



Environmental Law Center
Lawyers for the Environment

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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. Interventions in the Missouri Public Service Commission

On behalf of the **Natural Resources Defense Council (NRDC)**, **Sierra Club**, and **Renew Missouri**, Great Rivers often intervenes in the proceedings held before the Missouri Public Service Commission (PSC), particularly in electric utility rate cases, Integrated Resource Plans (IRPs), and energy efficiency dockets.

a. Ameren Missouri

Ameren filed an IRP late in 2014 as required by PSC rules to analyze the best and lowest-cost way to meet its customers' needs for the next 20 years. In 2015, Great Rivers drafted comments on the plan on behalf of the **Sierra Club** and **Renew Missouri**. In Ameren's rate case, Great Rivers represented the **Sierra Club** at the hearing and during settlement negotiations. Ameren also filed for approval of energy efficiency programs under the Missouri Energy Efficiency Investment Act (MEEIA). In that case, Great Rivers represented **NRDC**, **Renew Missouri** and **Sierra Club** on discovery, hearing preparation and negotiation of a settlement.

b. Kansas City Power & Light

KCP&L filed an IRP in 2015. Great Rivers helped draft comments on the plan for **NRDC, Renew Missouri** and **Sierra Club**

KCP&L also filed a MEEIA plan for approval of energy efficiency programs. Great Rivers represented **NRDC** in filing testimony and negotiating a settlement that was reached in November. However, one party to the case objected to the settlement, so a hearing was due to be held early in 2016.

Great Rivers represented **Sierra Club** at a hearing on KCP&L's rate case.

c. Rate Design

The PSC held an informal working docket to investigate the legality and desirability of decoupling utility revenue from sales in order to hold them harmless from revenue declines caused by customers' using less energy. Great Rivers helped **NRDC** and **Renew Missouri** draft comments and a legal memorandum arguing in favor of decoupling as a way to better incentivize utilities to conduct efficiency programs.

In 2015 our clients paid us \$11,858.05 for work on these matters.

2. Defending Proposition C

In November 2008, 66% of Missouri voters enacted Proposition C, the "Renewable Energy Standard Act ("RES"). The RES requires 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.

a. Renew Mo v. Empire District Electric

Before the voters could vote on Prop C, in 2008, the Missouri legislature granted an exemption from the solar rebate requirements imposed by Proposition C, for one utility in southern Missouri, Empire District Electric.

On behalf of **Renew Mo**, in 2013 Great Rivers filed a Complaint in the Public Service Commission against Empire District Electric's claimed exemption from the solar energy requirements of the law, which was the basis for an earlier declaratory judgment action that ended when the courts ruled that we must first exhaust administrative remedies at the PSC.

The PSC ruled against **Renew Mo** in November 2013, and **Renew Mo** appealed the Empire exemption issue to the Missouri Supreme Court since the validity of a statute is in question. We conducted an oral argument in the Missouri Supreme Court in September, 2014, and won the case in February, 2015.

We then returned to the PSC and moved to compel Empire to file a tariff offering solar rebates to its customers. Our negotiations with Empire were successful in getting them to file a tariff.

In 2015 our client paid us \$1,117.50 for work on this case.

b. SOLAR and Missouri Coalition for the Environment v. Public Service Commission

Proposition C enacted § 393.1030.3, RSMo, which requires the 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, the General Assembly amended § 393.1030.3 to cap and phase out the rebates. The Public Service Commission ("PSC") adopted a rule which establishes a methodology to determine when a utility may cap its solar rebates and 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 ended the solar rebates called for in proposition C.

In 2013, Great Rivers entered its appearance on behalf of the **Missouri Coalition for the Environment ("MCE")** in a suit seeking a judgment declaring that the PSC's Orders are invalid

In 2014, the parties litigated the case in the trial court. We dismissed the case in 2015.

In 2015 our clients paid us \$37.50 for work on this case.

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

On behalf of the **Missouri Coalition for the Environment, Missouri Solar Applications** and **Tom Sager**, Great Rivers filed suit in August, 2013, against the Joint Committee on Administrative Rules ("JCAR"), 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. The Circuit Court for Cole County ruled against us in May 2015.

We appealed to the Missouri Supreme Court and filed our initial brief there, but the defendants then moved to dismiss the appeal on the grounds that the circuit court's judgment was not final. The Supreme Court dismissed, and we returned to circuit court for entry of a new judgment.

In 2015 our clients paid us \$5,460.00 for work on this case.

d. Strengthening the Renewable Energy Standard

Renew Missouri retained Great Rivers as a legal resource on several renewable energy projects. Great Rivers reviewed several legislative proposals that **Renew** was considering as ballot initiative measures. Great Rivers also reviewed and wrote comments on revisions to the PSC's Renewable Energy Standard rules.

In 2015 our clients paid us \$2,460.00 for work on these matters.

II. 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 2015, 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.

No attorney fees were sought and recovered for this work.

III. 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. Sustainable Landscaping

On behalf of a citizen of Maplewood, Missouri, we investigated the City of Maplewood's selective prosecution of its "weed" ordinance in a manner which discourages natural, sustainable landscaping. Although Maplewood's ordinance in fact exempts from the definition of "weeds" plants which are "maintained" or "cultivated," the City appears to be issuing citations to citizens whose plantings do not resemble a traditional lawn. Sustainable landscaping is an issue of growing environmental importance as it allows people to plant gardens that do not need much water in places where water is scarce, and allows people to maintain gardens that might not need as many pesticides as they would otherwise.

A resident contacted Great Rivers after she was cited by the City for "high weeds and grass on property in excess of 12 inches." The resident asked Great Rivers to defend her in municipal court if Maplewood issued her a summons, and, if necessary, represent her in trial court if the municipal judge were to find her in violation of the City's weed ordinance.

After Great Rivers met with City officials, the City elected not to pursue its claim.

No attorney fees were sought and recovered for this work.

2. Conservation Easements

On behalf of the Greenbelt Land Trust, in Columbia, MO, Great Rivers assisted with the negotiating of a conservation easement to protect 102 acres of land.

No attorney fees were sought and recovered for this work.

3. Indian Trail Conservation Area—Proposed Clear-Cutting by Missouri Department of Conservation

Neighbors of the Indian Trail Conservation Area contacted Great Rivers to see if we could help fight a proposed sale of timber of hundreds of acres from the Indian Trail Conservation Area. The Missouri Department of Conservation (MDC) plans to sell timber and allow clear-cutting of many acres on steep slopes which will cause erosion into a creek that flows onto a neighbor's property. We filed comments on the proposal with the MDC.

MDC did change its project to cut fewer trees in some areas but the neighbors are still concerned with erosion. In 2015, we met with the MDC and individuals to discuss this further.

No attorney fees were sought and recovered for this work.

4. Rolla Race Track

A neighbor of the Fairgrounds in Rolla, MO, contacted Great Rivers after he learned a developer plans to build a race track in the Rolla Fairgrounds. The neighbor's father sued the Fairgrounds in the 1960s to stop a race track from being built there. Mel Carnahan received an injunction against the race track, which has been upheld in five court proceedings since then. On the neighbor's behalf, Great Rivers wrote to the current Fairgrounds owners informing them of the prior proceedings and the injunction which Great Rivers believes is still valid.

At the end of 2015, the work was not proceeding but that the Fairgrounds owners have not officially abandoned the project.

No attorney fees were sought and recovered for this work.

5. Preservation of Sylvan Springs Park in St. Louis County

In December, 2015, Great Rivers Environmental Law Center filed suit in the St. Louis County Circuit Court on behalf of three County taxpayers asking the Court to prohibit the County from selling a portion of Sylvan Springs Park to the U.S. Department of Veterans Affairs.

The Department of Veterans Affairs ("VA") seeks to purchase 38 acres of the 70-acre Park to use as a cemetery. St. Louis County has owned and operated Sylvan Springs Park as a park since 1950, when the County purchased the Park from the U.S. General Services Administration.

The VA seeks the Park because the Jefferson Barracks National Cemetery is running out of room. Even with the purchase of these 38 acres, the VA will run out of room at Sylvan Springs in approximately 17 years. Critics fear the VA will then seek the additional remaining 32 acres of Sylvan Springs, and even that would not be long-term solution. There are other large sites that have been presented to the VA as possible long-term solutions and that would last the VA for the next century or more, including one in Jefferson County and one in Illinois.

Great Rivers alleges the sale is illegal because the federal government dedicated the park to the County when it originally sold it to the County.

No attorney fees were sought and recovered for this work.

IV. 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 2015, 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. In 2015 we started our investigation of two plants operating under expired permits, and researching possible actions. At the request of a local Sierra Club member, we also are investigating the injection of coal ash slurry to an abandoned mine in the Kansas City area.

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 (“MDNR”) 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 Judge issued a temporary restraining order on October 15, 2013, restraining the MDNR from issuing a permit for a permanent asphalt plant at the current location (the facility currently is operating under a temporary permit).

In 2014 and 2015 we litigated the case and ultimately the court ruled against us.

In 2015 our clients paid us \$5,182.50 for work on this case.

3. Kelly Brothers and the Concerned Citizens Against Landvatter Ready-Mix Against the Board of Zoning Adjustment of Franklin County

Kelly Brothers and a citizens’ group, the Concerned Citizens Against Landvatter Ready-Mix, contacted us after a company received a conditional use permit from the Franklin County Planning and Zoning Commission in 2014, to construct a ready-mix concrete plant in Franklin County in a location very near to the Shaw Nature Reserve (Missouri Botanical Garden’s Arboretum). They are opposed to the concrete plant for many reasons including that the area is not suited for it as it is so close to the Arboretum and residences, and that it will create noise, dust, traffic, and stormwater runoff. We assisted in zoning appeals and filed suit in 2014. In January, 2015, the judge ruled in our favor on four of eight counts of defendants’ motion to dismiss. This allowed five counts to go forward on the motion for summary judgment, which we filed in February. In March, 2015, the developer withdrew the permit application. The Court vacated the permit in March, 2015.

In April, 2015, the developer filed a new application to construct a concrete plant on the same property, but this time it would be zoned as commercial. That would mean, according to

the City, that it did not have to hold a public hearing before Planning and Zoning could rule on the permit. In May, P & Z recommended a permit be issued. We assisted Kelly Brothers Mason and the Concerned Citizens at the hearing before the County Commission in July, 2015. The Commission ruled against us in September. We filed a Petition for a Writ of Certiorari in the Franklin County Circuit Court in September, 2015, and litigated the case during the remainder of 2015.

No attorney fees were sought and recovered for this work.

4. Callaway 1 Relicensing

In February, 2014, Ameren Mo issued a Final Environmental Report and the Nuclear Regulatory Commission (“NRC”) issued a Draft Supplemental Environmental Impact Statement (“DSEIS”), both justifying a license extension for the Callaway1 nuclear power plant, whose license does not expire until 2024. Great Rivers filed comments on behalf of the **Missouri Coalition for the Environment** in March, 2014, in opposition to the license extension.

In March, 2014 the NRC held a public meeting at Fulton City Hall to hear public comment on the DSEIS. Great Rivers’ board member Kay Drey and Great Rivers’ staff attorney Henry Robertson spoke against the license extension—and no one spoke in its favor.

All relicensing cases in the NRC were suspended while the NRC considered its “waste confidence rule” regarding long-term storage of irradiated reactor fuel. The NRC finalized the rule in August and lifted the suspensions.

On behalf of the **Missouri Coalition for the Environment**, in 2014 Great Rivers filed a new contention objecting to the final rule. In December, 2014, we filed an additional contention concerning the same rule. Great Rivers serves as local counsel to an attorney in Washington, D. C. in this matter. In March, 2015, the NRC relicensed Callaway to operate until 2044.

No attorney fees were sought and recovered for this work.

5. Westlake Landfill

On behalf of the **Missouri Coalition for the Environment** and individuals, we are investigating the problem of the radioactive wastes being permanently stored in the floodplain of the Missouri River, upstream from drinking water intakes which serve millions of people. The problem is exacerbated by an ongoing fire in the landfill adjacent to the radioactive wastes. We are evaluating the viability of claims and other actions.

No attorney fees were sought and recovered for this work.

V. 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. Eleven Point Scenic River Easement Under Attack

Interested parties asked us to investigate Governor Nixon’s plans to purchase land and build a new state park on land adjoining the Eleven Point Scenic River easement. The State DNR

says there are plans to build 6-foot wide trails through the easement to allow people access to a pristine 8-mile stretch of the Eleven Point, through the scenic easement. In 2015 we worked with a group of stakeholders to illuminate the state's plans and understand the proposed funding.

In October, 2015, we provided formal comments to the MDNR, United States Fish and Wildlife service, and United States Forest Service. We raised concerns over (1) the negative impact which property acquisition and park development is likely to have on the Lower Eleven Point National Scenic River, (2) the lack of a meaningful evaluation and discussion of secondary impacts which may arise from the proposed acquisition and development of property in the vicinity of the Eleven Point River, as required by the National Environmental Policy Act (NEPA), and (3) the diversion of natural resource damage assessment funds away from the mine impact sites to Oregon County, an area geographically removed from the mine impact sites.

No attorney fees were sought and recovered for this work.

2. Missouri Coalition for the Environment v. Worlds of Fun

Since at least September 2010, Worlds of Fun, an amusement park in Kansas City, MO, has consistently discharged pollutants from the facility—including oil and grease, total suspended solids, chlorine, and copper—into tributaries of Shoal Creek and the Missouri River in concentrations and amounts that exceed effluent limitations contained in Section A of its NPDES Permit.

On behalf of the **Missouri Coalition for the Environment**, in November, 2015, Great Rivers and Earthrise filed a lawsuit in the Western District of Missouri against Worlds of Fun LLC and Cedar Fair, L.P., alleging that the companies have failed to comply with their NPDES Permit, resulting in years of pollution to the Missouri River and Shoal Creek. Great Rivers had filed a notice of intent to sue in September, 2015, and attempts at negotiation with the companies were unsuccessful. Since filing suit, it appears that the companies are attempting to quickly settle the violations with the State.

3. Cleaning Up the Ozark Streams by Advocating for Removal of Human Waste

Officials at the St. Louis Zoo expressed concerns to us about the harmful effect of endocrine disruptors on amphibians in the Ozark Rivers. Specifically, Zoo officials believe the large amounts of human urine into the rivers contribute excessive amounts of birth control pill compounds into the rivers. In fact, these endocrine disruptors are not removed by Missouri American Water from St. Louisans drinking water either.

Great Rivers' attorneys are investigating the laws requiring removal of wastes in National Parks and planning advocacy efforts to help decrease the amounts of waste in the Ozark Rivers. Federal law requires no human waste disposal within 60 feet of water bodies; it is impossible to fulfill this on the Missouri streams as that puts floaters onto private property. In 2013, a floater was shot at and killed by a property owner while urinating on the owner's property. Park users in many National Parks across the nation have to carry in various means of carrying out human wastes; we hope to have Missouri join the rest of the nation.

VI. 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 2015, 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 permits issued by the U.S. Army Corps of Engineers (“Corps”) 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. Great Rivers is monitoring the effectiveness and enforcement of mitigation banks and in-lieu fee programs under the 2008 Mitigation Rule.

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. In 2015 we worked with the National Wildlife Federation and other stakeholders, and focused on requesting from the Environmental Protection Agency (“EPA”) a Clean Water Act section 404(c) veto of the project. The veto would be necessary if the Army Corps continues to recommend the project’s construction, which we expect it will.

No attorney fees were sought and recovered for this work.

b. Stop the Little River Drainage District’s Proposal to Clear-Cut Many Acres of Old Hardwood Trees

People who live in Puxico, MO, contacted us asking us to help fight a proposed “maintenance” project that the Little River Drainage District (LRDD) plans to undertake shortly. The neighbors are opposed because they have valuable trees on their property and believe the clear-cutting of them will increase erosion of their property. The LRDD claims it has easements; we have filed Sunshine Law requests and are reviewing the documents. We succeeded in getting the project postponed, but not yet changed to be less harmful.

At our request the LRDD held a community meeting in October, 2015, in Puxico. The neighbors attacked the plan, surprising the LRDD with their opposition. LRDD agreed to postpone the project further and do more investigating.

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

On behalf of the Missouri Coalition for the Environment, in 2012 and 2013 Great Rivers requested documents relating to several development projects that the U.S. Army Corps of Engineers (“the Corps”) had permitted affecting Mississippi River wetlands. The Corps withheld all documents relating to three permits claiming the documents were “pre-decisional.” Great Rivers believes the Corps is misinterpreting that exemption and filed suit in December, 2014, against the Corps. In March, 2015, the Corps agreed to release the documents and pay Great Rivers \$850 in attorney fees.