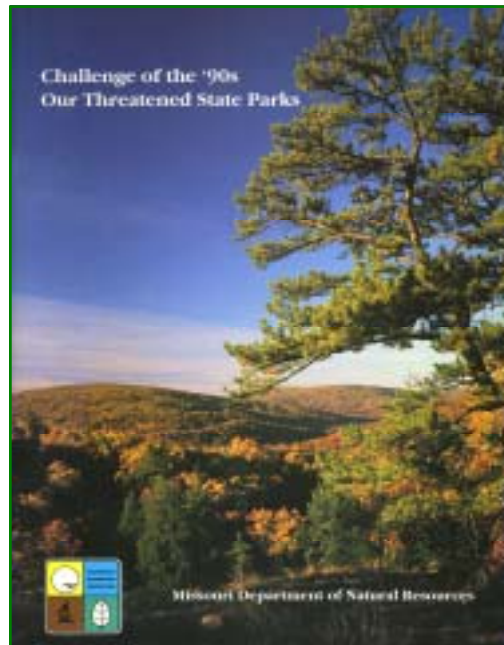


Taum Sauk Settlement a Sell-Out

The state's \$180 million settlement with Ameren over the Taum Sauk Reservoir collapse announced November 28 may sound like a good deal. But unfortunately, in the view of MPA leaders, it is a sell-out to Ameren. It does nothing to protect Church Mountain, the most critically threatened resource in the midst of the Taum Sauk complex of state-owned wild lands, but instead ties the state to a dubious "license" to construct a link part-way to Kansas City for the cross-state Katy Trail.

The deal is the outcome of protracted negotiation behind closed doors between Ameren and state officials jockeying



View of Church Mountain across Taum Sauk Creek Valley from Taum Sauk Mountain on the cover of a 1992 study of threats to the parks.

among themselves for political advantage. The long-range interests of Missourians and their state park system were not well served in the process.

At issue are the uses of the \$84 million payment for natural resource damages agreed to by the negotiators (rebuilding of Johnson's Shut-ins State Park and recompense for other injured parties in the region are provided for elsewhere in the settlement). The Missouri Parks Association and other organizations across the spectrum of conservation concern in Missouri, including the Conservation Federation of Missouri, The Nature Conservancy, Audubon

(See "Settlement" on Page 3)

MPA Sues Over Taum Sauk Rebuild

The Missouri Parks Association and Great Rivers Environmental Law Center sued the Federal Energy Regulatory Commission (FERC) and AmerenUE December 11 over the rebuild of the Taum Sauk pumped storage plant upper reservoir, which they contend requires evaluation of a full range of environmental impacts and alternatives with opportunity for public consideration.

The suit, brought in the U.S. District Court for the District of Columbia, claims that FERC failed to evaluate most of the significant impacts of the Taum Sauk Project before authorizing its reconstruction. MPA had asked FERC as early as February 2007 for a full Environmental Impact Statement as required by the National Environmental Policy Act, but Ameren and FERC contended that the rebuild is simply repair of an existing facility, hence

the evaluation was limited to the process of rebuilding and to the footprint of the original reservoir. FERC noted that a wider range of issues could be addressed during the relicensing process, which must be completed by June 30, 2010, but MPA and Great Rivers contend that once Ameren spends hundreds of millions of dollars on the rebuild it will be virtually impossible for FERC meaningfully to evaluate alternatives to the project.

FERC's regulatory actions are reminiscent of what took place when Union Electric (now AmerenUE) first constructed Taum Sauk almost 50 years ago. After completing construction, Union Electric dedicated the facility in October 1963, all the while engaged in litigation with the Federal Power Commission (now FERC) over whether it was required to obtain a federal license. It was, the Supreme

(See "Suit" on Page 6)

MPA President's Message

The Missouri Parks Association at 25*by Terry Whaley*

Thinking about how to celebrate twenty-five years of work by the Missouri Parks Association is not an easy task when you're the new guy with the group. I was just getting into the professional field of parks when the first MPA meeting was being held in 1982.

While members of MPA and its board were working for improved state park funding, trying to protect state parks and historic sites, thinking about an expanded future park system, and building the capacity of MPA to make a difference, I was just hoping to remain employed in a newly created job for another year.

Now in 2007 we celebrate twenty-five years of great work by others in our past, and we have a state park system that is rated one of the best in the country. So one might think the hard work is done. However, at our annual meeting at Arrow Rock State Historic Site in September we were reminded about the constant challenges for our park system. Some of these issues are reflected in this issue of *Heritage*.

While funding and development threats will always be issues for our state parks and historic sites,

we took time at the annual meeting to celebrate and recognize the fine work of the MPA players who preceded us. Several of these individuals are still active in MPA. Our recognition and presentation of the Charles Callison Award to John Karel for his work as state park director from 1979-1985 and his vision of promoting a citizens group for the state parks that led to the creation of MPA was a great moment. To hear Attorney General Jay Nixon speak enthusiastically about our park system and encourage MPA to keep up the good fight on issues like the Katy Trail, Church Mountain, CAFOs and the Parks and Soils Tax was exciting and inspiring for members present.

To take time to think about what and who MPA is today, how we can be most effective for our park system, and how we can be sure MPA will be around for a fiftieth anniversary is the task before us in 2008. On behalf of the Board of Directors, I encourage you to continue your support and become involved with MPA.

A special thanks to the planning committee for our annual meeting: Carol Grove, Karen Haller, Mary Abbott, Eleanor Hoefle, and Susan Flader.

MPA Confers Callison Award on John Karel

MPA President Terry Whaley (c) and Attorney General Jay Nixon (r) applaud John Karel (l).

For only the third time in its 25-year history, the Missouri Parks Association conferred the Charles Callison Award upon one of its members at the September 29, 2007, meeting in Arrow Rock. John A. Karel was presented with the Callison Award, the highest honor that the Missouri Parks Association can bestow. Karel was cited for his valuable service as director of the park system during turbulent times, wherein he nevertheless initiated new strategies for park planning and funding, major renovations, and park acquisitions. Karel was also cited for his role as a founding member of the Missouri Parks Association and for his long and distinguished service during the entire 25-year history of the organization. Previous recipients were Charles Callison on MPA's 10th anniversary and Leo Drey on its 15th.

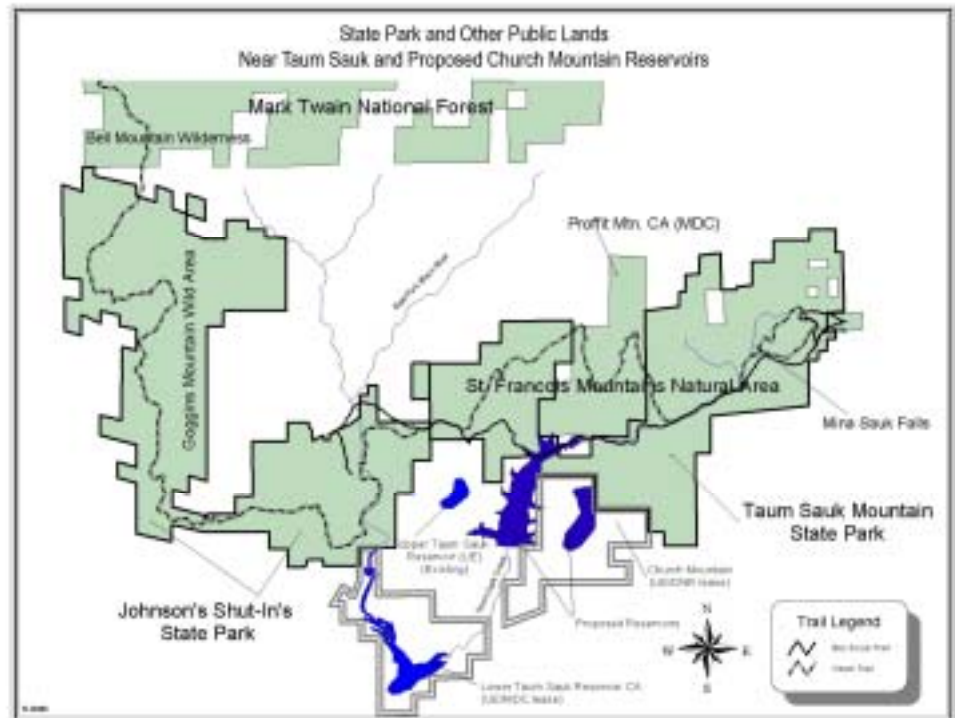
(*"Settlement" from Page 1*)

Missouri, Sierra Club and the Missouri Coalition for the Environment, argued from the start that the incredible destruction of natural resource values at Johnson's Shut-ins should be compensated by protecting other natural resources in the region: **natural resources destroyed should be compensated by natural resources preserved and protected.** That indeed is the legal intent of natural resource damage determinations nationwide.

At the outset, Governor Blunt and DNR director Doyle Childers publicly announced that they hoped to secure Ameren lands on Church Mountain and a Katy Trail link to Kansas City on Ameren's Rock Island Line. Ameren apparently refused early on to part with either Church Mountain, on which it has long planned to build a second and much larger pumped storage reservoir, or its Rock Island Line, on which there have been no trains running for years, offering instead to discuss a possible lease for public trails on Church Mountain and a "license" for an entirely new trail at the edge of its Rock Island right-of-way. Then it put inflated values on these limited concessions, forcing an eventual choice between Church Mountain and the trail extension.

Thousands of people, including many MPA members, have been waiting for a Katy link to Kansas City, so the choice of the trail extension was certain to be politically popular in a part of the state far removed from Johnson's Shut-ins. But in opting for the Katy extension the state not only tied itself to a dubious proposition but gave up an opportunity to protect Church Mountain, put other state-owned lands in the region at risk of degradation by industrial development there, and failed to preserve or protect any substantial natural resources in compensation for the natural resources destroyed at Johnson's Shut-ins.

Church Mountain is part of the mental geography of hundreds of thousands of people who have viewed



Maps prepared for MPA in 2001 showing new reservoirs proposed by AmerenUE.

***....natural
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it from Taum Sauk Mountain, Mina Sauk Falls, or other vantage points along trails in the region, probably without even knowing its name or realizing it was Ameren's property. Ameren's approximately 1300 acres there (the rest is part of Taum Sauk Mountain State Park) had been sought for inclusion in the 7,028-acre St. Francois Mountains Natural Area, the largest and most biodiverse natural area in Missouri, but Ameren declined. The firm did, however, grant the state a 25-year lease for public trails in 1990, but the park division inexplicably failed to develop any, pleading lack of funds. The lease, which remains in effect until 2015—as well as a 20-year right of first refusal to purchase the property if Ameren decides to sell, which Ameren granted as part of the settlement—explicitly allows Ameren to use the land for other purposes. In 2001 Ameren applied to FERC for a preliminary permit to build a second pumped storage plant there, then withdrew its application after MPA, other organizations, Missouri citizens, and state officials objected (see *Heritage*, August and November 2001, on the MPA website); but it has admitted the plant is still in its long-range plans.

A pumped-storage reservoir crowning Church Mountain would be a blight from virtually every vantage point in the region. While the current reservoir

(*See "Settlement" on Page 4*)

("Settlement" from Page 3)

site on Proffit Mountain is hidden from a number of vantage points by Church Mountain and a higher dome of Proffit, a reservoir on Church would intrude into the center of nearly every view; it would seriously diminish the recreational experience on more than 15,000 acres of state parks and other public land in this most iconic of wild Ozark landscapes as well as cause major fragmentation and degradation of this highly significant ecosystem. The new and larger lower reservoir would flood the historic Boy Scout Trail along Taum Sauk Creek, one of the finest remaining Ozark headwater streams in the state and a designated State Outstanding Resource Water, destroying the stream and cutting off the riparian route between Taum Sauk Mountain and Johnson's Shut-ins state parks.

Yet DNR and the governor walked away from protecting Church and opted instead to use natural resource damage funds in a way that would almost certainly create even more natural resource damage. The new Rock Island-Katy trail extension must be at least 25 feet from the center of the rail bed and it may not use any of the bridges or crossings. So several hundred acres of mature trees would have to be cut and riparian wetlands disturbed to build the new trail. State officials contend they can build a new bed and more than 80 new bridges and road crossings along the 46-mile route from Windsor to Pleasant Hill for the \$18 million provided in the settlement, yet the cost was estimated years ago at more than \$20 million. And there would still be more than 30 miles to go to Kansas City with no clear strategy in sight.

And that is not the worst problem. Ameren doesn't even own much of the land; it would only be licensing its *interest* in a portion of

its right-of-way, and its right is for a railroad, not a trail. The state would have to deal with hundreds of individual landowners, any of whom could challenge the trail. Ameren is not abandoning the rail line, so the state would not have the benefit of the National Rails to Trails Act if challenged in court. Would the state prevail? The result would surely not be known for years. For this dubious license Ameren is receiving a \$15 million *credit* in the settlement, when all of the risk is borne by the state.

DNR's Doyle Childers explained to a reporter that the state could not consider Church Mountain because Ameren was asking \$66 million for its lands there, yet others say no such figure was ever mentioned in the negotiations because DNR and the governor had already walked away. Ameren acquired most of its land around 1960 when the going rate would have been less than \$5 an acre, and even at perhaps \$1000 an acre for wild land in the Ozarks today the price would be only about \$1.3 million. The \$66 million figure, if true, could only reflect its purported value to Ameren as a pumped storage reservoir site. But who knows what a court of law would decide, especially if the court were asked to take into consideration the costs imposed on the public in terms of degradation of surrounding public lands, recreation foregone, and contributions to atmospheric carbon dioxide from burning 1.5 times as much energy in coal to pump water up the mountain as it produces when going down?

In short, the Rock Island-Katy Trail extension is likely to cost far more than is being provided in the settlement, if indeed the trail is ever built, and it could drain funds from other park purposes for years to come. Meantime, once settle-

ment funds are deposited in the state treasury they would still require legislative appropriation and they could be subject to diversions for other uses, as has been happening to park funds in recent years. The deal that was hailed by the *Kansas City Star* as "a promising path" turns out to be full of doubt and foreboding for the state park system. Ameren, on the other hand, has given up nothing; it has announced that it expects both its settlement costs and the rebuild of the Taum Sauk Reservoir to be covered by insurance.

How much better it would have been for state officials to make common cause to secure Church Mountain. A reasonable settlement to preserve Church Mountain would produce value for Missourians in perpetuity in the heart of the most iconic landscape in the state, and protect the state's already substantial investment in surrounding lands. It would require virtually no development and very little maintenance or personnel cost. That would be by far the most appropriate legacy for Missourians to come from the Taum Sauk disaster.

* * *

The public is invited to submit any comments on the settlement to DNR by December 27 for consideration by the state, Ameren, and the Reynolds County Circuit Court, which must approve the agreement. The park division is collating the comments: send by email to mo-parks@dnr.mo.gov (or from Contact Us on the state park website, mostateparks.com); by U.S. mail to Missouri DNR Division of State Parks, P.O. Box 176, Jefferson City, MO 65102; or by phone to 1-800-334-6946. We encourage you to express your views.

MPA Joins Friends of Arrow Rock in CAFO Suit

The Missouri Parks Association joined Friends of Arrow Rock and the Village of Arrow Rock in a lawsuit intended to establish the concurrent responsibility of the Missouri Department of Natural Resources to protect state parks and historic sites as well as to grant permits for concentrated animal feeding operations (CAFOs) if they meet the minimum requirements of the state's water quality regulations. DNR Director Doyle Childers and staff of the state's Clean Water Commission have steadfastly maintained that they are legally bound to issue the permits if minimum water quality standards are met, disregarding any possible adverse impact on nearby parks and historic sites by airborne CAFO emissions.

Over the strong objections of local park support groups, landowners, and other citizens, in the past year DNR has issued construction permits to three CAFOs within two miles of three different state parks—Battle of Athens, Roaring River, and Arrow Rock (see *Heritage*, March 2007). Most galling to park supporters and others who

challenge CAFOs are assertions by Childers and DNR staff that arguments and evidence about the impacts of water and airborne CAFO emissions on property values, groundwater quality and supply, public health, and park visitation are "ridiculous" and without merit.

After extensive discussion, the MPA board of directors in September voted to join Friends of Arrow Rock in two separate legal proceedings aimed at protecting Arrow Rock and other parks: an effort at the state level to compel DNR to fulfill its legal obligations to protect parks and historic sites, and an effort at the federal level to achieve compliance with the National Historic Preservation Act.

First to be initiated—and concluded—was the federal proceeding. Because Dennis Gessling, developer of the CAFO near Arrow Rock, had been awarded more than \$100,000 in federal grant funds from the Natural Resources Conservation Service (NRCS) for construction of the facility, Section 106 of the National Historic Preservation Act was

triggered. It requires a thorough analysis of potential impact on any historic sites affected by the project.

In a totally inadequate impact review, NRCS established an "Area of Potential Effect" for the Gessling CAFO of only about 118 acres surrounding the proposed facility, then found there were no historic properties within the area. When Friends of Arrow Rock, the National Park Service, the National Trust for Historic Preservation and others objected, NRCS reopened the proceeding, defined a new APE of 2,700 feet from the facility (based on a Purdue odor analysis model), and again found Arrow Rock and other historic properties too far away to be affected. At a meeting called by NRCS on October 11 to receive additional input, the Washington University School of Law Interdisciplinary Environmental Clinic, representing MPA and Friends of Arrow Rock, presented a thick binder of scholarly publications and other evidence about the odor and health effects of airborne CAFO emissions and the historic values at stake. The clinic challenged the new APE, identified several additional historical properties within the APE that would require further investigation, including a farm on which famed landscape artist George Caleb Bingham may have lived, and also argued that NRCS had not complied with the National Environmental Policy Act.

Supporting Friends of Arrow Rock and MPA were officials of the National Trust for Historic Preservation from Washington DC and Chicago and a National Park Service official from Omaha who came to the October 11 meeting to emphasize their concern about the potential impact of the CAFO on the Arrow Rock National



The George Caleb Bingham House in Arrow Rock is a National Historical Landmark in its own right, in addition to sharing in the NHL status for the entire town. Earlier, Bingham may have lived on a family farm that was on or adjoining the Gessling CAFO property.

Historic Landmark. They were especially interested in the precedent-setting nature of the Arrow Rock case as the first Section 106 proceeding in the nation related to a CAFO.

As it happened, this issue became moot when Gessling turned down the federal funds, thus negating the Section 106 trigger. NRCS thereupon terminated the process as of November 19. Whether Gessling had secured funding elsewhere was not known; the *Columbia Tribune* reported December 9 that Gessling was planning to move ahead in the spring.

Meanwhile, the second, state-level, legal action commenced on October 11—the same day as the NRCS meeting—with a filing in the circuit court of Cole County by the Miller Law Firm of Kansas City on behalf of MPA, Friends of Arrow Rock, and Village of Arrow Rock against the Missouri Department of Natural Resources and its director Doyle Childers. The petition reviewed evidence of the impact of airborne CAFO emissions on public health and well being and argued that Childers's approval of the Gessling permit was in direct violation of his obligations under the Missouri Constitution and state statutes related to parks and historic preservation. It asked the court for a declaratory judgment to that effect and an order to revoke the Gessling permit.

Attorney General Jay Nixon, who had commended MPA for its defense of Arrow Rock from CAFOs in his address at MPA's 25th anniversary meeting there in late September, declined to defend Childers and DNR, instead appointing a private firm. There is expected eventually to be a trial on the merits—including the issue of airborne emissions and public health, which was not considered by DNR—either in circuit court or in the court of appeals.

In related actions, Friends of Arrow Rock joined with Whitney and Day Kerr, who own a farm and the antebellum "Prairie Park" just south of the Gessling CAFO site, to petition the Missouri Clean Water Commission to revoke the Gessling construction permit. Kansas City attorney Charles Spear, who recently won a \$4 million settlement against a Missouri CAFO, filed suit on behalf of Roy Piper, an elderly farmer who lives a mile west of the Gessling site and across the road from another CAFO owned by Maurice Carmack, asking for damages resulting from emissions from the Carmack CAFO.

At opposite corners of the state, meanwhile, the CAFOs near Battle of Athens and Roaring River have been built, granted their operating permits by DNR, and are now operating. But local landowners and park support groups continue to challenge the permits. A multi-day hearing is set to begin January 7 before the Administrative Hearing Commission in Jefferson City about the Roaring River CAFO.

("Suit" from Page 1)

Court decided in May 1965, in one of the most significant cases in hydroelectric power history. FPC then issued the operating license, retroactive to July 1, 1960, thus avoiding any meaningful investigation of the project or public consideration of its impacts on surrounding resources. It is that license that Ameren is now seeking to renew.

"The regulatory authorities are carrying on the Taum Sauk tradition of constructing first and evaluating impacts later," said Bruce Morrison, an attorney with Great Rivers.



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