

GREAT
RIVERS



Fall 2014

REPORTER

Great Rivers Environmental Law Center

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GREAT RIVERS' ENVIRONMENTAL JUSTICE PROGRAM CONTINUES ITS FOCUS ON NORTH ST. LOUIS

Low-Income Area Bears Disproportionate Share of Environmental Harm



A metal shredder operation is located less than a mile from houses in North St. Louis.

Letter from the President:



The Sixth Mass Extinction Presents Enormous Challenges

In May 2014, the journal *Science* published a study showing that human activity has driven current rates of species extinction to 1,000 times faster than the natural rate. The study, led by conservation expert Stuart Pimm, also warns that without drastic action, the sixth mass extinction could be imminent. From habitat loss to invasive species to climate change to overfishing, humans are contributing to the plummet in biodiversity.

Elizabeth Kolbert's book, "The Sixth Extinction: An Unnatural History," also published this year, makes clear that if we continue with business as usual, human beings will become an endangered species and eventually extinct. Kolbert points out that the concentration of carbon dioxide in the atmosphere is the highest it has been in at least 800,000 years and the rate of warming is ten times faster than in previous interglacial periods, meaning far too fast for a great many species to migrate or adapt. There is also explosive human population growth and man's transformation of more than half the planet's habitable landscape, destroying and fragmenting habitats, all leading to the extinction of more species in a shorter period of time than ever before.

Great Rivers works to ensure that future generations have a healthy and ecologically diverse environment in which to live. It is outrageous that our state still relies on the burning of coal for 80% of its energy. Solar, wind and energy efficiency technologies are being used to a much greater extent by other states. Ameren Missouri, Empire District Electric Company, Kansas City Power and Light, the Public Service Commission, and elected officials all must do their part to help save our species—the fight has come closer to home and humankind is at risk.

We thank our donors who understand this and make our work possible.

Kathleen Henry

Board News

We wish Board Member Beatrice Clemens a speedy recovery from her chemotherapy and radiation treatments.

Great Rivers Environmental Law Center *Lawyers for the Environment*

(a 501(c)(3) tax-exempt nonprofit corporation)

Mission Statement

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

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(1924 - 2003)

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GREAT RIVERS' ENVIRONMENTAL JUSTICE PROGRAM TARGETS NORTH ST. LOUIS

Crown Candy Kitchen is in the part of North St. Louis called Old North, and the adjacent neighborhood is Hyde Park. The residents of these neighborhoods experience decreased life expectancy, as well as increased risk of asthma, hospitalizations, cancer and chronic conditions, because they are exposed to disproportionate environmental harm. Children especially are susceptible to illness caused by breathing in pollutants. Because these neighborhoods are mostly low-income, minority populations, this area has been condemned to environmental injustices, as polluters tend to settle where people have limited resources to resist them.

Great Rivers became involved with seeking environmental justice for North St. Louis in the summer of 2011, after identifying different sources of pollution that affect North St. Louisans' air quality by emitting particulate matter, sulfur dioxide, lead and other pollutants. Since then, we have been examining permits that allow companies to emit pollutants, examining the emissions reports, and engaging the community in urging the Missouri Department of Natural Resources to implement stronger protections for air and water quality.

North St. Louis should not be a dumping ground. The residents who live there should not have to breathe in pollutants that would not be acceptable to other communities.

GREAT RIVERS' WETLANDS PRESERVATION PROGRAM

Great Rivers Continues to Work to Stop Environmental Catastrophe and Taxpayer Boondoggle in the Mississippi River Corridor—the New Madrid Floodway Project

The New Madrid Floodway project will waste \$165 million in federal taxpayer dollars 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. **Great Rivers**, along with the **National Wildlife Federation**, **Kentucky Waterways Alliance**, **Missouri Coalition for the Environment**, **Missouri Parks Association** and **Sierra Club** continue their work to put an end to this wasteful project.

Great Rivers Works to Stop Harmful Practices the Corps of Engineers uses in the Mississippi River



The Upper Mississippi in Iowa

On behalf of the **National Wildlife Federation**, **Great Rivers Habitat Alliance**, **Minnesota Conservation Federation**, **Missouri Coalition for the Environment**, **Prairie Rivers Network**, and **River Alliance of Wisconsin**, Great Rivers is serving as co-counsel in a lawsuit filed in May, 2014, against the U.S. Army Corps of Engineers ("the Corps") over its Operation and Maintenance activities for the Upper Mississippi River Navigation System ("O&M activities"). These O & M activities occur in portions of the Upper Mississippi River Navigation System which include the Mississippi River north of Cairo, Illinois, the Illinois River, and portions of smaller tributary rivers. The O&M activities include construction of river training structures such as wing dikes, bendway weirs, and chevrons. The Corps claims they are necessary to keep the river deep enough for navigation.

The Corps' activities have heightened flood risks throughout the region and have thoroughly transformed the Upper Mississippi River system to the detriment of wildlife and their habitat.

GREAT RIVERS' CLIMATE CHANGE, ENERGY,

Missouri Supreme Court Takes Up Solar Rebate Issue

On September 18, 2014, Great Rivers' attorney Henry Robertson argued a case before the Missouri Supreme Court. The dispute began in 2008 when voters passed the renewable energy law that Great Rivers drafted, Proposition C. That law required state-regulated utilities to obtain 2% of their energy from solar and offer a rebate to customers who installed their own solar panels. Empire District Electric Company, the regulated utility which provides electric service to 207,000 customers in southwest Missouri, sneaked a bill through the legislature that exempted Empire only from the requirements—before Prop C even passed.

Great Rivers filed suit on behalf of solar installers in 2010. After failing to get relief in either Cole County Circuit Court or the PSC, Great Rivers appealed to the Missouri Supreme Court on behalf of **Renew Missouri**.

At the oral argument before the Supreme Court, (which is available to the public on the website: <http://www.courts.mo.gov/page.jsp?id=1977>), the Court's concern with the initiative process was evident. Voters enacted a law that was supposed to apply to all utilities equally, and the legislature thwarted their purpose.

"We're not going to be shoved into solar if it doesn't make sense," Brad Beecher, then an Empire vice president, was quoted as saying in the *Joplin Globe* on July 19, 2008. Beecher is now the company's chief executive.

There is nothing that doesn't make sense about solar energy. Utilities can profit from solar. The fuel is free. Empire thinks it has the right to overrule the will of 66% of the voters who chose renewable energy.

Great Rivers Continues other Litigation to Enforce Prop C

You might think utility company executives in Missouri live in a bubble. Do they not realize that coal emits carbon dioxide, and that the levels of CO₂ are dangerously high? Missouri regulated utility companies are wedded to coal to maintain their profits, regardless of the public interest and the will of the voters.

A year ago we filed suit on behalf of the **Missouri Coalition for the Environment, Missouri Solar Applications, and Thomas J. Sager** against the legislature's Joint Committee on Administrative Rules, 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.



Nearly 400,000 people marched at the People's Climate March in New York City on September 21, 2014, to demand action on climate change. The people get it; the time for our governmental officials, regulated utilities and coal and gas companies to take action is long overdue.

We argue that Missouri's Secretary of State failed to publish key provisions of the regulation. The result is that the utilities don't have to provide any renewable electricity to Missouri but can simply buy pieces of paper called "renewable energy credits" from solar and wind projects in faraway places like California. On July 28, 2014, the trial court denied the defendants' motion to dismiss the case.

Great Rivers Continues Fighting Asphalt Plant in the Kansas City Area

On behalf of the **Concerned Citizens for Air**, a citizens' group in Grandview, Missouri, and the **City of Grandview**, adjacent to Kansas City, Great Rivers continues its work in litigation to stop an asphalt plant from being permanently located in an area close to two elementary schools. We argue that the plant should not be built in such a populated area and urge the Missouri Department of Natural Resources to deny the permit.

Great Rivers Backs Wind Transmission Line

On behalf of the **Missouri Sierra Club**, Great Rivers is supporting the application of Grain Belt Express ("GBE") in the Public Service Commission to build a high-voltage direct current ("HVDC") transmission line to bring wind energy from Kansas to Ameren Missouri's territory.

CLEAN AIR AND PUBLIC HEALTH PROGRAMS

Because direct current (“DC”) is not easily converted to traditional alternating current (“AC”), a DC transmission line can serve as a wind-only corridor from western Kansas, where wind is strong, to the populous demand centers of the east. The GBE will run to Indiana, but will make 500 megawatts of wind energy available in Missouri.

A transmission line is not something Great Rivers or the Sierra Club would ordinarily support, but the importance of renewable energy in the fight against climate change makes this stance imperative, if controversial.

Great Rivers Litigates a Third Case Arising from the Renewable Energy Standards Act

Prop C required utilities to pay solar rebates. The solar rebates serve to offset a portion of solar energy project costs which otherwise would be incurred by the utilities’ customers who install solar energy projects, and, thereby, serve as an incentive to encourage the use of solar energy in Missouri which in turn serves to reduce the dependency of Missouri residents on the use of fossil-fuel sources of electricity. In 2013, in House Bill 142, the General Assembly amended §393.1030.3, the Renewable Energy Act, to impose a phase-down for the utilities’ payments of solar rebates and also enacted a cap on the amount of solar rebates that the utilities are required to pay in any calendar year.

The Public Service Commission (“PSC”) adopted a rule which establishes a methodology to determine when a utility may cap its solar rebates.

Based upon the PSC’s methodology, in November 2013, the PSC entered Orders capping the solar rebates issued by Ameren Missouri, Kansas City Power & Light, and Kansas City Power & Light-Greater Missouri Operations. The orders effectively have ended the solar rebates called for in Proposition C.

Great Rivers represents the **Missouri Coalition for the Environment (“MCE”)** in its suit against the Public Service Commission in the trial court in Jefferson City, arguing that the methodology the Public Service Commission used to calculate the cap is unlawful, and serves to significantly understate the amount of solar rebates that should otherwise be paid under §393.1030.3.

MCE and SOLAR (“Save Our Lawfully Authorized Rebates”) request the court to declare that the regulated utilities must continue to pay solar rebates, and must pay solar rebates that otherwise should have been paid.

It is disgraceful the utilities think the collapse of the planet won’t affect them and their families. The utilities should be running towards solar, wind and efficiencies instead of spending millions to defeat them.

Great Rivers Fights Another Dirty Energy Source: Nuclear Power

Even though nuclear power does not emit carbon dioxide, it produces wastes that can cause cancer for thousands of years. We still do not know how to dispose of the first cupful of waste, even though industry and governments have been promising solutions for over seventy years.



Photo courtesy of Beyond Nuclear

In 2012, Ameren Missouri requested a renewed license to operate its nuclear power plant in Callaway County, Missouri for another 20 years, although the original license doesn’t expire until 2024. But before the NRC could grant the relicensing, a federal court ordered it to revisit its “waste confidence” rule in light of the government’s failure to provide a safe long-term depository for power plant wastes. Without making

necessary safety findings, the NRC revised its rule to allow continued on-site storage of used nuclear fuel.

Seventeen nonprofit organizations from all across the nation, including the **Missouri Coalition for the Environment**, are challenging the NRC’s new rule; Great Rivers is serving as local counsel in the effort.

GREAT RIVERS' LAND USE PROGRAM

Great Rivers Wins in St. Louis County - Olivette Must Place Parks Measure on November Ballot

Last spring, Great Rivers helped citizens in Olivette start a petition drive for an amendment to the City charter that would prevent the City from disposing of or building on public park land without a vote of the people. The petition drive was sparked by the City's plan for private development in the City's largest park, 29-acre Warson Park. The plan calls for a 3.4 acre building with three ice-skating rinks and space for sports medicine offices, 750 additional parking spaces, and two artificial turf fields for soccer and lacrosse.



Photo of Warson Park courtesy of SaveWarsonPark.com

The St. Louis County Board of Elections certified that the initiative petition obtained enough valid signatures to qualify for the ballot. But at the August 12 City Council meeting, the citizens learned that the Council was not going to put it on the ballot. They appealed to Great Rivers. The final day to get the amendment on the ballot was August 26.

On August 21, 2014, Great Rivers' attorneys Bruce Morrison and Henry Robertson filed suit in the St. Louis County Circuit Court and managed to get a hearing on the morning of the 26th. We argued that the City had defied the duty imposed on them by the Missouri Constitution to provide "at once" by ordinance for submission of the amendment to the voters. The Circuit Court agreed with Great Rivers and ordered the City to put the measure on the November ballot.

"Local governments tend to underestimate the value their residents place on open space," said Robertson. "The City wants revenue from development, but it has to appreciate the intangibles."

Great Rivers Files Suit on Behalf of Citizens to Stop Concrete Plant from being Built Across Street from Shaw Nature Reserve

Citizens Ask Trial Court to Overturn Franklin County Board of Zoning Adjustment

On August 21, 2014, Great Rivers filed suit on behalf of the **Concerned Citizens Against Landvatter Ready Mix** and a concerned citizen, in the Franklin County Circuit Court, asking it to overturn the Conditional Use Permit issued by the Franklin County Board of Zoning Adjustment allowing a developer to build a concrete plant on land across the street from the world-renowned Missouri Botanical Garden's Shaw Nature Reserve.

Landvatter Ready Mix, Inc. proposes to build a ready-mix concrete plant on tree-covered hills just 600 feet from the Nature Reserve in Franklin County. There are houses and apartments in the area in between the Nature Reserve and the proposed plant. The homeowners believe the proposed plant will cause them to breathe in dust, suffer from noise and increased traffic, and that the wildlife, fishes, birds, flora and fauna in the Nature Reserve will also suffer from the plant.

In their appeal to the Circuit Court, the citizens argue that the conditional use permit is invalid because it violates Franklin County zoning codes and Missouri state law since the proposed concrete plant endangers public health and safety, decreases the value of adjoining property, is not in harmony with the area in which it is located, and is not in conformity with the Franklin County Master Plan.

Kelly Brothers, a resident whose house sits right in between the Nature Reserve and the proposed concrete plant, said, "This concrete plant should not be built here. Our property values will plummet. The wildlife and birds that depend on the Nature Reserve will suffer."

The citizens request the Franklin County Circuit Court to reverse the decision of the Board of Zoning Adjustment.

We are waiting for the trial court's decision.

Great Rivers Environmental Law Center Presented Lewis C. Green Environmental Service Awards to Dr. Jeffrey Bonner, CEO of the St. Louis Zoo



On October 5, 2014, Great Rivers Environmental Law Center presented its Lewis C. Green Environmental Service Award to Jeffrey Bonner, Ph. D., Dana Brown President and CEO of the St. Louis Zoo, at its 9th Annual Awards Party. Great Rivers presents this award annually to individuals or programs that have shown long-time commitment to the preservation of the environment.

In April 2002 Dr. Bonner was appointed President & CEO of the Saint Louis Zoo. In 2009 his position was endowed by the Dana Brown Charitable Trust. Under Dr. Bonner's leadership, the St. Louis Zoo has developed a new conservation education program and focused its field conservation initiatives under a single WildCare Institute—a force for saving animals across the globe. In Missouri, the Institute has reintroduced endangered Ozark Hellbenders and American burying beetles and begun working to save pollinators and river turtles.



Dr. Bonner has chaired the Association of Zoos and Aquariums, the Amphibian Ark, the International Species Information System and the Madagascar Fauna and Flora Group. He has served on the board of the World Association of Zoos and Aquariums and currently serves on several boards, including the Conservation Breeding Specialist Group, BioSTL, Higher Education Channel TV, Forest Park Forever and St. Louis Regional Chamber of Growth Association (RCGA). He is a member of The Explorers Club, the Academy of Science, FOCUS St. Louis and the Association of Zoos and Aquariums. In addition, he is a steering committee member of the Eisenhower Fellowships—a private, non-profit, non-partisan organization created in 1953 to honor President Dwight D. Eisenhower. Dr. Bonner received his Ph.D. from Columbia University in New York. He is a Burgess Fellow, Traveling Fellow, Fulbright Scholar, President's Fellow and a recipient of the National Research Service Award. He is the author of numerous articles and books, including *Sailing with Noah*, *Stories from the World of Zoos*.

Great Rivers honored Dr. Bonner at a party held on a replica of a riverboat at the estate of David Mesker, on the Missouri River. Over 100 guests enjoyed the fabulous views, delicious food, cocktails, and ragtime music performed by Vera Parkin, a keyboardist with the St. Louis Symphony.



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.

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

In May, 2014, Great Rivers held its annual Spring Cocktail Party at the Busch Family Mansion. Over 100 people enjoyed the beautiful Mansion and grounds, and fine food and drinks. The Community Music School of Webster University Prep Program provided classical string musicians and people got to get up close to a Clydesdale.

Great Rivers extends its sincere appreciation to Adolphus Busch for his generosity in making this event possible.

Great Rivers Extends its Appreciation to All of Its 2014 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 2014 in the Spring 2015 newsletter so that we can thank everyone for the year at one time.



There's Still Time!

Donate today and help us meet our goal for 2014! There are many ways to donate to Great Rivers. You can donate through our website, direct mail, AmazonSmiles, or Network for Good. Donate in memory or in honor of someone if you wish. Make a bequest if you like. Since we accept no money from government or corporate polluters, we depend on concerned individuals and foundations. Your gift helps us help others.

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