

GREAT
RIVERS



Spring 2007

REPORTER

Great Rivers Environmental Law Center
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Great Rivers' Victory Paves Way for Historic Settlement that Will Make Air Cleaner and Reduce Global Warming Pollutants



*Photo courtesy of Missouri Conservationist. Copyright 2002 by the
Conservation Commission of State of Missouri. Used with permission.*

**American White Pelicans migrate through the Kansas City area
each Spring and will breathe easier while there in the future.**

**Court of Appeals Sides with Great Rivers and Rules Public
Service Commission Lacked Jurisdiction to Approve
Kansas City Power and Light's Agreement**

Letter from the President:



Tribute to Senator Thomas F. Eagleton (1929-2007)

In 1982, I was fortunate to be offered an internship with Senator Eagleton at his office on Capitol Hill. This was the summer between my junior and senior years of college, and I was very excited to be living in Washington, DC and working on the Hill! The Senator had an extensive environmental record, having been one of the principal sponsors of the Clean Air Act of 1970 and Clean Water Act of 1972. Senator Eagleton allowed me to work on environmental matters, and I researched and wrote an article on acid rain, a relatively new problem. Senator Eagleton had my article read into the Congressional Record, making me proud to be published.

In 2003, my father went to see the Senator who was then living in St. Louis to consult with him about our new nonprofit environmental law firm, Great Rivers Environmental Law Center. Shortly after their visit, my father passed away and Senator Eagleton sent me a note saying that he greatly admired my father. I know that my father felt the same way about the Senator. Senator Eagleton then organized a Tribute Dinner to my father in 2004.

The Senator went on to serve as an Honorary Chair of Great Rivers' Board of Directors and to speak at our Dinners in 2004 and 2006. For such a busy man, it was incredibly gracious of him to devote so much time and energy to Great Rivers.

The Senator was renowned for his humor. The doorman in his building and the Senator traded jokes and the Senator brought the doorman bottles of wine on occasion. Because the Senator was hard of hearing, he and I communicated by email when possible. Although the Senator did not have a computer, he had a very helpful secretary, Karon Hippard, who would patiently type his messages to me. He made sure that she used all capital letters in the words he wanted emphasized, adding much humor to the messages. Last October, he mailed me an envelope containing a Claire McCaskill bumper sticker, with the Senator's characteristic "TFE" scrawled on the envelope as the only identifying mark.

I will greatly miss Senator Eagleton for his wisdom and wit. Great Rivers remains very thankful to him for his early support of our organization. ❖

Kathleen Henry

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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GREAT RIVERS' ENERGY PROGRAM

Great Rivers' Victory in Appellate Court Paves Way for Historic Settlement

Since 2004 Great Rivers attorneys have been representing the Concerned Citizens of Platte County (CCPC) and the Sierra Club in their efforts to stop Kansas City Power and Light (KCPL) from building a new coal-fired power plant (latan2) in Iatan, just north of Kansas City. In 2004, KCPL got leave from the Public Service Commission (PSC) to hold public “workshops” with the aim of building consensus around the new plant. After the workshops, however, KCPL went behind closed doors with a number of parties, primarily other utilities and industrial energy users, but also the Sierra Club and CCPC. The result was a negotiated agreement called a “Stipulation and Agreement,” which allowed KCPL to build the plant with assurances that they could recover the cost from ratepayers; KCPL also made concessions obligating them to do modest amounts of wind generation and energy efficiency.

KCPL hoped to get rubber stamp approval from the PSC by presenting it with a unanimous Stipulation and Agreement. But the Sierra Club and CCPC, alone among the parties, refused to go along. In 2005, the PSC accordingly held a four-day hearing at which Great Rivers represented CCPC and the Sierra Club, but the result was the same — unqualified approval of the whole package by the PSC.

In 2006, Great Rivers appealed the PSC's approval of the plan to the state trial court and again the stipulation was upheld. Later in 2006, we appealed the approval to the state Court of Appeals, Western District, which ruled in our favor on February 27, 2007.

Our appeal focused on the unprecedented procedure of a utility using a stipulation to settle what was, at the time, an uncontested case (the workshop proceedings); we argued the law says that there is nothing to settle until there is a contested case before the Commission. The Court of Appeals agreed that the PSC lacked jurisdiction over a contested case commenced by a stipulation.

Two days after the Court ruled in our favor, KCPL came to the bargaining table, and almost three weeks later, on March 19, Kansas City Power & Light agreed to a landmark settlement that will fully offset the carbon dioxide pollution from its new, coal-burning power plant north of Kansas City. This settlement breaks new ground for utilities in their attempts to deal with global warming in that for the first time a utility is pledging to reduce carbon dioxide pollution.

(Although our suit was settled by the Court's opinion, there were still suits pending against KCPL over the new plant in other courts and handled by other attorneys. The Washington University Interdisciplinary Environmental Law Clinic was handling a case against KCPL over the

Department of Natural Resources' air permit issued to KCPL; a private attorney in Kansas was handling the Sierra Club's suit against the Kansas Corporation Commission for its approval of the same stipulation that the Missouri PSC approved.)

The settlement allows for KCPL to continue building Iatan 2. However, in exchange for this, KCPL made unprecedented commitments to reduce the air pollution from its plants and to offset the 6 million tons of CO₂ Iatan 2 is expected to contribute to global warming over its lifetime. KCPL, the Sierra Club and CCPC agreed to work cooperatively toward the overall goal of reducing KCPL's CO₂ emissions from all their operations to 20% below the 2006 level. KCPL specifically committed to taking the following actions:

- More strictly controlling nitrogen oxide, sulfur dioxide and particulate matter pollution from Iatan and the La Cygne plant in Kansas;
- Adding 300 megawatts of wind power by the end of 2012, on top of the 100 MW it is already installing;
- Implement enough energy efficiency programs for its customers so that there will be the equivalent of 300 MW less power generation;
- Offsetting the remainder of Iatan 2's CO₂ emissions by taking whatever steps may be necessary at other plants, including closing down an existing generator;
- Filing a net metering tariff to allow customers to generate their own electricity and get credit for any power they feed onto KCPL's grid;
- Conducting a study of Montrose, its oldest and dirtiest plant, which could result in retiring it.

KCPL also agreed to several community investments:

- \$180,000 to Kansas City to help implement its Climate Protection Plan;
- \$60,000 for improved monitoring of ozone and particulate pollution in the greater Kansas City area;
- \$100,000 for drinking water infrastructure upgrades in Weston, near Iatan, where water quality could be affected by the new plant.

In an ideal world this plant would not be built, but for the time being coal-fired electricity is legal. This Collaboration Agreement is a step in turning the tide against coal and diverting investment from dirty power to renewable generation, conservation and the efficient use of energy. ❖

GREAT RIVERS' LAND USE PROGRAM

Parks and Floodplains are Under Siege as Cities Seek Revenue

Preservation of Wetlands and Historic Site in Illinois

Currently, the trash from many St. Louisans goes to a landfill just over the Missouri border in Illinois where it is piled in a trash heap on land near the Mississippi River. Waste Management, the trash company that hauls it there, applied for a permit to expand the landfill onto land closer to Cahokia Mounds than the first pile. The City of Madison approved the permit and would receive approximately a million dollars annually in host agreement fees from the company.

On March 13, on behalf of American Bottom Conservancy and the Sierra Club, Great Rivers Environmental Law Center appealed the siting decision to the Illinois Pollution Control Board in opposition to

Waste Management's proposed new North Milam landfill. The organizations contend that the siting process was not "fundamentally fair," a legal term which requires minimal standards including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence. They argue that the decision to approve the landfill was based on information not available to the public and not subject to cross-examination. Additionally, Illinois rules require that a landfill not be located in an area that is incompatible with the character of the surrounding area, and the organizations argue this area is incompatible. ❖

Preservation of Forest Park

Proposition P, the initiative to protect St. Louis City parks from being sold or leased for non-park purposes without a public vote, passed at the April 3 municipal election with 69.72% of the vote. Voter turnout, however, was a pitiful 6.8%. As a result, we anticipate that the margin of victory will not deter a court challenge against the Charter amendment. Great Rivers drafted Prop P for Citizens to Protect Forest Park, and we are prepared to defend it.

City officials, Forest Park Forever and other critics of Prop P have complained that the language of the initiative is so broad that it will require votes on things like the Shakespeare festival in Forest Park and even an old men's pinochle club in Carondelet Park. These claims are wildly exaggerated. We do not yet know when or how the legal challenge will come, but it is clear that the City will not defend its own law. Great Rivers will have to step in. ❖

Preservation of the Katy Trail State Park

In December, 2006, Great Rivers filed its brief in the Missouri Court of Appeals, Western District, on behalf of trail users and the donor of the funds used for creation of the Katy Trail State Park. Great Rivers argued that the trail users and donor have standing to appeal the State's give-away of the Boonville Bridge. In May, 2007, Bruce Morrison argued the case before the Court and the case is now under submission. ❖

Preservation of Buehler Park in Rolla, Missouri

On March 20, 2007, Great Rivers filed its opening brief in the Missouri Court of Appeals, Southern District, for the Citizens to Preserve Buehler Park. Great Rivers argued that the language used in the dedication of the land for park purposes does amount to a legal "dedication." The language states that the land "shall be used for park purposes only and none other...FOREVER." The rest of the briefs will be filed by the end of Spring and the case will be set for oral argument after they are filed. ❖



Brief Update on Other Projects

Energy Issues

Another Coal-Fired Power Plant is Proposed for Missouri

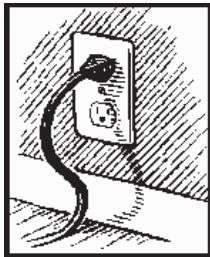
Associated Electric Cooperatives, Inc. (AECI) has plans to build a 660 megawatt coal-fired power plant in Norborne, Carroll County, between Columbia and Kansas City. AECI sought a loan from the U.S. Department of Agriculture's Rural Utilities Service. This triggered the National Environmental Policy Act, and USDA had to issue an environmental impact statement (EIS). In March, 2007, Great Rivers filed comments on the Draft EIS.

Burning coal for electricity is a major source of carbon dioxide, a contributor to global warming. Great Rivers stressed the need for energy conservation and efficiency measures and asked USDA to consider how carbon regulation in the form of a carbon tax or cap-and-trade system will affect the price of electricity fueled by coal.

To its credit, AECI has taken an enlightened view of energy efficiency and is buying the entire output of Missouri's first three wind farms. We hope they can be dissuaded from building the Norborne plant.

Good News for Home Electricity Generators

After an April 25, 2007, meeting with Great Rivers and other parties, it looks as if the Missouri Public Service Commission will simplify matters for utility customers who want to connect home generating units to the utility grid. Congress urged the states to adopt a national standard for interconnecting small systems to the grid. By complying, the PSC will cut through some of the tangled knot of requirements imposed on customer-generators by the utility-sponsored and misnamed Consumer Clean Energy Act of 2002, a state law that calls itself a net metering law but is a wolf in sheep's clothing for homeowners trying to do their part for renewable electricity.



Great Rivers intervened in the PSC proceedings on the federal standard on behalf of a number of groups interested in renewable energy. Great Rivers also drafted a true net metering bill that, as of this writing, has passed committees of both houses of the Missouri legislature, after being watered down slightly in negotiations with the utilities to get their support. Net metering lets customers feed any power they generate in excess of their needs onto the utility grid and get credit for it at the full retail rate.

Evaluation of AmerenUE's Twenty-Year Plan Continues

In December 2005, AmerenUE filed a long-range plan called an integrated resource plan (IRP) as required by PSC rules. Great Rivers intervened along with a number of companies and state agencies. 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 do a whole new plan and to include stakeholders in the process.

Stakeholder meetings are ongoing. Ameren has committed to evaluating energy efficiency programs, renewable power options (especially wind) and the potential costs of future global warming regulation by Congress. ❖

Water Issues

Missouri River Threat Looms

Hudson Bay, Canada, seems a long way from our territory, but Great Rivers filed comments in April, 2007, against a project of the U.S. Bureau of Reclamation and the State of North Dakota to divert water from the Missouri River to the Red River of the North, which is in the Hudson Bay watershed.

The Missouri is in the midst of a seven-year drought, but North Dakota has used inflated claims of future population growth and industrial expansion to justify the diversion. The project is estimated to cost \$700 million, would jeopardize endangered and threatened species like the least tern, piping plover and pallid sturgeon and would risk transferring invasive species to the Hudson Bay watershed. Great Rivers demanded that the State and Reclamation consider water conservation measures and the impacts of global warming on the Missouri.

Fight Over Proposed Levee in Jefferson City Continues

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 submitted the case to the District Judge in the Spring of 2007. ❖

Public Health Issues

St. Louis Asbestos Case Remains in Court

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. ❖

A Glimpse of the Nation's Environmental Law Firms

By Kathleen Henry

When my father founded Great Rivers Environmental Law Center in 2002, he modeled it after Earthjustice, a national nonprofit law firm with eight offices around the country that provides free legal services to those seeking to preserve and protect the environment. We studied another nonprofit law firm, Earthlaw of Denver, Colorado (now part of Earthjustice), and discussed our law center with their attorneys. Today Earthjustice has offices in California, Hawaii, Alaska, Washington, Montana, Colorado, Florida, and the District of Columbia. The Western Environmental Law Center, another nonprofit law firm, has offices in Oregon, New Mexico and Colorado. Another nonprofit law firm, Wildlaw, has offices in Alabama, Florida and North Carolina. There are smaller nonprofit environmental law firms in Wisconsin, South Carolina and Georgia.

In many of these states there are foundations dedicated to preserving the natural resources of their states and these foundations support, in part, the nonprofit environmental law firms located in them. The attorneys at Great Rivers have been told that Missouri represents the "hole of the donut," in the eyes of the large national foundations, as we have no coastal areas nor mountain ranges to protect. We are always trying to change the minds of the large national foundations

and to convince them that Missouri's natural resources are worth supporting too, and that our environmental problems have broad impact, but without connections at the foundations we have limited success.

Each year in March, there is a public interest environmental law conference hosted by the law students in Eugene, Oregon. At that conference environmental attorneys from many of the offices mentioned above congregate to discuss litigation pending in the country. Over 3,000 attorneys and activists from around the world attend. Attorneys and activists can submit ideas for panel discussions and if their ideas are accepted, can make presentations. For the past two years, I have organized and led a panel on coal-fired power plants with attorneys from Kentucky, Colorado and Wisconsin. This conference gives me insight into the other nonprofit environmental law firms around the country and enthusiasm for our causes.

Great Rivers is the only nonprofit environmental law firm in Missouri. We depend on donations from individuals and foundations to sustain us. We are part of a larger picture of attorneys dedicated to preserving the environment through our laws and courts. ❖

Board News

Great Rivers mourns the loss of Board member **James N. Holsen**, who passed away on March 12, 2007. Jim was one of our original and longest-serving board members and brought a wealth of experience on a wide-range of environmental issues to our Board. Jim was always willing to help in whatever way he could. He approached his work with humor and optimism. In the six years that the Great Rivers board of directors has been meeting, Jim has always been either present at the meeting or available for consultation afterwards. We will miss him in the months and years ahead.

Great Rivers welcomes **David Bohm** to our Board of Directors. David is an attorney in St. Louis practicing employment discrimination and intellectual property law with the firm of Danna McKittrick. Prior to that, he was a City Counselor for six years. David serves on the boards of several nonprofits in Missouri and we are fortunate to be able to count him as a board member. ❖

Kansas City Jazz Benefit, April 2007

Jazz saxophonist Bobby Watson performed for a crowd of 60 people in Kansas City in April at a cocktail party benefiting Great Rivers and the Sierra Club. Michael Henry and Terry Anderson graciously opened up their home for the event.



Michael Henry and Terry Anderson with Casey and Foster in front of their home in Kansas City.



The crowd thoroughly enjoyed the music of Bobby Watson.

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

Contributions received October 2006 – April 2007

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- John Rava and the Rava Family**
Larry Carp

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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:

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

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. On March 30, 1927, the eastern **bluebird** (*Sialia sialis*) became the official state bird of Missouri. The bluebird, considered a symbol of happiness, is usually 6 1/2 to 7 inches long. While its upper parts are covered with light blue plumage, its breast is cinnamon red, turning rust-colored in the fall. The bluebird is common in Missouri from early spring until late November. (RSMo 10.010.)

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- Andy Fromm & Laurie Bomba
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Pedro's Planet

MATCHING CONTRIBUTIONS

- Recreational Equipment, Inc.**
Susan Rice
St. Paul Travelers Foundation
Kenneth Shorney

SAVE THE DATE!

September 27, 2007

for the annual Lewis C. Green Environmental Service Awards Dinner
with a special Tribute to the late Honorable Thomas F. Eagleton (1929-2007).

Recipients of the 2007 awards are:

Kay and Leo Drey

and

**Operation Clean Stream, Robert Rubright,
Chairman of the Board of the Open Space Council**

Top of the Met
Downtown, St. Louis

6:00 p.m.

The Courthouse Steps will provide entertainment.

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