of the new permit and for the Court to decide if the government's review of the permit application complied with EPA rules and regulations.

ENVIRONMENTAL JUSTICE PROGRAM

The Environmental Protection Agency defines Environmental Justice as: "The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work."

Great Rivers Files Comments with the Missouri Department of Natural Resources telling the DNR to Require North St. Louis Businesses to Clean Up their Emissions

The people in North St. Louis do not enjoy the same degree of protection from environmental and health hazards as do the people in suburbs of St. Louis. Great Rivers is investigating many businesses that emit pollutants with the goal of decreasing the emissions.

In July 2013, Great Rivers submitted comments addressing deficiencies in the stormwater permit of a metal recycling facility, Grossman Iron & Steel, on behalf of **North St. Louis residents**, the **Missouri Coalition for**

the Environment and the **Old North St. Louis Restoration Group**. Grossman Iron & Steel uses a giant mega-shredder to dismantle scrap metal. It accepts auto bodies, demolition and industrial scrap, motor blocks, appliances, aluminum, copper, nickel alloys, zinc and tin. When these materials are processed through the mega-shredder, huge plumes of metal-containing particulate matter such as arsenic, lead, cadmium, Freon, manganese and nickel, are released into the air. These particles accumulate on the land and can be washed away by stormwater or leach into the ground. Great Rivers requested stricter effluent limitations for pollutants typically found at scrap metal recyclers.

In September 2013, Great Rivers submitted comments addressing deficiencies in Beelman River Terminals' stormwater permit on behalf of **North St. Louis residents** and the **Missouri Coalition for the Environment**. Beelman River Terminals moves all sorts of commodities from barges to land transportation. People unload from barges large piles of coal, salt and scrap metal. These piles are exposed to stormwater, causing harmful pollutants to drain into the Mississippi River. Beelman River Terminals emits chloride, oil & grease, pH, aluminum, copper, iron, lead and zinc. Great Rivers requested the Missouri Department of Natural Resources to require stricter limitations for pollutants. Great Rivers is waiting for the DNR's response.

**Great Rivers Environmental Law Center
Presented Lewis C. Green
Environmental Service Awards to Steve
Mahfood and St. Louis Public Radio**

On September 29, 2013, Great Rivers Environmental Law Center presented its Lewis C. Green Environmental Service Awards to Steve Mahfood and St. Louis Public Radio at its 8th Annual Awards Party. Steve Mahfood is the former director of the Missouri Department of Natural Resources and serves on the boards of several environmental nonprofit organizations. St. Louis Public Radio has continuously aired programs about environmental and public health problems in the St. Louis area. Great Rivers presents this award annually to individuals or programs that have shown long-time commitment to the preservation of the environment.

Great Rivers honored Mr. Mahfood and St. Louis Public Radio at a party at the Bluffs on Broadway on September 29, 2013. The Board of Directors also recognized Louise Green for her eleven years of service on the Great Rivers Board and her leadership in ensuring that Lewis C. Green's intentions for Great Rivers were followed.

The Bluffs is a house that is located just south of downtown St. Louis and offers spectacular views of the Mississippi River and contains intriguing art pieces. Over 100 guests enjoyed the fabulous views, delicious food and cocktails at the Bluffs.

The award is named after the founder of Great Rivers Environmental Law Center, the late Lewis C. Green, a leading environmental litigator in Missouri for many decades.



Steve Mahfood



View from the top of the Bluffs

**Great Rivers Environmental Law Center
Held its Spring Cocktail Party
at the Busch Family Mansion**

In May, 2013, Great Rivers held its annual Spring Cocktail Party at the Busch Family Mansion. Over 230 people enjoyed hearing Trudy Busch Valentine recount adventures of growing up in the Mansion and discussing her sustainability initiative. Also, they enjoyed fine food, drinks, music provided by the St. Louis Classical Guitar Quartet, and seeing a Clydesdale up close.

Great Rivers extends its sincere appreciation to Adolphus Busch and Trudy Busch Valentine for their generosity in making this event possible.



The St. Louis Classical Guitar Quartet and a Clydesdale

**Great Rivers Extends its Appreciation
to All of its 2013 Donors**

We could not provide legal services without your help, as we are dependent on contributions from individuals and foundations to do our work. We will list our donors for the year 2013 in the Spring 2014 newsletter in order to list everyone for the year at one time.

CONSIDER BEQUESTS OR PLANNED GIFTS TO GREAT RIVERS ENVIRONMENTAL LAW CENTER

BEQUESTS

A Gift in Your Will or Trust can Create a Lasting Legacy

You can leave a gift to Great Rivers by including language in your will or trust leaving a portion of your estate to Great Rivers or by designating Great Rivers as a beneficiary of your retirement account or life insurance policy.

PLANNED GIFTS

By making a planned gift, you can make a significant contribution to Great Rivers while gaining financial and tax advantages for your family. Planned gifts can be made through securities, IRA Rollovers, and charitable lead trusts. People 70½ or older at the time of transfer can make a 2013 qualified charitable rollover until December 31, 2013. We would be happy to speak to you and your tax advisor about any of these gifts.



Image courtesy of Grant Cochrane at FreeDigitalPhotos.net.

RETURN SERVICE REQUESTED

www.greatriverslaw.org
(314) 231-4184 phone
(314) 231-4184 fax

705 Olive Street
Suite 614
St. Louis, MO 63101

Environmental Law Center
Lawyers for the Environment



Nonprofit
Organization
U.S. Postage
PAID
St. Louis, MO
Permit No. 0257