

Part III - Statement of Program Service Accomplishments

I. ENERGY AND AIR QUALITY PROGRAM

An important part of our energy and air quality program involves monitoring actions taken by federal, state and local governments that will impact global warming 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 global warming. Great Rivers is frequently involved in matters that adversely affect air quality and global warming. 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 prevent the emission of global-warming causing pollutants.

Global Warming and Air Pollution

In 2007, there were over 150 new coal-burning power plants proposed for the United States. If all were built, the reductions in emissions taken by the rest of the world pursuant to the Kyoto agreement would have been undone by the United States alone. Due to public opposition, over 50 of those plants were abandoned or refused licenses in 2008. Another 50 are being contested in courts. Electric utility companies have a great responsibility to try to clean up their plants, but without any financial incentive, the ones operating in Missouri fail to take meaningful action. On behalf of several citizens' groups, in 2008, Great Rivers represented their interests in proceedings before courts and administrative agencies, and in drafting legislation.

1. Challenging the Coal-Fired Power Plant Proposed for the Kansas City Area

Great Rivers continued its representation of the Concerned Citizens of Platte County and the Sierra Club in an attempt to block the construction and operation of a new coal-fired electric generating plant proposed by Kansas City Power and Light Co. (KCPL) on the eastern bank of the Missouri River near Weston, MO in Platte County, a short distance north of Kansas City. In 2005, we represented the groups at a formal hearing before the Public Service Commission (PSC) in which we argued that the plant is ill-advised due to air pollution (mercury, CO₂, toxics, ozone precursors) and environmental damage (destruction of natural wetlands, depletion of drinking water aquifer, disposal of toxics-contaminated fly ash in landfills in the floodplain); therefore, the company's request for approval of the new plant should be denied. The PSC upheld the agreement calling for a new plant and, in 2006, we appealed the PSC's ruling to the trial and appellate courts. In February, 2007, the Missouri Court of Appeals for the Western District ruled in our favor and held that the PSC lacked jurisdiction when it approved the Stipulation. This led to negotiations between the parties and in March, 2007, the parties entered into a Collaboration Agreement with potential nationwide implications. KCPL will build the new plant, but agreed to offset all of its CO₂ emissions with wind power and energy efficiency

programs offered to customers. During the remainder of 2007, Great Rivers continued to represent the Sierra Club and Concerned Citizens in implementing the Agreement.

In January, 2008, KCPL filed documents with the PSC indicating that it will not comply with the Collaboration Agreement's planned addition of 100 MW of wind in 2008. Great Rivers intervened to assess KCPL's explanation for this failure. The PSC ordered KCPL to file a report. No attorney fees were sought and recovered in this case.

2. Challenging the Coal-Fired Power Plant Proposed for Norborne, Missouri

Norborne, Missouri, is a small town about 65 miles northeast of Kansas City, Missouri, in Carroll County. In 2006, Associated Electric Cooperative, Inc. (AECI), of Springfield, Missouri, filed a permit application with the state Department of Natural Resources (DNR) to build a new 660 MW coal-fired power plant in Norborne. AECI sought a loan from the Rural Utilities Services of the US Department of Agriculture (USDA), which triggered the National Environmental Policy Act. The Concerned Citizens of Carroll County and the Sierra Club contacted Great Rivers for assistance in this matter. The USDA filed an Environmental Impact Statement (EIS), and in 2007, Great Rivers filed comments on it on behalf of the Concerned Citizens and the Sierra Club, arguing that the USDA failed to consider the cumulative impacts of global warming-causing pollutants when drafting the EIS.

In 2008, Great Rivers prepared a federal lawsuit to challenge the EIS on the above grounds. Before the suit could be filed AECI withdrew its air permit because it could not get funding from the RUS. The Sierra Club remains prepared to file suit if RUS funding somehow gets back on track; concerns in Congress and a worsening financial outlook for coal plants led it to stop lending for this purpose.

No attorney fees were sought and recovered in this case.

3. Intervention in AmerenUE's Integrated Resource Plan

On behalf of four nonprofit groups—Association of Community Organizations for Reform Now (ACORN), Mid-Missouri Peaceworks, Missouri Coalition for the Environment and the Sierra Club—Great Rivers continued its work in the intervention in the proceedings held before the Missouri Public Service Commission (PSC) on AmerenUE's filing of its twenty-year plan.

On Feb. 5, 2008, AmerenUE filed its Integrated Resource Plan. Thanks to our intervention in their last IRP, a great deal of it has been made public. It envisions a new nuclear unit, Callaway 2, modest renewable energy investments, and what it characterizes as "aggressive" energy efficiency programs. A 120-day period for filing a "report" (comments) commenced with the filing. Great Rivers filed a report on the IRP in June, 2008. The parties then attempted to reach agreement on ways to remedy deficiencies in the plan, with only partial success. On Oct. 7, the PSC held a hearing on whether or not to hold an evidentiary hearing on unresolved issues. The matter was undecided at the end of 2008.

No attorney fees were sought and recovered in this case.

4. Intervention in AmerenUE Rate Case

On behalf of the Missouri Coalition for the Environment and Missourians for Safe Energy, in November, 2008, Great Rivers intervened in the Public Service Commission on AmerenUE's rate case. AmerenUE sought to recover expenditures for filing its application with the NRC to build the Callaway 2 nuclear plant. Great Rivers and its clients believe Ameren's request to recover expenditures for the proposed plant violates Missouri's law prohibiting the recovery of funds spent on plants before they are built. Great Rivers attended two days of the hearings in November and December (those days dealing with our issue), made an opening statement and cross-examined witnesses. We filed a brief on the issue in December.

No attorney fees were sought and recovered in this case.

5. Energy Legislation and Regulatory Matters

On behalf of Renew Missouri, a coalition based in Columbia, MO, consisting of Missouri Votes Conservation, the Missouri Coalition for the Environment, the Heartland Renewable Energy Society and the Sierra Club, Great Rivers drafted bills for net metering and interconnection, and for a Renewable Electricity Standard (RES). The Easy Connection Act (net metering and interconnection) passed both houses of the legislature and was signed by the Governor in 2007. Renew Missouri failed to find a sponsor for the RES bill. Renew Missouri requested and received assistance from Great Rivers in 2007 in drafting an initiative petition for the RES and in drafting energy efficiency legislation.

In 2008, Renew Missouri and the other groups received enough signatures to put the RES on the ballot and, on November 4, 2008, voters overwhelmingly passed Proposition C. This means that there will be a year's worth of rulemaking on the new law.

Also in 2008, the PSC commenced a rulemaking on the Easy Connection Act. Great Rivers participated in the workshops and later intervened in the formal rulemaking when we learned that the PSC had imposed an illegal insurance requirement; this led to the lawsuit discussed below.

In addition, the PSC started a rulemaking proceeding on the renewable electricity standards component of last year's SB 54. Great Rivers also participated in these workshops, but the rulemaking was rendered moot by the passage of Prop C.

Great Rivers drafted energy efficiency bills for clients to introduce in the 2009 legislative session. Great Rivers drafted a bill to encourage the use of Combined Heat and Power and had it reviewed by experts at the American Council for an Energy Efficient Economy. Another bill would encourage utilities to start energy efficiency programs to help their customers save energy.

No attorney fees were sought and recovered for these clients for this work.

6. Suit Over Net Metering Insurance Requirement

In late 2008, the Public Service Commission announced that it would require homeowners who produce solar and wind power and are tied into their utilities' grid to carry insurance for \$100,000 or \$1,000,000 worth of liability, depending on the size of the customer's system. On behalf of Renew Missouri, Great Rivers filed a suit against the PSC in December, 2008, arguing that this requirement is illegal as it is not contained in the law passed by the

legislature in 2007.

No attorney fees were sought and recovered from this client for this work.

7. Challenging the Rebuilding of the Taum Sauk Hydroelectric Plant

Missouri Parks Association (MPA) and Missouri Coalition for the Environment (MCE) requested Great Rivers' assistance in 2007 in the matter of AmerenUE's rebuilding of the upper reservoir of the Taum Sauk pumped storage project located on the East Fork Black River in Reynolds County, Missouri. The facility expends more energy from the burning of coal than it generates as hydroelectric power. The Federal Energy Regulatory Commission (FERC) prepared an Environmental Assessment (EA) that evaluated the impacts from constructing the facility. FERC determined it was not required to evaluate the environmental impacts of the facility's operations until well after Ameren had completed construction of the facility.

In February, 2008, Great Rivers filed a petition to review FERC's determination in the United States Court of Appeals for the Eighth Circuit. In October, 2008, the Court of Appeals entered judgment on the petition for review for FERC and against Missouri Parks Association and Missouri Coalition for the Environment.

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 done in the Public Health Program overlaps the work done in Energy and Air Quality Program.

1. Fighting a Coal-Fired Iron-Ore Smelter Proposed for Crystal City, Missouri

In 2007, the Concerned Citizens for Crystal City sought assistance from Great Rivers after they learned their city government had secretly agreed to lease public land to a developer who plans to construct a new coal-fired pig iron ore smelter on the property. The Citizens oppose it because it will cause further deterioration of the air quality and contribute to global warming. Crystal City is 35 miles south of St. Louis and shares in the health problems such as asthma and respiratory illnesses caused by the regions' poor air quality. The entire region remains out of compliance with EPA limits on certain air pollutants, and is not expected to be in compliance by the time the new plant is built.

In November, 2007, Great Rivers filed a lawsuit in state trial court arguing the City government had failed to comply with Missouri's Open Records law, or Sunshine Law, and other state statutes. During the year 2008, we conducted discovery. Defendants failed to release any documents and we filed a motion for sanctions which was heard in June and September, 2008.

Pursuant to IRS Rev. Proc. 92-59, 1992-2 C.B. 411, a public interest law firm may accept client-paid fees in an amount not to exceed the actual cost incurred in each case, viz., the salaries, overhead, and other costs fairly allocable to the litigation in question. In 2008, our clients paid us \$8,947.50.

2. Asbestos Wet Demolitions

Great Rivers represents Families for Asbestos Compliance, Testing and Safety (FACTS) in its legal challenge against the City of St. Louis and City of St. Louis Airport Authority over the illegal use of the “wet method” of asbestos removal in demolishing more than 300 homes in Bridgeton, Missouri. In this method, buildings containing asbestos are sprayed with water and then demolished. The neighboring residents do not believe that method adequately protected their health. The U.S. District Court for the Eastern District of Missouri entered judgment for FACTS in September, 2008, ruling that the wet demolitions violate the Clean Air Act.

No attorneys’ fees were sought and recovered in this case.

3. Nuclear Waste at West Lake Landfill

The Mallinckrodt Chemical Works in St. Louis processed uranium for nuclear weapons as far back as the 1940’s. Radioactive waste from this enterprise wound up at various sites in St. Louis City and County over the years. In 1973 a large quantity was illegally dumped at West Lake Landfill in Bridgeton, Missouri, and it is still there. The EPA held a public meeting on the waste in September 2006. On behalf of the Missouri Coalition for the Environment, Great Rivers filed comments opposing EPA’s plan to leave the waste there, where it sits in the Missouri River floodplain and can leach into the River which is a source of drinking water for thousands of Missourians.

Pursuant to IRS Rev. Proc. 92-59, 1992-2 C.B. 411, a public interest law firm may accept client-paid fees in an amount not to exceed the actual cost incurred in each case, viz., the salaries, overhead, and other costs fairly allocable to the litigation in question. In 2008, our clients paid us \$4,303.00.

III. WETLANDS AND FLOODPLAIN PROTECTION PROGRAM

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.

Mississippi and Missouri Rivers Basins Watershed Project

Missouri River Protection

1. Development of Floodplain in Cottleville, Missouri

The Cottleville Development Co., LLC, applied to the US Army Corps of Engineers (the Corps), for a permit authorizing the company to raise an area out of the 100-year floodplain in connection with the proposed development of 563 single-family residential lots. The applicant proposed to fill 2.3 acres of wetlands, fill approximately 4,100 linear feet of unnamed tributaries, and excavate approximately 2,780 linear feet of unnamed tributaries. On behalf of area residents, Great Rivers reviewed documents in connection with the application. The developer presently is not proceeding with the project.

No attorney fees were sought and recovered in this case.

2. Opposition to Proposed Levee in St. Peters, MO (Lakeside 370)

Great Rivers Habitat Alliance (GRHA), retained us in connection with the completion of a levee along the Mississippi River at St. Peters, Missouri. GRHA is concerned that neither the Army Corps of Engineers nor the Federal Energy Management Agency (FEMA) had evaluated the cumulative impacts of their actions on flood heights and flood storage capacity. GRHA also is concerned that FEMA's actions concerning revisions to the applicable flood insurance rate map are unlawful.

In 2008, Great Rivers evaluated documents as they were produced by FEMA and the Corps. Also we developed a record before FEMA in the event of litigation concerning FEMA's flood map determination. In December, 2008, we filed a complaint in federal court on behalf of Great Rivers Habitat Alliance against FEMA.

Pursuant to IRS Rev. Proc. 92-59, 1992-2 C.B. 411, a public interest law firm may accept client-paid fees in an amount not to exceed the actual cost incurred in each case, viz., the salaries, overhead, and other costs fairly allocable to the litigation in question.

Great Rivers accepted \$1,469.00 in client-paid fees for this matter in 2008.

3. City of St. Peters - Open Records

Great Rivers Environmental Law Center sought public records from the City of St. Peters concerning St. Peters' effort to revise the effective Flood Insurance Rate Map for St. Charles County, MO and incorporated areas. St. Peters failed to make the records public and in September, 2007, Great Rivers filed suit against the City of St. Peters for violating Missouri's Open Records Law. In 2008, the parties filed cross motions for summary judgment. The circuit judge denied the motions and the case proceeded through the circuit court. On August 29, 2008, the Court entered judgment in favor of St. Peters and against Great Rivers. Great Rivers appealed to the Missouri Court of Appeals. The appeal is pending.

No attorney fees were sought and recovered in this case.

4. Development of Floodplain in Hazelwood, Missouri

On behalf of Great Rivers Habitat Alliance, Great Rivers is evaluating a proposal to develop a portion of the floodplain in Hazelwood, Missouri.

Pursuant to IRS Rev. Proc. 92-59, 1992-2 C.B. 411, a public interest law firm may accept client-paid fees in an amount not to exceed the actual cost incurred in each case, viz., the salaries, overhead, and other costs fairly allocable to the litigation in question. Great Rivers billed the client for 5.20 hours of work, or \$338.00, in this case at the end of 2008.

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.

V. LAND USE PROGRAM

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.

Preservation of Open Space and Parks

Protection of the Katy Trail State Park and Boonville Lift Bridge

In April, 2008, Great Rivers asked the Inspector General for the Department of Homeland Security to investigate wrongful conduct of the Coast Guard concerning the Boonville Lift Bridge. We have also written to the Coast Guard to demand compliance with the National Environmental Policy Act. Great Rivers currently is serving as a consulting party in a National Historic Preservation Act process intended to avoid or mitigate adverse impacts concerning the Boonville Lift Bridge.

No attorney fees were sought and recovered in this case.

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. Great Rivers has asserted environmental justice claims against the City of St. Louis and the Missouri Department of Natural Resources.

St. Louis Lead Prevention Coalition

Great Rivers routinely provides 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 from the St. Louis Lead Prevention Coalition.