MASSACHUSETTS
Rivers Alliance

The RIVER Advocate

HEALTHY RIVERS FOR PEOPLE AND WILDLIFE

SPRING 2018

Supreme Court HDR by MitchellShapiroPhotography/licensed under CC by 2.0

Taking it to the courts

Last fall Mass Rivers filed a lawsuit against the U.S. Environmental Protection Agency (EPA) and its Administrator Scott Pruitt, joining a national grassroots legal movement. Executive orders, decreased federal staff, and agency mission shift have created a significant threat to existing environmental protections. The federal government asserts that loosening environmental regulations will be an economic boon to businesses and communities. Environmental groups see the rollback as a disastrous attack on protections essential to the health of our land and water and a setback to recent progress on climate change adaptation. These two clashing viewpoints are resulting in a cascade of lawsuits against the EPA nationwide. Mass Rivers chose to join the legal fight when we felt the threat to our rivers could no longer go unchallenged. Advocates across the country are taking their grievances to the courts to prevent environmental deregulation and the loss of important gains made over past decades. It is integral to our mission to speak up for those who don't have a seat at the table when environmental policy decisions are made - those in underserved communities, future generations, and of course, the rivers themselves. With this lawsuit, Mass Rivers and our co-plaintiffs are speaking for them - loudly and clearly.

MARCH, 2018

From the Director

OUT OF BALANCE

There is a tension between protecting nature for the benefit of the public, and exploiting it for private profit. While many Americans say they don't like regulations, nearly everyone values clean water. And without our environmental laws, regulations, and the agencies entrusted with enforcing them, we would not have clean water (or breathable air, or protected land). In a very real way, our environmental regulations keep us safe. We could certainly do a better job of protecting public health and our environment. But until recently, for the most part, our federal government's three branches seemed to be working the way they were supposed to, balancing these two competing interests.

In the past year, that balance has been thrown suddenly and dramatically out of whack across the country. The U.S. Environmental Protection Agency Administrator Scott Pruitt has made it his mission to weaken the country's environmental regulations, slashing funding for an already understaffed federal agency, and stepping back from enforcing environmental laws. So far, the U.S. Congress has shown little interest in stopping him.

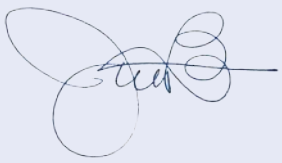
That leaves the courts.

Here in Massachusetts, Mr. Pruitt directed EPA Region 1 staff to pull back the state's stormwater permit, two days before it was to go into effect, following many years of negotiation among all stakeholders, and nine years after the last permit expired.

This action catalyzed the Massachusetts Rivers Alliance and nine of our member groups into action, with a lawsuit you can read about on page 3. With this litigation, we joined environmental groups around the country who have sued to reverse this administration's illegal actions in its war against the environment. We are grateful to our pro bono attorneys, Kevin Cassidy, and Irene Freidel, (page 5) and to our nine co-plaintiffs (page 4). We greatly appreciate the support of Attorney General Maura Healey (and her excellent staff), who have requested permission to file an amicus brief in support of our lawsuit.

We were surprised to see who also asked the court's permission to file an amicus brief **in opposition** to our lawsuit; National Association of Home Builders, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, and National Mining Association among others. It's not clear to me why they would care about a stormwater permit in Massachusetts, but these industries certainly have a record of pushing back, hard, against environmental regulation that protects our water.

We at Mass Rivers are proud to stand up for the environment, for clean water, and for you. Thank you for your support.



Julia

MASSACHUSETTS RIVERS ALLIANCE ORGANIZATIONAL MEMBERS

Association to Preserve Cape Cod
Belmont Citizens Forum
Berkshire Environmental Action Team
Berkshire Natural Resources Council
Biodiversity for a Livable Climate
Blackstone River Coalition
Boxborough Conservation Trust
Center for Coastal Studies*
Charles River Conservancy
Charles River Watershed Association*
Charlestown Waterfront Coalition
Clean Water Action
Connecticut River Conservancy
Conservation Law Foundation
Environment Massachusetts
Environmental League of Massachusetts
Essex County Greenbelt Association
Friends of the Assabet River NWR
Friends of the Blue Hills
Friends of the Malden River
Greater Northfield Watershed Association
Green Newton
Groundwork Lawrence
Hoosic River Revival
Hoosic River Watershed Association
Hop Brook Protection Association
Housatonic Valley Association
Ipswich River Watershed Association*
Jones River Watershed Association
Kestrel Land Trust
Lowell Parks & Conservation Trust
Mass Audubon
Massachusetts Assoc. of Conservation Comm.
Massachusetts Land Trust Coalition
Mass Org of State Engineers and Scientists (MOSES)*
Massachusetts Watershed Coalition
Merrimack River Watershed Council
Millers River Watershed Council
Mystic River Watershed Association
Nashua River Watershed Association
Neponset River Watershed Association*
North and South Rivers Watershed Association*
OARS, for the Assabet, Sudbury, & Concord Rivers
Ocean River Institute*
Parker River Clean Water Association
Save the Bay – Narragansett Bay Riverkeeper
Sea Run Brook Trout Coalition
Shawsheen River Watershed Association
Sudbury Valley Trustees
Sudbury, Assabet and Concord Wild & Scenic River Stewardship Council
Taunton River Watershed Alliance
Taunton River Wild & Scenic Stewardship Council
Ten Mile River Watershed Council
The Nature Conservancy*
The Trust for Public Land
The Trustees
Trout Unlimited, Greater Boston Chapter
Trout Unlimited, Nor'East Chapter
Trout Unlimited, Pioneer Valley Chapter
Wastewater Advisory Committee (WAC)
Water Supply Citizens Advisory Committee (WSCAC)
Weir River Watershed Association*
Westfield River Watershed Association
Westfield River Wild & Scenic Advisory Committee
Westport River Watershed Alliance

**Leadership members*

Why did we take EPA and Scott Pruitt to court?

On September 22, 2017, the Massachusetts Rivers Alliance and nine watershed organizations filed suit in Boston's federal district court to challenge the legality of EPA's one-year delay in implementing the state's new municipal stormwater permit. The permit, known as the "MS4," for small "municipal separate storm sewer systems," regulates stormwater pollution under the federal Clean Water Act.

The Clean Water Act is the principal federal statute enacted to protect water quality in the United States. In Massachusetts, MS4 permits are issued by the EPA and require municipalities to take specific actions to reduce or eliminate stormwater pollution. These permits expire and need to be re-issued every five years. In Massachusetts, our permit expired in 2008 but was administratively continued until EPA issued the new permit in 2016. The new permit, which should have gone into effect last summer, is a product of extensive public input as well as eight long years of negotiation among the state Department of Environmental Protection ("DEP"), the EPA, and many other stakeholders.

The new permit requires towns to create a stormwater management plan and directs them to map their stormwater collection systems, monitor outfall pipes, and prioritize clean-up of the most pressing problems, such as the discharge of untreated sewage into nearby waterways via storm drains. The permit also requires public outreach, stormwater recharge, and "good housekeeping" practices such as storm drain cleaning and street sweeping.

Two days before the permit was set to take effect, the EPA surprised everyone by delaying its implementation by at least another year. We believe the basis for this delay is illegal and will cause additional harm to our rivers. The process used by the EPA to draft and finalize these permits is complicated and labor-intensive. There are limited legal reasons the EPA can delay a permit once it has gone through this lengthy process and been issued. Governor Baker and DEP could have implemented the permit despite EPA's actions, but chose not to. Due to the failure of our federal and state environmental protection agencies to uphold the issued permit, Mass Rivers and our co-plaintiffs decided to take our case to the judiciary on behalf of our rivers.

Photo courtesy US Environmental Protection Agency

As of this writing we are waiting for the federal district court to either issue a decision or set a date for a hearing on our legal briefs seeking to vacate EPA's stay of the permit. Our motion asks the court to stop the delay and implement the permit that should have gone into effect last year. In response, EPA has filed its own motion to dismiss our case, and numerous national industry organizations have requested permission to file briefs opposing our lawsuit (see list in Executive Director's column). Each month the MS4 permit is delayed, new development projects across the state are being constructed with outdated stormwater controls adversely affecting our environment both now and in the future. Watershed associations had been working with their municipal and regional partners for many years to help our cities and towns prepare to comply with the new permit. The EPA's delay needlessly squanders the opportunity to finally make significant progress on the number one source of water pollution in our state. We are waiting for our legal system to play its important role of checking and balancing the power of other branches of our government. Our rivers have waited too long.

Orange sun on Sudbury River. Photograph by Rob Houghton - All Rights Reserved © - www.robhoughtonphotography.com

Mass Rivers' legal green team

Attorneys Irene Freidel and Kevin Cassidy are co-counsel representing the plaintiffs in Mass Rivers, et al v. E. Pruitt. Their generous donation of time and talent enabled us to file this important lawsuit. Irene and Kevin are part of a national movement of lawyers who have made a commitment to try to prevent a rollback of state and federal environmental regulatory protections.

What was your path to becoming Mass Rivers' pro bono attorney in our lawsuit against the EPA?

Irene: I have always had a passion for the environment and thought my law career would be entirely as an environmental lawyer. I was chair of the Environmental Law Society in law school and interned at EPA Region I as a law student. However, once I started practicing law, I had one significant Superfund case, and then my career veered off in an entirely different direction. I have never lost my interest in environmental law, or my love of the outdoors. Along the way, I worked on a couple of pro bono cases for Mass Audubon, and learned a great deal about rivers and water policy during my three year stint as a member of the Mass Rivers board. In the summer of 2017, I retired from private practice to devote all of my time to pro bono legal work. Around the same time Mass Rivers was looking for pro bono counsel to potentially file suit against the EPA. As a long-time litigator with a love for the environment, my decision to jump in was easy to make.

Attorney Irene Freidel. Photograph by Jacob Gaposchkin ©

Kevin: I went to Lewis & Clark Law School in Portland, Oregon for its environmental law program. As a student, I participated in the environmental law clinic. After graduation, I spent eight years as an environmental crimes prosecutor for the U.S. Department of Justice. Toward the end of 2010, I got a call from my former environmental law professor who asked if I was interested in opening up an east coast office for L&C's environmental law clinic, the Earthrise Law Center. Earthrise provides low or no cost legal services for nonprofit conservation organizations. When Mass Rivers decided to challenge the EPA's delay of the MS4 permit, it was an easy decision for Earthrise to agree to provide legal representation in this important lawsuit.

How does our lawsuit relate to cases pending against the EPA in other parts of the country?

Irene: In the summer of 2017, when I first started looking into the viability of potential claims against EPA in our case, two things quickly became clear. First, EPA was trying to roll back environmental rules around the country using the same legal mechanism as in Massachusetts, and, second, various environmental groups were pushing back with their own lawsuits. In other words, we were not alone, and we were not the first to work on a legal strategy to get the rules that we need back on course. It was both distressing to realize just how hard EPA, under Scott Pruitt's leadership, was turning back the clock on environmental regulation, but also encouraging to know that many groups were turning to the courts for protection. Their example made the conception of our lawsuit much easier, and, in turn, we have benefited from the work of other environmental lawyers and activists around the country.

Attorney Kevin Cassidy of Earthrise Law Center

Kevin: There is some fast developing law on the power of administrative agencies to overturn the rules and regulations of prior administrations. It's pretty obvious that no administration has been as aggressive at doing this as the Trump administration, so there isn't a lot of case law to draw upon - it's all happening in real time. The national manufacturing and extractive industry groups asking to file an amicus brief in our case are doing the same in other cases - they see it as a chance not only to roll back environmentally protective permits and regulations, but also as a chance to set precedent for administrations that are aligned with their anti-regulatory positions to do this again in the future.

What was your favorite experience on a river? Where were you and what were you doing?

Irene: I have so many fond memories of being on different rivers, it's a challenge to pick one! There is hardly anything more relaxing to me than floating along with the current in a canoe or kayak on a beautiful day, watching birds, ducks, turtles, fish, beavers, muskrats, otters, and so many other creatures that seem to only appear along river edges. I was recently out floating on the Nashua River with one of my sons late in the day and into the sunset (it was chilly!); we were surrounded by tree swallows, many different varieties of ducks, and under the watchful eye of a bald eagle. It was heavenly. On the less wonderful end of the spectrum, I once (accidentally) dumped my husband-to-be out of a canoe into a very cold river in northern Michigan a fairly long way from our campsite. Luckily, it wasn't our first date. **Continued on page 5.**

What is stormwater?

Stormwater runoff is one of the greatest threats to clean water in Massachusetts and a public health concern. It is generated from rain and snowmelt that flows over impervious surfaces, such as paved streets, parking lots, and building rooftops, and does not soak into the ground. The runoff typically is a mix of bacteria, chemicals, metals, nutrients, hydrocarbons, and other pollutants that flows down storm drains into the waterways the public relies on for drinking water and recreation. Common pollutants in stormwater runoff include antifreeze, detergents, fertilizers, gasoline, household chemicals, oil and grease, paints, pesticides, fecal matter from pets, farm animals, and wildlife, road salt, trash such as plastics and cigarette butts, sediments, ammonia, and solvents. According to EPA, stormwater discharges are causing or contributing to at least 55% of the water quality impairments in all Massachusetts' assessed waters.

Clogged Storm Drain by Chris Hamby/licensed under CC by 2.0

The nine co-plaintiffs of MASS RIVERS v. E. SCOTT PRUITT, EPA

The co-plaintiffs in our lawsuit challenging the EPA are Neponset River Watershed Association, Connecticut River Conservancy, Merrimack River Watershed Council, Taunton River Watershed Alliance, OARS, Ipswich River Watershed Association, Mystic River Watershed Association, Jones River Watershed Association, and North and South Rivers Watershed Association.

Together these groups protect some of the largest watersheds in Massachusetts and cover over half of the state. We are proud to have them stand with us - and with you.

OARS

MRWC
MERRIMACK RIVER
WATERSHED COUNCIL

IPSWICH RIVER
WATERSHED ASSOCIATION

Connecticut River
Conservancy

MyRWA
Mystic River Watershed Association
your community • your watershed

Jones River
Watershed
Association

A Voice for the River
TAUNTON RIVER WATERSHED ALLIANCE, INC.
TRWA
1988 - 2018
30
years

NSRWA
nsrwa.org

neponset river
WATERSHED ASSOCIATION

"Mass Rivers' legal green team" from page 4.

Kevin: I grew up in Virginia so I have some great early memories of canoeing on the Potomac River with my dad and two brothers. Nowadays, I'm lucky to have the North River as my "home" river. My most recent favorite experience was a Father's Day canoe trip on the upper reaches of the North River with my wife and two daughters. It gets surprisingly remote and wild in that area of the river, and we were gliding near the bank when we saw a giant snapping turtle swim slowly up from the river bottom and start munching on some vegetation at the surface. It felt like something out of Jurassic Park. My girls didn't get out of the canoe much after that.

Massachusetts Rivers Alliance
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617-714-4272 • www.massriversalliance.org
We have moved to Cambridge!
Please note our new address.

Massachusetts Rivers Alliance

Mass Rivers' mission is to protect and restore rivers across the Commonwealth.

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Mass Rivers Annual Meeting 2017 - A Night to Remember

Telling the 200-person crowd to "put on your big girl pants," former EPA Administrator and our 2017 Guest Speaker Gina McCarthy urged audience members at the Mass Rivers Alliance Annual Meeting not to give up. "The federal government never had an original idea in its life," she insisted, explaining that her long experience in government showed her that it's the grassroots initiatives that create change. McCarthy's entertaining and inspiring speech had the crowd laughing, nodding, and finally, on its feet in an enthusiastic standing ovation.

Gina McCarthy and Mass Rivers staff.
Photo by Carole Smith Berney

Mass Rivers also recognized outstanding contributions to river protection by recently retired EPA permit writer Dave Pincumbe, former Division of Ecological Restoration Director Tim Purinton, and Charles River Watershed Association Associate Director and General Counsel Margaret Van Deusen. The three were given River Hero awards.

Thank you for making this event our largest and most successful yet. We hope to see you in 2018!