

## **Riverkeeper Groups as Enforcement Agents for Environmental Policy** **Adeline C. Miller (Student), Angela M. Person (Advisor), Randy A. Pepler (Advisor)**

### *Project Background*

Riverkeepers are environmental Non-Governmental Organizations (NGOs) that focus on preserving or rehabilitating a local water body. Often these groups engage legal processes as a part of their preservation efforts. Nonetheless, my preliminary research has revealed a lack of research on Riverkeeper groups, with no literature existing on their collective influence on environmental policy and actions in the legal system on any scale. Recognizing this gap in the literature, this research will serve as an introduction to the concept, actions, and impacts of Riverkeepers, which could initiate further inquiry in the environmental policy enforcement field.

The first Riverkeeper was officially established for New York's Hudson River in 1986 through a name change of a previous organization, "Hudson River Fisherman's Association" (Riverkeeper "About Us"). Thus, "Hudson Riverkeeper" was established as the first ever "Keeper" group. The Hudson Riverkeeper's subsequent successes (described below) inspired others to follow their lead as other Keeper groups popped up across the United States, and internationally. In 1999, the Waterkeeper Alliance was established by environmental activist Robert F. Kennedy Jr. as an umbrella organization to unite individual Keeper groups (Scribner 42). The Waterkeeper Alliance envisioned the growing strength and number of Keeper Groups, which have expanded to over 300 since.

As an environmental group, the Hudson Riverkeeper has achieved numerous environmental feats, but my research is uniquely focused on Keeper Groups' legal successes. As the first Keeper Group, the Hudson Riverkeeper gained the earliest legal successes for the movement, beginning in 1992. Legal efforts and successes have grown since, with a recent success in the 2023 *Riverkeeper, Inc v. State Contracting Corp. of NY* case in the United States District Court for the Southern District of New York. The case resulted in a settlement where State Contracting Corp. must now report information regarding discharges of pollution from its facility to waterbodies or sewers of any kind. As well as granting the Riverkeeper site access for inspection at least once a year, the ruling requires this polluter to make corrections within 30 days if found to violate any terms, and pay the Riverkeeper \$40,000 plus up to an additional \$10,000 in fees for continued monitoring costs (*Riverkeeper, Inc v. State Contracting Corp. of NY* 2023). Another recent success was the 2023 *St. Johns Riverkeeper, Inc. v. Berman Bros.* case in which another settlement was reached. It forces Berman Bros. to operate its facility according to MSGP (the Environmental Protection Agency's Multi-Sector General Permit) and Clean Water Act (established in 1972 for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters) requirements, implement structural and non-structural best management practices, create a new stormwater sampling structure, implement stormwater controls, implement enhancements to stormwater monitoring and reporting, and pay \$70,000 to reimburse legal fees along with \$35,000 to environmentally beneficial projects within the St. Johns River Watershed (*St. Johns Riverkeeper, Inc. v. Berman Bros.* 2023).

Along with many other legal successes by Keeper groups, these two examples highlight the importance of "citizen suits" or "enforcing suits" in the environmental field, which have proved to be a tool for enforcing environmental regulations. An Environmental Law Institute article by Roberts and Dobbins (2016) articulates the role of citizen environmental enforcement of environmental protection goals by permitting citizens to seek enforcement of environmental laws and regulations. Roberts and Dobbins also point out that citizen lawsuits for environmental protection do not seek a personal economic gain for the plaintiff, allowing the suits to be solely filed for the purpose of the public's best interest. Overall, citizen suits provide a more level playing

field, free of lobbying or industry pulls, and act as a platform for the citizens to be heard. To illustrate the efficacy of these lawsuits, Bothner, Toller, and Schnase (2022) quantitatively analyzed the impacts of environmental organization (ENGO) lawsuits regarding nitrogen dioxide (NO<sub>2</sub>) levels in several German cities, finding that in cities where legal action was taken, NO<sub>2</sub> levels decreased more significantly than in cities where no legal action was taken. This led to the conclusion that it is possible for ENGO lawsuits to lead to air quality improvements that would not have occurred otherwise.

The impacts of citizen lawsuit importance and efficacy of environmental lawsuits are vitally important when analyzing the state of current environmental regulation. Gray and Shimshack (2011) stated that traditional monitoring and enforcement is becoming increasingly controversial, leading the industrialized world to push for alternate solutions such as voluntary programs or informational policies. Furthermore, they state that many countries' enforcement numbers have declined; they cite the U.S. as one example, with EPA's civil enforcements having markedly declined since the 1990s. This is not the case in all countries, however, as Doonan, Lanoie, and LaPlante (2005) found that 70 percent of Canadian plant managers reported their primary source of environmental regulatory pressure comes from the government. May (2005) examined regulation and compliance motivations in the United States and found that conventional regulation was significantly more impactful on managers' deterrence measures than voluntary programs. The disconnect between support for voluntary programs, shown by Gray and Shimshack, and the apparent disregard for voluntary programs, shown by May, illustrates a prevailing inconsistency with environmental regulation in the U.S. Some polluters are deliberately advocating for nonmandatory regulations, while Doonan, Lanoie, and LaPlante explicitly show that polluters regard the government as the only enforcement for changing their harmful practices.

This contradiction may suggest that other forms of regulation that operate outside of the government to hold violators legally accountable are needed. Riverkeepers have emerged as one possible solution, at an intersection between government regulation and voluntary programs. They seek to enforce the government's policies and standards but operate outside of the government within their own time frames, funding, leadership, motivation, and willingness to fight against environmental threats. Riverkeepers would seem to have geographic reach, with focused efforts on local water bodies, with the capability of expanding their network and practices regionally or nationally. Keeper groups' growing presence in the court room demonstrates their ability to force the government to act on violators, companies, municipalities, and states alike.

### *Project Details*

#### **Central Research Question:**

This research project asks how Riverkeeper groups engage the legal system to enact environmental policy enforcement. Background research has shown the demand for citizens to seek enforcement of environmental policy, a role that Riverkeeper groups appear to be fulfilling. Background research has also revealed lackluster enforcement through traditional mechanisms, which suggests that as long as enforcement remains under the current structure, pollution mitigation will suffer in United States' waterways. This research seeks to uncover the key legal mechanisms leveraged by local Riverkeepers which may be adopted by environmental groups in new geographic regions or to new different, but related environmental issues.

#### **Intended Outcome:**

This is the first scholarly research project that looks at the work of Riverkeeper groups' legal actions nationally, drawing together the practices and impacts of their collective activism. The intended outcome of the proposed UReCA project is to **develop a database of cases nationally**

**and conduct a content analysis of lawsuits brought by Riverkeepers since the first lawsuit in 1992.** At the end of the fellowship, this database will be uploaded to ShareOK, an online, open access repository managed by OU Libraries, as a reference for other scholars. Following my summer UReCA fellowship, I will spend my final semester (Fall 2024) analyzing the database and drafting a manuscript to be submitted to a journal such as *Studies in Social Justice* as an outcome of my Senior Capstone project (GEOG 4953). Following my summer UReCA fellowship, I will spend my final semester (Fall 2024) drafting a **manuscript to be submitted to a journal such as *Studies in Social Justice*** as an outcome of my Senior Capstone project (GEOG 4953).

### **Objectives:**

The core objectives of this project are as follows (see “Expected Results” section below for a project timeline related to completing these objectives):

- Work with the OU College of Law librarians to understand how to read and interpret court cases and conduct legal database research (Note: Contact with them has been established);
- Compile a database of relevant Riverkeeper court cases;
- Compile a literature review of Riverkeeper federal court cases;
- Conduct an analysis utilizing the database and record my findings; and
- Draft a manuscript suitable for submission to a publication

### **Data and Analysis:**

This project will primarily engage qualitative data and analysis. My data collection will consist of compiling federal court cases involving Riverkeepers for analysis. I have narrowed the search criteria as follows: the court cases must include Riverkeepers as the plaintiff bringing the case forward to hold a violating party accountable. This study will use the Clean Water Act as a requirement for the cases included, with the Act as the governmental standard the Riverkeeper is enforcing against the defendant. The defendant must be a non-federal governmental environmental threat, such as private companies, municipalities, states, or even individuals. I will not include cases where Riverkeepers sue the federal government or the EPA. Thus, I will only include cases in which the Riverkeeper holds an entity liable for violating a governmental regulation. I will locate these court cases through legal databases, such as NexisUni, with support from OU College of Law librarians. A preliminary search suggests approximately 600 cases may qualify for inclusion in the study.

Once all relevant court cases are compiled, I will create a database spreadsheet to organize their details. It will document metadata such as case name, year, circuit, outcome, defendant, and content. The database will allow me to compare the cases, organize similar ones into groups, identify trends, and analyze common themes. Manipulation of the database will allow me to identify success rates of the cases, and specifically who, what, when, where, and why particular cases may be successful. To conduct the analysis, I will apply qualitative content analysis (e.g., Schreier 2012) to my database to identify themes, patterns, and relationships between the court cases. Content analysis also will allow me to systematically describe the meaning of material in the court cases and what conclusions can be drawn from them, with the hope of gleaning new insights into how the court cases affected policy. My approach will be modeled after a study by Kappeler et al. (2002), which utilized content analysis for 1,359 police civil liability cases. That study focused on determining longitudinal trends, types of law enforcement, prevailing parties, allegations, and amounts awarded to successful plaintiffs. These are similar to the categories I will be examining within the Riverkeepers court cases.

### Expected Results:

I expect to uncover how the Riverkeeper groups' legal actions may be connected under common themes or motivations and how together they contribute to a common goal, and how individual Keeper group actions are contributing to an overall improvement in domestic environmental enforcement. Furthermore, I hope to illuminate this new system or approach to environmental policy enforcement that could then be modeled and utilized by environmental organizations to further improve enforcement of U.S. environmental policy.

<b>Timeline</b>	<b>Objective</b>
<i>Preliminary Work (Completed)</i>	Background research and understanding of Riverkeepers, preliminary literature review, initial contact with OU College of Law librarians, initial search for relevant court cases.
UReCA Week 1	Work with the OU College of Law librarians to gain a basic understanding on how to read and understand a case summary and narrow down my search parameters. Meet with research mentors.
UReCA Week 2	Work with Law librarians to manipulate and utilize the legal database to search for relevant case data. Meet with research mentors.
UReCA Weeks 3-5	Assess the data to confirm the dataset is relevant and ready to be transferred into the database. Meet weekly with research mentors.
UReCA Week 6	Build an effective and navigable database with capabilities of call functions to easy manipulate data for analysis, identifying which factors are important to include in the spreadsheet. Meet with mentors.
UReCA Weeks 7-8	Compile all relevant case data from the legal database into the new spreadsheet database, this process will be methodical and meticulous to correctly list all cases into the spreadsheet. Meet weekly with mentors.
UReCA Weeks 9-10	Begin analysis utilizing the database, drawing conclusions, identifying patterns and themes, and documenting my findings. Draft final UReCA project report & submit database to ShareOK. Meet with mentors.
<i>Post UReCA Fellowship (Fall 2024)</i>	Draft a journal manuscript presenting my findings to be submitted for publication, to be completed as part of my senior capstone.

### Personal Statement

This research project is the culmination of my undergraduate interests and my future career goals. I am studying both Environmental Sustainability and Letters with a focus in Constitutional Studies, with the goal of working in environmental law. As an aspiring legal scholar, research on case law will be a fundamental part of my future. This project will allow me to experience not only the research process, but to delve into the legal world, allowing me to learn how to think and process in legal terms while still an undergraduate student, building my skills and confidence, and excitement for the work, before I attend law school. Furthermore, I feel that the proposed research is important to the broader fields of environmental law and advocacy and fills a critical gap at the intersection of both fields. The enforcement of environmental policy is critical to the protection of the planet, so uncovering and documenting the extensive work of these enforcement agents, the Riverkeepers, could spark other researchers and environmental advocates to study and engage this type of work. I am interested in pursuing environmental law because I believe federal regulation and enforcement plays a critical role in ensuring sustainable practices. This study, which integrates my educational interests, seeks to contribute to improved enforcement of our nation's environmental policy.

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