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Part III - Statement of Program Service Accomplishments

I. CLIMATE CHANGE, ENERGY AND AIR QUALITY PROGRAM

An important part of our climate change, energy and air quality program involves monitoring actions taken by federal, state and local governments that will impact climate change and the quality of the air breathed by the citizens of Missouri and surrounding states. All of our air quality work is also public health work, as air pollution causes asthma and other respiratory problems as well as climate change. Great Rivers is frequently involved in matters that adversely affect air quality and climate change. Measures taken by Great Rivers include commenting on proposed rules, issuing position papers about hazardous air pollutants, drafting legislation, assisting clients with negotiations with governmental agencies, and, as a last resort, handling litigation for clients seeking to protect air quality and public health and to prevent the emission of climate change causing pollutants.

1. Intervention in Ameren and KCPL's Integrated Resource Plans

On behalf of the **Natural Resources Defense Council, Sierra Club, and Renew Missouri**, Great Rivers has intervened in the proceedings held before the Missouri Public Service Commission (PSC) on utility Integrated Resource Plans (IRPs), which are filed every three years explaining how the utility intends to meet its customers' needs for the next 20 years through supply-side (electricity generation) and demand-side (customer end-use efficiency programs) options at the lowest possible cost.

The utilities must also file annual updates, on which the parties are allowed to comment, and consult the parties on their intentions for the next triennial filing. Great Rivers continued to represent its clients in these ongoing IRP matters.

In 2013 our clients paid us \$3,682.50 for work on these matters.

2. Defending Proposition C

Proposition C is the voter-passed initiative which created a Renewable Energy Standard (RES) requiring utilities to obtain increasing percentages of their energy portfolio from renewable resources, reaching 15% in 2021. The utilities have fought it fiercely since (and even before) its passage in 2008. In 2013, we assisted Renew Missouri and solar companies in filing

cases (“complaints”) in the Public Service Commission making the legal arguments against the loopholes the utilities have shot in Prop C. We filed the complaints in January, 2013, and advocated for our client at a hearing in April, 2013.

We also reviewed with Renew Missouri the utilities’ annual compliance reports and compliance plans detailing what they have done and intend to do to meet the RES requirements.

In 2013 our clients paid us \$2,835.00 for work on this case.

3. Missouri Energy Efficiency and Investment Act Litigation

In 2009, the legislature passed the Missouri Energy Efficiency Investment Act (MEEIA), a law designed to give utilities financial incentives to pursue efficiency programs. The PSC made rules implementing the law and in 2011 the utilities sued the PSC over the rules. On behalf of **Renew Missouri**, in 2011 Great Rivers intervened in the trial court urging the court to uphold the PSC’s rules. In 2011, the trial court ruled in our favor. The utilities appealed in 2012 and again we intervened on behalf of **Renew Missouri**, filing a brief and arguing the case before the Missouri Court of Appeals, Western District. The court ruled in our favor on Jan. 15, 2013.

In 2013 our clients paid us \$75.00 for work on this case.

4. Utility Energy Efficiency Programs

Ameren and Kansas City Power and Light-Greater Missouri Operations (KCPL-GMO) reached unanimous settlements in 2012 to do Energy Efficiency (EE) programs. Under the rules of the Public Service Commission, each utility must work with a stakeholder collaborative and take input from it on the progress of its EE programs. These take the form of quarterly meetings and periodic distribution of updates. A statewide collaborative of all the utilities is being created.

Empire District Electric became the last utility to file a plan, and Great Rivers filed a motion to intervene on behalf of the **Sierra Club** in November, 2013. We are not seeking fees in this case.

Finally, Great Rivers helped **NRDC** and **Renew Missouri** file comments on a draft PSC rule dealing with rate design issues in MEEIA.

In 2013 our clients paid us \$3,112.50 for work on this case.

5. Missouri Coalition for the Environment v. US Army Corps of Engineers

Overlooked in all the uproar over the Keystone XL pipeline, the Canadian company Enbridge is building a line through Missouri starting in August. The Flanagan South is part of a line, slightly bigger than the Keystone, from Alberta to the Texas Gulf Coast. The pipeline would cross hundreds of streams and wetlands in northern and western Missouri, including impaired waters.

On behalf of the **Missouri Coalition for the Environment**, Great Rivers sought information under the Freedom of Information Act (FOIA) from three Corps of Engineers Districts concerning the proposed Enbridge pipeline that will cross Missouri—the Flanagan South pipeline. The Corps refused to release any documents and Great Rivers filed suit in the US District Court for the District of Columbia on August 16, 2013. We engaged in litigation on this during the remainder of 2013.

Also on behalf of the **Missouri Coalition for the Environment** we filed Comments in December, 2013, on an Environmental Assessment for the Mississippi River crossing, urging the Corps of Engineers to deny the developer a permit.

No attorney fees were sought and recovered for this work.

6. Missouri Coalition for the Environment, et al., v. Joint Committee on Administrative Rules, et al.

On behalf of the **Missouri Coalition for the Environment (MCE)**, **Missouri Solar Applications** and Tom Sager, Great Rivers filed suit in August, 2013, against the Joint Committee on Administrative Rules, Secretary of State Jason Kander, the Public Service Commission, and Governor Jay Nixon, asserting that JCAR acted unconstitutionally in disapproving two key paragraphs of the Public Service Commission's Renewable Energy Standard rules, and the Secretary of State had a duty to publish them. Great Rivers engaged in litigating this case for the remainder of 2013.

In 2013 our clients paid us \$17,190.00 for work on this case.

7. Ameren Missouri and Kansas City Power & Light Rate Cases

In 2012 Great Rivers represented **NRDC**, **Renew Missouri** and the **Sierra Club** in several general rate cases. The first was filed by Ameren; KCPL filed two because it operates as two separate utilities, KCPL and KCPL-Greater Missouri Operations (GMO). The Ameren case concluded in December, 2012, the KCPL and GMO cases in January, 2013.

In 2013 our clients paid us \$1,237.50 for work on these cases.

II. PUBLIC HEALTH PROGRAM

Great Rivers seeks to protect the public health by preventing further deterioration of the region's air and water quality, and by reducing and preventing exposure to toxic substances. Our public health program consists of aiding individuals, citizens' groups and organizations that seek legal assistance in connection with their work to protect the public health. Our work in the Public Health Program overlaps our work in Climate Change, Energy and Air Quality and Water Quality Programs.

1. Cleaning Up Existing Coal Plants

Great Rivers seeks to reduce emissions of pollutants from existing coal-fired power plants. Each year, coal-fired power plants emit thousands of tons of mercury, nitrogen oxides, sulfur dioxide, and carbon into the air. The pollutants cause asthma, respiratory problems, cancer and contribute to climate change.

In Missouri, there are more than 20 existing power plants which are 38–61 years old. In 2013, Great Rivers worked to enforce laws requiring the Missouri Department of Natural Resources ("MDNR") to issue stringent, enforceable permits and to ensure that plant operators have in place the required technologies on their plants, or to shut down the plants and to meet energy demand using efficiencies, solar and wind power instead.

No attorney fees were sought and recovered for this work.

The following are specific matters we worked on in this project.

In May of 2013, Great Rivers and the **Sierra Club** jointly submitted comments to MDNR addressing deficiencies in the draft operating permit for Kansas City Power & Light's ("KCPL") Montrose Generating Station. This facility operates three coal-fired boilers, and is one of the

dirtiest facilities KCP&L operates. Great Rivers urged the MDNR to require more stringent controls on the plant.

In July of 2013, Great Rivers and the **Sierra Club** jointly submitted comments to MDNR addressing deficiencies in the draft operating permit for Aquila's Lake Road Generating Station, also urging the MDNR to require more stringent controls.

No attorney fees were sought and recovered for this work.

2. City of Grandview v. City of Kansas City

In 2013, Great Rivers filed suit on behalf of the **Concerned Citizens for Air, Inc.**, and the City of Grandview against the Missouri Department of Natural Resources concerning a hot mix asphalt plant recently constructed in Kansas City, Missouri, just across the boundary line the City of Grandview shares with the city of Kansas City. The Grandview School District and many residents in close proximity to the asphalt plant are concerned about the short and long-term environmental, health, and land use development impacts arising from the plant's operations. The Circuit Court issued a temporary restraining order in October, 2013, restraining the Missouri Department of Natural Resources (MDNR) from issuing a permit for a permanent asphalt plant at the current location (the facility currently is operating under a temporary permit). Great Rivers engaged in litigating this case for the remainder of 2013.

No attorney fees were sought and recovered for this work.

3. St. Louis Lead Prevention Coalition

Great Rivers provided legal services to the **St. Louis Lead Prevention Coalition**, an organization seeking to reduce and eliminate lead exposure in the St. Louis metropolitan area. The work of the **St. Louis Lead Prevention Coalition** affects thousands of people in the St. Louis metropolitan area.

No attorney fees were sought and recovered for this work.

III. WETLANDS AND FLOODPLAIN PROTECTION PROGRAM: MISSISSIPPI & MISSOURI RIVERS' BASINS

Our wetlands and floodplain protection program consists of challenging environmentally detrimental floodplain development and the over-engineering of rivers by means of levees and dams which destroy floodplains and aggravate flooding risk. We monitor permit applications to dredge and fill wetlands. Great Rivers issues comments on proposals and assists environmental groups and individuals in their legal challenges to protect wetlands. These activities affect all of the people who inhabit and work in the watersheds of the Missouri and Mississippi Rivers which drain major portions of the central and northwestern United States. Wetlands and floodplains are vital to public health in that they affect our water supply and the quality, recharge and discharge of water; they assist in the cleansing of pollutants from waters; and they provide valuable services for flood and storm hazards, and for the controlling of sediment and erosion. In addition, they are necessary for the maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources.

1. Halt the Rapid Loss of Wetlands Project

In 2013, we continued our project to end the rapid loss of wetlands within the Mississippi River corridor. At one time almost 7 million acres (37%) of the 18.4 million acres in the 100-year flood zone were wetlands. Four million acres of these former wetlands have now been drained, and federal levees isolate approximately 2.3 million acres (13%) of floodplain from their parent rivers.

Great Rivers continued with its work involving Corps-issued permits and Corps Civil Works activities. On the regulatory side, the Corps often is not requiring the amount and type of mitigation necessary to halt wetlands losses. When the Corps does require appropriate mitigation, often the Corps does not require the developer to actually create or restore the wetlands. The situation is worse on the Civil Works side, where the Corps is failing to put in place for its own projects even the most basic of the critical mitigation requirements. In addition to identifying Corps' deficiencies, we advocated for compliance with the law through formal comment, correspondence, position papers, and meetings.

No attorney fees were sought and recovered for this work.

We worked on the following specific Corps' projects:

a. The Corps' Memphis District New Madrid Floodway Project

The most serious, recurring threat to our region's wetlands and floodplain habitat is the Corps of Engineers' St. Johns Bayou/New Madrid Floodway. If built, the project will close one of the last sections of the Mississippi River which is still connected to the River's wetlands and floodplains. The project will drain 80,000 acres of regularly inundated floodplain habitat, including 30,000 acres of wetlands. The Corps released its draft Environmental Impact Statement (DEIS) in July, 2013. In 2013, Great Rivers analyzed the DEIS with particular emphasis on habitat loss, environmental justice and economic impacts, and analyzed Corps responses to Independent Peer Review panel recommendations.

b. Advocating for the Preservation of the Wetlands

In July 2013, Great Rivers submitted comments to the Corps, advocating against Beck-Cal, LLC's 404 permit application to build a commercial development that would destroy 1,186 lineal feet of stream and 0.03 acres of wetlands.

In July 2013, Great Rivers submitted comments on Pavilion Properties, LLC's 404 permit application to build a commercial development that would destroy 2,209 lineal feet of stream and 0.145 acres of wetlands, advocating against this destruction.

In August 2013, Great Rivers submitted comments on the Hunt-Lima Drainage and Levee District's 404 permit application to heighten a levee that would destroy 8.03 acres of wetlands, advocating against this destruction.

Through researching Corps 404 permit files, in 2013 Great Rivers also identified deficiencies in wetland mitigation required of the City of St. Peters for the construction of its levee. Erosional gullies were formed that were draining protected wetlands and negatively impacting wetland hydrology. Through engagement with Corps officials, these mitigation

deficiencies were brought to the attention of St. Peters and have since been corrected by the municipality.

c. Missouri River Recovery Program (MRRP)

The Corps of Engineers has been implementing the MRRP since the U.S. Fish and Wildlife Service determined in its 2000 Biological Opinion that the Corps' continued operation of the Bank Stabilization and Navigation Project (BSNP) on the Missouri River jeopardized the continued existence of the endangered pallid sturgeon. In 2008, the Jameson Island Shallow Water Habitat Restoration Project was halted by the Missouri Clean Water Commission due to concerns that the sediment reintroduction that would take place as a part of the project would introduce high levels of phosphorus and nitrogen to the water that would travel to the Gulf of Mexico and exacerbate its hypoxia problem, also known as the "Dead Zone." A subsequent study by the National Academy of Sciences found that the Corps' restoration projects would have little effect on the Dead Zone. The issue of 401 Certification was reopened by the Commission and considerable opposition from farming interests threatened to keep the project shut down indefinitely. In January 2013, the Commission waived Certification under Section 401 of the Clean Water Act allowing the Corps to implement the Jameson Island Project, which is currently under construction.

After the Corps' Jameson Island Project was allowed to go forward in 2013, the Corps planned two more shallow water habitat projects on the Missouri River at Benedictine Bottoms (in between Missouri and Kansas) and Little Sioux Bend (Iowa). The Benedictine Bottoms Project would eventually develop 65 acres of shallow water habitat and the Little Sioux Bend Project would develop 33 acres.

In June 2013, Great Rivers submitted comments on the Benedictine Bottoms Project to both MDNR and the Kansas Department of Health and Environment urging the agencies to grant water quality certification for this project. The Benedictine Bottoms Missouri River Fish and Wildlife Mitigation Site, which is located in Atchison County, Kansas, will be the next location that the Corps will continue its shallow-water habitat restoration projects. The Corps will construct two chutes along the Missouri River for shallow-water habitat and will reintroduce dredged sediment to help restore natural river function. When the project is completed, 33.7 acres of shallow-water habitat will be created. Over time, natural river processes will develop a total of 65 acres of shallow-water habitat in the area. We are waiting to see if the project will be approved.

In June 2013, Great Rivers submitted comments on the Little Sioux Bend Shallow Water Habitat Project to the Corps of Engineers and Iowa's Department of Natural Resources. The Corps will construct a 7,300 foot-long flow through chute to initially create 19 acres of shallow water habitat. Over time, a total of 33 acres of shallow-water habitat will be created.

d. Missouri Coalition for the Environment v. US Army Corps of Engineers

On behalf of the **Missouri Coalition for the Environment**, Great Rivers requested documents under the Freedom of Information Act ("FOIA") in connection with sixteen Clean Water Act Section 404 Permits granted by the Corps. While the Corps allowed Great Rivers' staff to inspect and copy documents for most of the permits, some important documents were

missing from the permit files. Great Rivers sent four more FOIA requests asking specifically for the missing files. The Corps did not respond to any of the FOIA requests within the statutorily mandated timeframe under the FOIA. We filed suit in September, 2013, in the U.S. District Court for the District of Columbia and the Corps allowed us to review documents in November, 2013.

No attorney fees were sought and recovered for this work.

IV. WATER QUALITY PROGRAM

Great Rivers seeks to protect and preserve the waters of Missouri and surrounding states. Our water quality program begins with monitoring proposed federal, state and local actions that will adversely affect water quality. Great Rivers is frequently involved in matters that adversely impact water quality. This includes assisting environmental groups, citizens' organizations and individuals in their legal challenges designed to protect the quality of the waters.

1. Protection of Two Mile Creek, Des Peres, Missouri

On behalf of two individuals, Great Rivers filed suit against the U.S. Army Corps of Engineers (the "Corps") and the St. Louis Metropolitan Sewer District (MSD) to prevent MSD from installing concrete blocks along the banks of a beautiful, spring-fed creek in St. Louis County, thereby destroying the vegetation and habitat for animals and fishes. Great Rivers argued for a preliminary injunction in December, 2012, which the trial court denied. The litigation ended in 2013.

No attorney fees were sought and recovered for this work.

2. Preservation of Habitat for the Ozark Hellbender

In January, 2013, on behalf of the **Missouri Coalition for the Environment** ("MCE") and **Center for Biological Diversity** ("CBD"), Great Rivers Environmental Law Center and the CBD filed a formal Notice of Intent to the U.S. Forest Service ("FS") and U.S. Fish and Wildlife Service ("FWS") over the agencies' failure to protect the Ozark Hellbender, Hine's Emerald Dragonfly, Tumbling Creek Cavesnail and two endangered mussels in the Mark Twain National Forest, where logging, road use and other activities are polluting waterways.

In August, 2013, the Forest Service sent out a Notice seeking Comments on a Forest Plan Amendment to change the standards for endangered species. In October, 2013, Great Rivers submitted joint Comments with the Center for Biological Diversity urging the Forest Service to protect these endangered species.

No attorney fees were sought and recovered for this work.

V. LAND USE PROGRAM: PRESERVATION OF OPEN SPACE & PARKS

Our land use program consists of assisting environmental groups, citizens' groups and individuals in their efforts to preserve and protect open space, forests and wilderness areas. Great Rivers issues comments on proposed rules that may affect environmentally sensitive areas, and as a last resort, represents environmental groups in litigation to enforce the laws.

1. Protection of the Ozark National Scenic Riverways

The National Park Service issued its long-awaited draft General Management Plan for the Ozark National Scenic Riverways in November, 2013. Great Rivers reviewed the plan and presented information at the public hearing on the draft plan held in December, 2013.

No attorney fees were sought and recovered for this work.

2. Opposition to the Proposed South County Connector Roadway

Great Rivers filed Comments in opposition to this project to the St. Louis County Department of Highways and Traffic in July, 2013, urging the County to abandon plans to construct this environmentally damaging roadway.

No attorney fees were sought and recovered for this work.

VI. ENVIRONMENTAL JUSTICE PROGRAM

Great Rivers is committed to monitoring permitting actions for sites proposed for development that will unfairly burden minority or low income populations. Great Rivers has evaluated proposed developments to determine whether permitting authorities have unfairly targeted disadvantaged populations.

Bring Environmental Justice to North St. Louis Project

The need for environmental justice in North St. Louis is pressing. This region is rife with toxic industries that impact the health of its community members. More than 90% of this area's population is African-American, and a staggering number of families live below the poverty line. The per capita income in the area we are targeting ranges from \$7,865 and \$10,008 annually. Low-income families and minorities in North St. Louis bear a disproportionate burden of toxicity in their environment as compared to their racial and socioeconomic counterparts. In 2013, Great Rivers investigated businesses along the Mississippi River in North St. Louis, reviewing permit applications and self-monitoring reports of emitted pollutants.

Residents of the neighborhoods of Old North and Hyde experience decreased life expectancy, as well as increased risk of asthma, hospitalizations, cancer and chronic conditions because they are exposed to disproportionate environmental harm. Because these neighborhoods are mostly low-income, minority populations, this area has been condemned to environmental injustices, as polluting businesses tend to settle where people have limited resources to resist them.

In 2013, Great Rivers requested MDNR to inspect some of these businesses. MDNR found a scrap metal recycler to be in violation of several of the state's water quality laws. The scrap metal recycler failed to renew its permit in time, did not submit an annual operations report, and caused pollution to a tributary of the Mississippi River. MDNR is requesting the facility to redress these problems or be faced with a Notice of Violation.

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**. We urged the MDNR to require 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 for its terminal's operations on behalf of North St. Louis residents and the Missouri Coalition for the Environment. Beelman River Terminal maintains giant salt piles that wash into the Mississippi River when it rains. Great Rivers worked with residents assisting them in submitting comments to the MDNR on the permit. We urged the MDNR to require that a permanent berm be installed around the salt piles, and that MDNR require the "best management practices" for stormwater runoff be implemented, and that MDNR require stricter effluent limitations for pollutants in the permit.

No attorney fees were sought and recovered for this work.