

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 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 prevent the emission of climate-change causing pollutants.

1. Intervention in AmerenUE's Integrated Resource Plan

On behalf of nonprofit groups—including Mid-Missouri Peaceworks, Missouri Coalition for the Environment and Sierra Club—Great Rivers intervened in 2006 in the proceedings held before the Missouri Public Service Commission (PSC) on AmerenUE's filing of its twenty-year plan. This work has been ongoing ever since.

AmerenUE filed its last Integrated Resource Plan in 2008, and its next one is due in February 2011. In the meantime Ameren is holding periodic stakeholder meetings with updates on the process. During 2009, Great Rivers participated in several stakeholder meetings. This effort will continue through 2010 with the goals of urging Ameren to see that efficiency is its best option from here on out, and opposing proposals for new fossil-fuel or nuclear generation.

No attorney fees were sought and recovered in this case.

2. Intervention in 2008 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, 2008, and a post-hearing brief in January, 2009. In January 2009 the PSC gave Ameren a rate increase of \$162 million but denied the attempt to get a return on the costs of the Callaway license application because to do so would have violated state law. No appeal of this decision was taken.

No attorney fees were sought and recovered in this case.

3. Intervention in 2009 AmerenUE rate case

On behalf of the Natural Resources Defense Council (NRDC), on August 17, 2009, Great Rivers filed a motion to intervene in AmerenUE's 2009 rate increase case. NRDC seeks to influence the way Ameren is compensated for efficiency programs, to make it more profitable for Ameren and therefore more desirable. Great Rivers attended Ameren's meetings it called "settlement talks" in an effort to develop cost-recovery methods for efficiency that will satisfy all parties to the rate case. Great Rivers served as NRDC's local counsel in filing testimony and on other matters. At the end of 2009, the settlement talks do not appear to have satisfied all parties, including NRDC. Great Rivers and NRDC filed further testimony and may participate in hearings to be held in March 2010.

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 2009, our clients paid us \$1,494.10.

4. Energy Legislation and Regulatory Matters

Proposition C

On Feb. 27, 2009, the PSC Staff released a draft rule to implement Proposition C, the Renewable Energy Standard, which has now gone through seven iterations. Great Rivers drafted comments and proposed regulatory language and participated in three workshops to go over the rule in the Spring and Summer of 2009. Great Rivers is working with representatives of the solar and wind industries and Missouri renewable energy installers. PSC staff issued their final version in Summer, 2009. The PSC issued a notice of formal rulemaking, which involved a 60-day public comment period culminating in a hearing before the Commission in April 2010.

Part of the PSC rule will likely be incorporated into the Integrated Resource Planning rule, which is about to undergo a complete rewrite. Great Rivers attended day one of the first two-day workshop on the IRP rule May 18.

DNR also has to promulgate a rule under Prop C. In December Great Rivers filed comments on DNR's first draft. DNR is still in the process of drafting a rule, and Great Rivers is providing input.

Great Rivers received \$20,000 through a joint grant by the Energy Foundation to Great Rivers, Renew MO and the Missouri Coalition for the Environment.

Legislation

Great Rivers drafted two bills dealing with energy efficiency for the 2010 legislative session, one to encourage the use of Combined Heat and Power (CHP) and the other to establish an Energy Efficiency Resource Standard. Great Rivers also assisted in revising and finalizing a bill to establish a statewide building energy efficiency code. As of this writing the building code bill has been introduced and the CHP bill will likely be introduced.

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

5. 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.

Thanks to the new PSC Chairman and some pressure on the old chairman by the Act's sponsor, the PSC sent an amendment to the Secretary of State that would remove the insurance requirement. On our motion the court suspended the case pending the outcome of a new rulemaking. We participated in the PSC hearing on the amendment. The insurance requirement was lifted, and Great Rivers voluntarily dismissed the lawsuit.

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

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. We took 10 depositions in January and February of 2009 and filed an amended petition in February, raising 16 counts of illegal actions by the City of Crystal City. The trial court denied our motion for leave to file an amended petition on June 3, 2009. In the same order, the trial court ordered plaintiffs to release the database of the website that plaintiffs created in 2007. The database contains a forum at which people wrote anonymous messages both for and against the smelter. Our client had contracts with people who post to the forum guaranteeing he would not reveal their identities. In 2009, Great Rivers took this part of the order to the court of appeals and Missouri Supreme Court on petitions for writs of prohibition. The higher courts denied the writ petitions without opinions. The identities were due on September 15, 2009. After the database administrator refused to release the identities on the ground that people feared

retaliation, the trial court held a hearing on November 24, 2009, and dismissed the case against all five plaintiffs the same day on that ground. Plaintiffs filed a notice of appeal on December 30, 2009.

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 2009, our clients paid us \$2,727.25.

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. The Court set the case for trial on February 17, 2009, on the Resource Conservation and Recovery Act (RCRA) claim and on the remedy phase for the Clean Air Act violations. Plaintiff dismissed its RCRA claim before trial. The remedy phase was tried on February 17 and 18. In July, 2009, the District Judge ruled that plaintiffs lacked standing to seek further relief.

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. In May 2008, the EPA issued a Record of Decision selecting a proposed remedy that would leave the waste in place. 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. EPA did not alter its decision.

Under the Superfund law, no citizen’s suit is allowed to challenge a federal remedy once it is being implemented. Great Rivers continues to assist the Coalition for the Environment in requesting the EPA to reconsider its order by writing memos and letters.

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 2009, our clients paid us \$4,880.00.

4. Opposition to a New Nuclear Plant in Callaway County

In 2009, AmerenUE made official its plans to build a second nuclear unit at the nuclear power plant in Callaway County, Fulton, Missouri. AmerenUE filed in the Nuclear Regulatory

Commission (NRC), a combined Construction and Operating License Application (COLA).

Because of deficiencies in the Environmental Report and the absence of offsite storage for nuclear waste, on behalf of the Missouri Coalition for the Environment and Missourians for Safe Energy, Great Rivers filed a petition for hearing and leave to intervene in the NRC on April 6, 2009, raising 11 contentions. Ameren and the NRC staff filed answers not contesting petitioners' standing but objecting to nearly all our contentions. On May 15, Great Rivers filed a Reply to the answers. The NRC set oral argument for July 28 in Fulton, MO. The NRC expected to issue an order determining the admissibility of contentions by August 28. Before the oral argument occurred, Ameren got the NRC Staff to suspend review of the COLA and then asked the Licensing Board to terminate the hearing proceeding. Great Rivers negotiated a settlement with Ameren whereby, if the proceeding is revived in the future, we will be notified, our contentions will be preserved, and the public may seek to intervene.

Great Rivers received \$13,146.50 from our clients in this case during the year 2009.

5. Cleaning Up Existing Coal Plants

Toxic chemicals are present in coal combustion waste (CCW). These chemicals are released from CCW into the environment through dust that is inhaled or settles onto soil and plants, and through discharges that contaminate ground and surface water. There are at least 30 CCW sites in Missouri. Many of these are operating under expired permits.

Great Rivers has been evaluating air, water and waste data for three facilities to determine whether there are violations of existing permits. Anticipated follow-up actions include the prosecution of suits for permit violations or triggering enforcement by the state.

No attorney fees were sought and recovered in this case.

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

1. Protection of Endangered Species in Mississippi and Missouri Rivers

On behalf of the National Wildlife Federation (NWF) and Great Rivers Habitat Alliance (GRHA), Great Rivers Environmental Law Center is challenging the Federal Emergency Management Agency's (FEMA) implementation of the Federal Flood Insurance Program (FFIP). In implementing the FFIP along the Mississippi and Missouri Rivers FEMA takes various actions without consulting with the U.S. Fish and Wildlife Service on the potential effects to the endangered pallid sturgeon and interior least tern, in violation of the ESA. On December 3, 2009, we served notice of intent to file a citizen suit under the Endangered Species Act.

No attorney fees sought or recovered in this case.

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

On December 29, 2006, the City of St. Peters requested from FEMA a Letter of Map Revision (LOMR) to remove a tract of land from the floodplain of the Mississippi River. The request purported to be based upon a change to the floodplain due to the construction of an urban levee. The levee, according to the request, was designed to provide protection from a 0.2% annual event (500-year flood). By Letter of Map Revision issued June 13, 2008, with an effective date of October 30, 2008, FEMA granted St. Peters' request and revised the Flood Insurance Study report and Flood Insurance Rate Map within the communities of St. Charles County, Missouri, the City of St. Charles, Missouri, and the City of St. Peters, Missouri.

In 2009, Great Rivers, on behalf of GRHA and the Adolphus Busch Revocable Trust, brought suit against FEMA concerning revisions to the flood insurance rate map. In July, 2009, the District Court dismissed the suit for lack of subject matter jurisdiction. We appealed to the 8th Circuit, and filed our opening brief on November 20, 2009.

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 \$2,697.50 from the client for this matter in 2009.

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. 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. Great Rivers filed a reply brief on March 18, 2009, and conducted an oral argument on

April 30, 2009. On May 26, 2009, the Court of Appeals affirmed. The Missouri Supreme Court denied our application for transfer on September 1, 2009.

Court-awarded attorney fees were sought but not recovered in this case.

4. Preservation of Confluence Flood Plain

Truman Business Center proposes to raise and develop 99 acres of vacant, formerly agricultural, land within the Confluence flood plain. The City of St. Charles determined the flood plain property to be blighted for reasons which include flooding and ponding of water, lack of basic infrastructure, and lack of safe ingress and egress.

On behalf of Great Rivers Habitat Alliance, Great Rivers is developing claims to prove the area is not “blighted” because property within the 100-year floodplain typically is characterized by these features.

No attorney fees were sought and recovered in this case.

5. Floodplain Casino

St. Louis County has approved a plan to develop a casino entertainment complex on 377 acres near the confluence of the Missouri and Mississippi rivers, immediately south of Missouri’s Edward “Ted” and Pat Jones - Confluence Point State Park. The development proposes to remove a huge amount of acreage from the Confluence floodplain. Visitors to the State Park use the area to enjoy the many species of songbirds, shore birds, wading birds, waterfowl and raptors as they watch the rivers flow by. These uses are threatened by the proposed casino entertainment complex. Great Rivers has been working to develop strategies to stop the proposed casino complex from going forward.

No attorney fees were sought and recovered in this case.

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 the Ozark National Scenic Riverways

Shannon County has plowed, within the Ozark National Scenic Riverways (ONSR), seven illegal roads in 2007 and two illegal roads in 2008. Further, according to one National Park Service (“NPS”) employee, one of the illegal roads has destroyed features that fall within the protections of the Archaeological Resources Protection Act of 1979. Conversations with NPS employees reveal that federal officials will not enforce the restrictions which prohibit these illegal roads, or any other illegal road plowed by Shannon County. A park service official showed Great Rivers staff the destruction caused by these roads during a visit to the ONSR in May, 2008. In 2009, Great Rivers requested and received from the National Park Service files

concerning the unlawful road building. We are in the process of evaluating the files.

In 2008 Great Rivers received a grant from L-A-D Foundation in the sum of \$3,250.00, and as of December 31, 2009, that balance of the grant is \$2,479.50.

2. Big Creek

On behalf of the L-A-D Foundation, on April 6, 2009, Great Rivers served upon Shannon County a notice of intent to sue for violations of the Clean Water Act. Great Rivers filed suit against Shannon County on L-A-D's behalf in July, 2009, for the Clean Water Act violations as well as damage to L-A-D property. The case is set for trial in May, 2011.

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.

Our client has paid us \$3,108.80 in this case at the end of 2009.

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

1. Protection of the Katy Trail State Park and Boonville Lift Bridge

During the year 2009, Great Rivers served as a consulting party in a National Historic Preservation Act process intended to avoid or mitigate adverse impacts to the Boonville Lift Bridge. Also, in January 2009, Great Rivers filed comments with the Surface Transportation Board on a petition filed by the State of Missouri for a declaratory order on whether Union Pacific had authority to abandon the Bridge.

No attorney fees were sought and recovered in this case.

2. LaBarque Creek Watershed

AmerenUE ("Ameren") proposed construction of a 138,000 volt transmission line in Jefferson County. Ameren originally set forth three routes for consideration: "green," "red," and "yellow." The yellow route would cut through the Hilda Young Conservation Area, which is a 970-acre plot of land that makes up a significant part of the LaBarque Creek Watershed. The LaBarque Creek Watershed features a high-quality stream along with a rugged sandstone terrain. The Watershed's sandstone geology produces a dramatic landscape. Deep, sheltered canyons and ravines contain state-listed plants found in only a few other locations in Missouri. The Watershed is largely undisturbed. This minimal disturbance has allowed for the maintenance of a high-quality ecosystem. LaBarque's level of stream diversity and richness is found nowhere

closer to the St. Louis area. Great Rivers worked to reduce the transmission line's impacts to the Watershed.

No attorney fees were sought and recovered in this case.

3 Preservation of Creve Coeur Lake Park

Using federal stimulus funds, St. Louis County proposes to extend Highway 141 from Olive Blvd. to Page Avenue through largely vacant land along Creve Coeur Lake Park. Great Rivers has been demanding that a project of this magnitude requires an Environmental Impact Statement. The existing Environmental Assessment fails to evaluate adequately many impacts to the environment, including impacts to surface waters and wetlands.

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.