

**The History of Waterkeeper Alliance:  
An International Grassroots Movement Flows from the Hudson**

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## Part I:

# Origins and Growth of Waterkeeper Alliance

### Hudson River Fishermen Meet the Dawn of Modern Environmentalism 1962 - 1983

In his 1997 foreword to *The Riverkeepers* by renowned Hudson River activists John Cronin and Robert F. Kennedy, Jr., then-Vice President Al Gore reflects upon a dark chapter of America's environmental history. "As our nation grew and our economy became industrialized," Gore explains, "we began to turn our backs on our waterways, in many cases treating them more as dumping grounds than as national treasures. Nowhere was this more prevalent than on the Hudson River, which by the 1960s had become so severely polluted - so polluted that some considered it to be dead."<sup>1</sup>

Biologists Karin E. Limburg, Mary Ann Moran and William H. McDowell echo Gore's historical judgment, noting that "The once luxuriant estuarine flora and fauna [had] been adversely affected by long-term pollution.

Recreational activities on the lower Hudson had all but ceased by the early

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<sup>1</sup> Al Gore, foreword to *The Riverkeepers: Two Activists Fight to Reclaim our Environment as a Basic Human Right*, by John Cronin and Robert F. Kennedy, Jr. (New York: Scribner 1997; reprinted with preface by John Cronin and Robert F. Kennedy, Jr. New York: Touchstone, 1999), 11. Citations are to the Touchstone edition.

1960s."<sup>2</sup> Cronin and Kennedy recount in *The Riverkeepers* how, as new forms of environmental law and activism emerged in the late 1960s and thereafter, the Hudson gradually rebounded. Nevertheless, in the earlier part of that decade, the river's improvement appeared unlikely.

Robert Boyle, an author and environmentalist whom celebrated Hudson River historian Carl Carmer claims "knows more about [the Hudson] than any other living man," strongly lamented this pollution's consequences.<sup>3</sup> Boyle's knowledge of the river initially grew through conversations with Hudson fishermen during the early 1960s while he was writing fishing articles for *Sports Illustrated*.<sup>4</sup> He quickly became a leading expert on the history, ecology, laws, and politics affecting the Hudson. By 1969 Boyle had written *The Hudson: A Natural and Unnatural History*. As Cronin and Kennedy note, "Regarded by many as the best book ever written about a river, it quickly became a classic among nature and history readers and has gone through nearly a dozen printings."<sup>5</sup> Indeed, when the Society of Environmental Journalists published their "Great Books" list in 2003, Jim

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<sup>2</sup> Karin E. Limburg, Mary Ann Moran, and William H. McDowell, *The Hudson River Ecosystem* (New York: Springer-Verlag, 1986), 3.

<sup>3</sup> Carl Carmer, review of *The Hudson River* by Robert H. Boyle, *New York Times*, February 15, 1970, 226.

<sup>4</sup> Suzanne DeChillo, "Battler for a Clean Hudson," *New York Times*, February 15, 1981. WC1.

<sup>5</sup> John Cronin and Robert F. Kennedy, Jr. *The Riverkeepers: Two Activists Fight to Reclaim our Environment as a Basic Human Right* (New York: Scribner, 1997; reprinted with preface by John Cronin and Robert F. Kennedy, Jr. New York: Touchstone, 1999), 23. Citations are to the Touchstone edition.

Detjen, their founding president, recalled that reading Boyle's "excellent book" was crucial to launching his career.<sup>6</sup>

Boyle's road to Hudson activism was paved in 1962, when Consolidated Edison announced its plan to construct the world's largest pump storage facility on the Hudson Highlands' beautiful Storm King Mountain. During Con Edison's July 31, 1964 license application hearing, Scenic Hudson, a new environmental group, tried to prevent the project on aesthetic grounds. The hearing examiner dismissed their arguments as selfish and overly idealistic – a bad sign for Scenic Hudson, although the Federal Power Commission would not make a final decision until later. Boyle heard about this ruling and visited Scenic Hudson to lend assistance. He told Scenic Hudson's leaders that while researching for *Sports Illustrated* he discovered that ninety percent of the Hudson's striped bass spawned near Storm King. The hydroelectric plant's water intake valve could rapidly deplete this major East Coast bass population by the millions.<sup>7</sup>

Boyle rounded up fishermen and biologists to testify against the plant. On February 16, 1965, a state legislature committee under Senator R. Watson Pomeroy listened to them and unanimously voted their disapproval of Con Edison's proposal. Still, the FPC upheld its prior tradition of siding with

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<sup>6</sup> Jim Detjen, "The Beat's Basics: A Primer on Taking over the Environmental Beat," *SEJournal*, Summer 2003, Volume 13, Number 1, p. 22.

<sup>7</sup> Allan R. Talbot, *Power Along the Hudson: The Storm King Case and the Birth of Environmentalism* (New York: E.P. Dutton, 1972), 112-3; see also: Cronin and Kennedy, 28-31; John Sibley, "Armada of Foes Invades Site Of Con Ed Project on Hudson," *New York Times*, September 7, 1964. 21.

industry, refusing to consider the fisheries issue. They approved Con Edison's proposal on March 9, 1965. That August, Scenic Hudson and Boyle approached the Federal Circuit Court of Appeals in New York, hoping a lawsuit would overturn the FPC's ruling since the FPC had ignored so many environmental considerations. Con Edison maintained that Scenic Hudson's members were economically injured by the FPC's decision, and therefore had no constitutional standing to sue.<sup>8</sup>

The Court of Appeals' unanimous decision on December 29, 1965 became, on several levels, one of the most influential moments in environmental history. "For the first time in history," Cronin and Kennedy point out, "the court reversed an FPC decision to license a power plant, holding that injury to aesthetic or recreational values was sufficient to provide an aggrieved party with constitutional 'standing.'"<sup>9</sup> The ruling forced the FPC to start the hearings from scratch, and finally pay due attention to public concerns. Judge Paul R. Hays wrote in the decision, "The [Federal Power] commission should reexamine all questions on which we found the record insufficient."<sup>10</sup> Forcing the FPC to reconsider environmentalists' arguments, Judge Hays emphasized that "On remand, the commission should take the whole fisheries question into consideration

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<sup>8</sup> Robert H. Boyle, *The Hudson River: A Natural and Unnatural History* (New York: W.W. Norton, 1969; reprinted with preface and epilogue by Robert H. Boyle, 1979), 161-8. Citations are to the 1979 edition; see also: Cronin and Kennedy, 31-2; Talbot, 112-6, 127.

<sup>9</sup> Cronin and Kennedy, 32-3; see also: Edward Ranzal, "Storm King Plant Blocked by Court," *New York Times*, December 30, 1965, 1.

<sup>10</sup> Ranzal, "Storm King Plant Blocked by Court."

before deciding whether the Storm King project is to be licensed.”<sup>11</sup> Already important to Judge Hays in 1965, fisheries petitions, led primarily by Boyle, quickly became central to the subsequent Storm King opposition.<sup>12</sup>

Once the Supreme Court refused to hear the FPC’s appeal in 1966, the battle continued until the parties reached a settlement on December 19, 1980. After Con Edison’s chairman, Charles F. Luce conceded, “We lost the fight,” the company withdrew its plant proposal.<sup>13</sup> Environmentalists agreed to stop demanding that Con Edison build expensive, fish-saving cooling towers at its smaller Hudson plants, allowing Con Edison instead to install less costly equipment that would still protect most fish.<sup>14</sup> Representing fishermen at the settlement, Boyle made Con Edison provide twelve million dollars toward creating the Hudson River Foundation, an independent fisheries research institute that has since grown steadily.<sup>15</sup>

Even more important than its eventual settlement, the Storm King case became a “legal milestone” with the December 29, 1965 decision.<sup>16</sup> “By ruling that a conservation organization could sue to protect the public interest in the environment,” Talbot observes, “...the Second Circuit Court encouraged

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<sup>11</sup> Ranzal, “Storm King Plant Blocked by Court.”

<sup>12</sup> DeChillo, “Battler for a Clean Hudson”; see also Talbot, 112.

<sup>13</sup> DeChillo, “Battler for a Clean Hudson”; see also: *New York Times*, “A Peace Treaty for the Hudson,” *New York Times*, December 20, 1980, 24.

<sup>14</sup> *New York Times*, “A Peace Treaty for the Hudson.”

<sup>15</sup> DeChillo, “Battler for a Clean Hudson”; see also: Cronin and Kennedy, 37.

<sup>16</sup> Talbot, 133.

citizen suits against the actions of other federal agencies.”<sup>17</sup> In fact, the 1965 ruling set precedent enabling “citizen suit” provisions found in most of the federal environmental statutes passed in the 1970s.<sup>18</sup> Historian Samuel P. Hays puts the ruling into broader perspective: “This case is often taken as the beginning of environmental law. It had a profound effect on both lawyers and environmentalists as to the possible role of law and the courts in achieving environmental objectives.”<sup>19</sup>

In addition to enabling citizen suit provisions in future federal statutes, the 1965 Storm King ruling also required a new form of environmental review, as Cronin and Kennedy explain:

The decision required the FPC to perform a full environmental review of the Storm King project, the first full environmental impact statement ever. In 1969, Congress codified the Storm King decision in the most important piece of environmental legislation in history. The National Environmental Policy Act forced federal agencies to assess the full environmental impacts of every major decision.<sup>20</sup>

Judge Hays had made this requirement clear in 1965 when he wrote, “[T]he record on which [the commission] bases its determination must be complete.

The petitioners and the public at large have a right to demand this

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<sup>17</sup> Talbot, 132.

<sup>18</sup> Cronin and Kennedy, 37.

<sup>19</sup> Samuel P. Hays, *Beauty, Health, and Performance: Environmental Politics, and Permanence: Environmental Politics in the United States, 1955-1985*. (New York: Cambridge University Press, 1987), 480.

<sup>20</sup> Cronin and Kennedy, 37; see also: Talbot, 134.

completeness.”<sup>21</sup> The National Environmental Policy Act (NEPA) made that requirement universal and permanent.<sup>22</sup>

Shortly after the Court of Appeals’ landmark December 29, 1965 ruling, however, America’s environmentally concerned citizens still faced considerable uncertainty. NEPA and the 1970s federal environmental statutes this decision helped enable did not yet exist. The future of environmental protection on the Hudson also seemed unclear at this time. Although the December 29 ruling gave environmentalists standing in court, the case’s outcome was not final until 1980. Over several months before and after the 1965 decision, while gathering evidence from Hudson fishermen for his *Sports Illustrated* articles and Storm King testimony, Boyle became well aware of the fishermen’s anxieties.<sup>23</sup>

Creating a forum for these concerns, in February 1966 Boyle invited a handful of commercial and recreational fishermen to his riverside house in Cold Spring. These citizens felt powerless in the face of industrial pollution and governmental inaction that had depleted the Hudson. Although most of his visitors were, like Boyle, patriotic former U.S. marines, they began to consider violent acts such as blowing up a Penn Central Railroad pipe. Hearing their plans for this pipe, which had been drowning ducks and fish in

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<sup>21</sup> Ranzal, “Storm King Plant Blocked by Court”

<sup>22</sup> David M. Bolling, *How to Save a River: A Handbook for Citizen Action*. (Washington, D.C.: Island Press, 1994), 165.

<sup>23</sup> Cronin and Kennedy, 40; see also: Boyle, *Hudson*, 98, 159.



oil for decades, Boyle introduced them to the Refuse Act of 1899. This statute outlawed pollutant emissions on the nation's waterways, and stated that whoever turned in the polluter could collect half of the penalty. Once Boyle discovered this rather obscure statute, *Sports Illustrated's* lawyers verified that although such bounties had never been collected, the Refuse Act remained enforceable. Instead of breaking the law through terrorism, the fishermen could enforce it through the Refuse Act. That night, the group decided to form the Hudson River Fishermen's Association (HRFA) and pursue Penn Central's pipe under the Refuse Act.<sup>24</sup>

Constantly prodding the authorities to enforce this statute, HRFA ultimately convinced the U.S. Attorney in Manhattan to sue Penn Central in June 1968. According to then-U.S. Attorney Whitney North Seymour, Jr., when HRFA collected half of Penn Central's four thousand dollar penalty, they were the first organization in American history to receive a bounty under the seventy-year old statute.<sup>25</sup> HRFA used this momentum to go after several other violators over the next few years, bringing Refuse Act penalties against large polluters such as Standard Brands and the National Guard.<sup>26</sup> They spent their bounties on advertising the Refuse Act, informing the public

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<sup>24</sup> Cronin and Kennedy, 40-42; see also: Wade Greene, "Of Slime and the River," *New York Times*, November 14, 1971, E3.

<sup>25</sup> Boyle, *Hudson*, 286.

<sup>26</sup> Boyle, *Hudson*, 286; see also: Greene, "Of Slime and the River"

that if citizens exposed polluters, the crimes could be halted.<sup>27</sup> This method was particularly successful when Fred Danback, a cable packer at Anaconda Wire and Cable Co., told HRFA in 1969 that his employers had been secretly dumping toxic oils into the Hudson.<sup>28</sup> Danback joined HRFA, who investigated further and presented their findings to the U.S. Attorney. After years of litigation, Anaconda paid two hundred thousand dollars in 1973, the largest pollution fine ever for an American corporation.<sup>29</sup>

These citizen lawsuit outcomes had several significant influences on the budding modern environmental movement. As *New York Times* reporter Wade Greene wrote, following the Anaconda's historic penalty, "The amount [of the fine] was enough, no doubt, to give force to sentencing judge Thomas Croake's admonition that pollution levies can no longer be shrugged off by corporations as a cost of doing business. Anaconda would appear to agree; it has already installed settling tanks to remove the copper from its discharges into the Hudson."<sup>30</sup> Federal District Judge Croake applauded HRFA's contribution to the case as citizen activists, "[because it] persistently challenged the bureaucratic inertia which characteristically prevents effective

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<sup>27</sup> Cronin and Kennedy, 45; see also: Wade Greene, "Of Slime and the River," *New York Times*, November 14, 1971, E3; David Bird, "Bounty for the Accuser," *New York Times*, August 6, 1972, E5.

<sup>28</sup> Bird, "Bounty for the Accuser"; see also: Wayne A. Hall, "Hudson Hero Danback dies," *Times Herald-Record*, March 13, 2003.

<http://www.recordonline.com/archive/2003/03/13/whdanbac.htm> (March 21, 2005).

<sup>29</sup> Greene, "Of Slime and the River"; see also: Hall, "Hudson Hero Danback Dies"

<sup>30</sup> Greene, "Of Slime and the River"

governmental action on controversial matters.’ ”<sup>31</sup> Two decades later, *Washington Post* reporter Anita Huslin put Croake’s immediate praise for HRFA’s citizen lawsuits into historical context: “Boyle’s and other similar victories helped spawn greater environmental activism in the United States.”<sup>32</sup>

As a result of HRFA’s contributions on the Storm King and Refuse Act cases, its membership grew rapidly, bringing together a diverse group of three hundred Hudson enthusiasts by 1969.<sup>33</sup> With increasing numbers of environmental victories and supporters around this time, Talbot notes, “The Hudson River had become the most studied and protected resource in the United States.”<sup>34</sup> Though revolutionary as a symbol and legal frontier of the budding environmental movement, however, the Hudson was not the only catalyst for progress. Indeed, scholars and environmentalists point to Rachel Carson’s popular anti-pollution manifesto, *Silent Spring* (1962), the contaminated Cuyahoga River’s 1969 ignition (1969), and a major 1969 oil spill off Santa Barbara as other pivotal factors.<sup>35</sup> Historian Samuel P. Hays observes that such 1960s influences created “...the second phase in

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<sup>31</sup> David Bird, “U.S. Prosecutors Split on Bounties,” *New York Times*, September 5, 1972, 23.

<sup>32</sup> Anita Huslin, “Watching, Conserving Chesapeake Waterways,” *Washington Post*, May 8, 2003, AA12.

<sup>33</sup> Boyle, *Hudson*,

<sup>34</sup> Talbot, 160.

<sup>35</sup> Ted Steinberg. *Down to Earth: Nature’s Role in American History*. (New York: Oxford University Press, 2002), 247-8; see also: William P. Cunningham, MaryAnn Cunningham, and Barbara Woodworth Saigo, eds. *Environmental Science: A Global Concern*. (New York: McGraw-Hill, 2005), 524.

environmental politics, when concern for pollution took its place alongside the earlier-arisen [scenic and recreational] interest in natural-environment areas."<sup>36</sup>

Environmentalism's metamorphosis appeared most evident on Earth Day, a national event organized by Wisconsin Senator Gaylord Nelson and Harvard University graduate students. Occurring five months after NEPA's passage, history and law professor Ted Steinberg recounts, "On April 22, 1970, an estimated 20 million people turned out for a series of demonstrations, parades, and rallies in support of ecological issues, the clearest evidence to date of environmentalism's status as a mass movement."<sup>37</sup> One hundred thousand New Yorkers assembled that day to hear HRFA President Richie Garrett's speech in Union Square.<sup>38</sup> Garrett's prominent appearance at Earth Day not only encouraged further progress, but also was well deserved considering his organization's prior contributions to the environmental movement. Hays recognizes this duality, asserting, "Earth Day was as much a result as a cause. That event came after a decade or more of evolution in attitudes and programs without which it would not have been possible."<sup>39</sup>

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<sup>36</sup> Hays, 54-5.

<sup>37</sup> Steinberg, 252-3.

<sup>38</sup> Cronin and Kennedy, 45.

<sup>39</sup> Hays, 53.

Cronin and Kennedy suggest, moreover, that the "democratic outpouring at Earth Day 1970," combined with the "constitutional door opened" by the Storm King case, spurred Congress to create the Environmental Protection Agency (EPA) and pass more than forty major environmental statutes.<sup>40</sup> Steinberg supports the notion of Earth Day's "democratic" influence on legislators, asserting, "In putting forth such environmental reforms, Congress took its cue from the American public."<sup>41</sup> The December 29, 1965 Storm King decision provided constitutional backing for the statutes, Talbot adds, by making the environment a "legally protected public interest."<sup>42</sup>

The federal statutes created multifaceted goals and provisions for such protection. The Clean Water Act (1972), for example, sought to establish adequate water quality for wildlife and recreation in American waterways by 1983, and halt the discharge of pollution into navigable waters by 1985.<sup>43</sup> Moreover, the Clean Water Act and Clean Air Act (1970) were the first of many federal statutes providing citizens with the ability to sue government administrators who neglected to enforce environmental law.<sup>44</sup> These statutes also encouraged increased citizen action because many of them, including the Clean Water Act, contain provisions allowing plaintiffs to recover their legal

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<sup>40</sup> Cronin and Kennedy, 153.

<sup>41</sup> Steinberg, 251.

<sup>42</sup> Talbot, 197.

<sup>43</sup> Bolling, 155.

<sup>44</sup> Hays, 481.

fees if victorious.<sup>45</sup> Groups like HRFA who are cognizant of citizens' legal rights can use the federal statutes effectively to protect their waterways and communities.<sup>46</sup> When the Clean Water Act effectively replaced the Refuse Act in 1972, HRFA learned to use the new statute with continued success.<sup>47</sup> The historic grassroots advocacy accelerated in 1983 when HRFA hired former commercial fisherman and lobbyist John Cronin to work as a unique patrolman for the Hudson.<sup>48</sup>

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<sup>45</sup> Cronin and Kennedy, 155.

<sup>46</sup> Bolling, 186.

<sup>47</sup> Boyle, *Hudson*, 288-294; see also: Special to *New York Times*, "A River Watchdog Is Turning 20," *New York Times*, April 6, 1986, 44.

<sup>48</sup> Robert Worth, "Groups that Defend the Hudson: A Primer," *New York Times*, November 5, 2000, WE1; see also: Roger Rosenblatt, "Let Rivers Run Deep," *Time*, August 2, 1999. <http://www.time.com/time/archive/preview/0,10987,991659,00.html> (March 20, 2005).

## A Riverkeeper Emerges on the Hudson

### 1983 - Present

John Cronin's parents used the Hudson for swimming, rowing, and fishing when they were growing up in Westchester in the 1930s and 1940s. These pursuits, however, seemed quite distant to Cronin during his own Yonkers childhood in the 1950s and 1960s, when the Hudson had become too polluted for swimming and fishing, and too obstructed by developers for boating access. Cronin never really gave the river much thought until 1973, when he was back home near the Hudson, working as a house painter after "one unsuccessful year of college" and several years of random jobs around the country. That October, at age 23, Cronin heard a radio advertisement for folksinger Pete Seeger's annual Hudson "Pumpkin Sail" aboard the *Clearwater*. Cronin decided to attend the party on this sloop -- which doubled as a "floating environmental classroom" -- because he had been a big fan of Seeger's music. The environmental aspect of the party began to rub off on Cronin because between famous songs, Seeger would deliver moving lectures about the steps citizens could take in improving the Hudson.<sup>49</sup>

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<sup>49</sup> Cronin and Kennedy, 50-4; see also: Suzanne DeChillo, "A Watchdog on the Hudson," *New York Times*, September 9, 1984, WC1.

Taking Seeger's message to heart, and drawing inspiration from HRFA's citizen lawsuits, in 1973 Cronin and his early mentor, activist Tom Whyatt, began gathering evidence of pollution discharged by the Tuck Tape factory.<sup>50</sup> As he recounts, "Following the path beaten by [Robert] Boyle and the Hudson River Fishermen's Association, we brought our evidence to the office of the U.S. Attorney in Manhattan.... A Tuck spokesman sneered to the *New York Times* that we were 'boy scouts with binoculars,' but the company soon pled guilty to half of the counts and was fined \$205,000. It was the first successful prosecution in New York State under the 1972 Clean Water Act."<sup>51</sup>

Cronin's advances in one year as a 23 year old volunteer inspired him. His excitement in realizing how ordinary people could improve the Hudson led him to work on the river, and moreover enjoy it, mostly as a shad fisherman for the next ten years. With his experience as a former environmental volunteer and aide to New York State Representative Hamilton Fish, combined with his growing knowledge of the river as a fisherman, Cronin caught the attention of none other than Robert Boyle. Still leading the HRFA he had founded, Boyle wanted to extend the group's effectiveness by creating a staff position for somebody who would patrol the

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<sup>50</sup> Richard Severo, "Pollution? Tuck Calls it Purity," *New York Times*, December 1, 1974, 48.

<sup>51</sup> Cronin and Kennedy, 56-7; see also: Severo, "Pollution? Tuck Calls it Purity"



Hudson as a full-time advocate. In 1982, he convinced Cronin to take the job.<sup>52</sup>

Boyle felt that the Hudson required a watchdog because government, despite having passed the aforementioned environmental statutes, was not a reliable steward on its own.<sup>53</sup> Even if government ignores industry's lobbying and bribery attempts, it often still fails to protect our resources because of basic budget and staff limitations. Analyzing America's regulatory structures in the *Transactions of the Institute of British Geographers*, Matthew Gandy observes, "Whilst the national state in developed economies has been pivotal in pushing through postwar environmental legislation, the responsibility for implementation has fallen largely to sub-national tiers of state authority. Yet the local state has been embroiled in an increasingly intense fiscal and political crisis since the 1970s, throwing the long-term efficacy of environmental regulation into doubt."<sup>54</sup>

Gandy's observation of federal and state regulatory effectiveness implies that citizens must shoulder the burden of environmental protection. Boyle relayed this need for non-governmental action more explicitly, writing in 1980, "[T]he federal and state governments are doing next to nothing to deal with the problem of chemical contamination. The likelihood is that the

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<sup>52</sup> Nelson Bryant, "New Riverkeeper to Patrol Hudson," *New York Times*, February 27, 1983, S8.

<sup>53</sup> Robert H. Boyle, *Bass* (New York: W.W. Norton, 1980), 96; see also DeChillo, "A Watchdog on the Hudson"

<sup>54</sup> Matthew Gandy, "The Making of a Regulatory Crisis: Restructuring New York City's Water," 22 *Transactions of the Institute of British Geographers* (1997): 338.

mess is going to get worse before it gets better, and it won't ever get better until the bass fishermen and trout fishermen and anyone else who cares about natural resources and human health raise absolute hell."<sup>55</sup> Between 1966 and 1982, Boyle's HRFA had done just that.<sup>56</sup>

HRFA's ability to raise absolute hell, however, remained somewhat limited by the fact that its members had to balance time as HRFA volunteers with their various professions. Despite HRFA's excellent work on the Hudson, none of them were held professionally accountable for the river's protection. Realizing that the Hudson needed a full-time guardian, Boyle had written in *The Hudson* that the river should one day have "[an activist] out on the river the length of the year, nailing polluters on the spot..."<sup>57</sup> HRFA called Cronin's position a "Riverkeeper" because "river keeper" had been an old term in England for wardens who monitored and stocked streams for salmon fishing clubs.<sup>58</sup>

Rather than simply policing fisheries like these English wardens, Boyle reasoned, the Hudson's Riverkeeper would patrol and advocate for all matters of public interest on the river.<sup>59</sup> Also unlike the English wardens, Cronin's constituency, so to speak, would include not just fishermen but the entire watershed's inhabitants and visitors. Consistently out on the water, the

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<sup>55</sup> Boyle, *Bass*, 96.

<sup>56</sup> DeChillo, "Battler for a Clean Hudson"

<sup>57</sup> Boyle, *Hudson*, 276.

<sup>58</sup> Nelson Bryant, "New Riverkeeper to Patrol Hudson"; see also: see also DeChillo, "A Watchdog on the Hudson"

<sup>59</sup> Boyle, *Hudson*, 276-7; see also DeChillo, "A Watchdog on the Hudson"

Riverkeeper would be accessible to the public he serves. Boyle further explained that Cronin's stewardship would be nongovernmental: "You can't trust government to do the job. Government makes deals."<sup>60</sup> Subsequently, HRFA used the money it had since collected from donations, legal victories, settlements, and its membership's annual dues to hire Cronin and buy him a patrol boat.<sup>61</sup> Hearing this announcement, *New York Times* reporter Nelson Bryant described the boat as "a visible and functioning symbol of concern for the well-being of the Hudson River, its denizens and the people who love and use it...."<sup>62</sup>

With environmental issues on the Hudson becoming more publicized by 1982, through increased outrage over its degradation, as well though the legislative successes of groups such as HRFA, NBC producer Mark Kusnetz decided to accompany and film Cronin on his first day in the Riverkeeper boat.<sup>63</sup> Amazingly, that very first day, Kusnetz' cameraman filmed Cronin confronting an Exxon oil tanker that seemed to be rinsing its oily tanks and refilling them with cleaner Hudson water.<sup>64</sup> Having uncovered this previously unknown practice of Exxon, Cronin wrote a letter to Rudolph

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<sup>60</sup> DeChillo, "A Watchdog on the Hudson"

<sup>61</sup> DeChillo, "A Watchdog on the Hudson"

<sup>62</sup> Nelson Bryant, "New Riverkeeper to Patrol Hudson"

<sup>63</sup> Tom Brokaw, reporter, "Hudson River and Exxon," *NBC Evening News for Wednesday, October 19, 1983*. Vanderbilt University Television News Archive, <http://tvnews.vanderbilt.edu/TV-NewsSearch/fulldisplay.pl?SID=20050325907043457&UID=&CID=15008&auth=&code=TVN&RC=527010&Row=49> (March 24, 2005).

<sup>64</sup> Cronin and Kennedy, 72.

Giuliani, then-U.S. Attorney for New York City's Southern District, which led to a major takings inquiry.<sup>65</sup>

Events following this encounter help exemplify the citizen participation that often accompanies effective grassroots activism. Inspired by the immediate publicity of the Riverkeeper's discovery, the Hudson's neighbors began compiling their own evidence of other Exxon tankers' pollution, and submitting reports to Cronin. Facing these reports, Exxon's leaders, who theretofore denied that Cronin's initial bust had uncovered a pattern, were forced to admit their regular practice of "rinsing" their tankers in the Hudson, filling up with Hudson water, and selling the water to hotels in Aruba.<sup>66</sup> The situation became even worse for Exxon when Cronin soon uncovered that this rinsing process caused the tankers to discharge carcinogenic chemicals, such as benzene, into the Hudson.<sup>67</sup>

Exxon's subsequent settlement was groundbreaking for the Hudson and the Riverkeeper program. First, Exxon promised to discontinue its tanker traffic. The company paid \$1.5 million to New York State, establishing the Hudson River Improvement Fund, which continues to support the Hudson. Exxon also paid HRFA \$500,000 to support the

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<sup>65</sup> Richard Severo, "Exxon's Taking of Hudson Water Leads to Inquiry," *New York Times*, October 5, 1983.

<sup>66</sup> Cronin and Kennedy, 75-6; see also Richard Severo, "Exxon is faulted on use of Hudson," *New York Times*, October 15, 1983, 1.

<sup>67</sup> Severo, "Exxon is faulted on use of Hudson"

Riverkeeper program and upgrade Port Ewen's Drinking Water Plant.<sup>68</sup>

Following the settlement, New York's Department of Environmental Conservation's Region 3 director, Paul Keller, told the *New York Times*, "We wouldn't have had a case if it hadn't been for the riverkeeper. I think the riverkeeper is fulfilling a role on the Hudson that can only be filled by someone who devotes full-time to the river. It's the best way to see the problems of the river."<sup>69</sup> Keller had grasped the essential consistency of the Riverkeeper's vigilance after just one case, and his judgments about the program would be proven correct over the next two decades.

First, though, the settlement money awarded to HRFA helped them create, in 1983, a separate organization built around John Cronin's Riverkeeper position.<sup>70</sup> This organization, known as Riverkeeper, merged with HRFA in 1986 under the Riverkeeper name. At that point, Cronin explains, "Our mission was to complete the work of the Hudson River Fishermen - to track down and prosecute every polluter on the river; to protect its biological integrity and return the Hudson to the public."<sup>71</sup> In 1984, Cronin and Boyle added considerable support to these pursuits by hiring young lawyer Robert F. Kennedy, Jr., son and namesake of the late senator and U.S. attorney general.

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<sup>68</sup> Cronin and Kennedy, 76; see also: DeChillo, "A Watchdog on the Hudson"

<sup>69</sup> DeChillo, "A Watchdog on the Hudson"

<sup>70</sup> DeChillo, "A Watchdog on the Hudson"

<sup>71</sup> Cronin and Kennedy, 48-9.

Cronin and Kennedy initially appeared to be opposites. The Riverkeeper once lived in the back of a pickup truck, while the attorney had fond memories of visiting his “Uncle Jack” in the White House.<sup>72</sup> However, Kennedy quickly showed his commitment to the Riverkeeper organization’s self-proclaimed “blue collar environmentalism” through his first endeavor. Investigating pollution on Quassaic Creek, a Hudson tributary that flows through the impoverished city of Newburgh, Kennedy walked through sewage pipes, scaled factory walls, mounted surveillance cameras, and scuba dived in winter.<sup>73</sup> Because Kennedy collected such thorough evidence, Riverkeeper’s sixteen lawsuits against the creeks’ various polluters led all the defendants to settle before trial, cease polluting, and donate a total of two hundred thousand dollars to the destitute city’s Quassaic Creek Fund.<sup>74</sup>

In order for Riverkeeper to take on a larger number of cases like those it found in Newburgh, in 1987 Kennedy founded the Environmental Litigation Clinic at Pace University in White Plains.<sup>75</sup> Since then, the clinic’s law students represent Riverkeeper in court under a special New York State agreement.<sup>76</sup> Cronin found cases for the clinic through his patrolling, and

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<sup>72</sup> Cronin and Kennedy, 65, 81.

<sup>73</sup> Cronin and Kennedy, 99.

<sup>74</sup> Cronin and Kennedy, 110; see also: Jacques Steinberg, “A Son Sees Reflection in the Water,” *New York Times*, February 13, 1995, B1.

<sup>75</sup> Cronin and Kennedy, 119.

<sup>76</sup> Robert Worth, “A Kennedy and His Mentor Part Ways over River Group,” *New York Times*, November 5, 2000, WE1; see also: Cronin and Kennedy, 118-123.

Kennedy taught the students legal strategy. The clinic's immediate and consistent victories extended Riverkeeper's potential for strong advocacy.<sup>77</sup>

Recognizing Riverkeeper's increasing influence, in 1994 New York State Governor George Pataki asked the organization to help resolve a crisis concerning New York City's drinking water. Relying on a unique, protected, upstate reservoir system, the city's unfiltered water had been considered the nation's best for decades. Still, the EPA mandated in the late 1980s that all major cities must install filter systems unless they demonstrate substantial reservoir protection. New York State had to choose between upstate communities' wishes to develop the reservoir areas, and the New York City's paranoia over building the staggering eight billion dollar filter system. Pataki asked Kennedy to find middle ground among these long estranged parties.<sup>78</sup>

Kennedy's leadership in the Watershed Memorandum of Agreement raised Riverkeeper's press coverage, and his own fame, to unprecedented heights. His contribution to the negotiations has been applauded by reporters, environmentalists, and politicians ever since.<sup>79</sup> "[D]ictating the agenda for saving the country's premier water system," environmental author

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<sup>77</sup> Jacques Steinberg, "A Son Sees Reflection in the Water"; see also: Cronin and Kennedy, 123, 207-209.

<sup>78</sup> Cronin and Kennedy, 207-227; see also: Gandy, "The Making of a Regulatory Crisis: Restructuring New York City's Water," 338; Andrew C. Revkin, "Rates to Rise 2% at Most Under Plan to Protect City Reservoirs," *New York Times*, November 3, 1995, B1

<sup>79</sup>Worth, "A Kennedy and his Mentor Split over River Group"; see also Barry Werth, "Somewhere down the Crazy River," *Outside Magazine*, November, 1997.

<http://outside.away.com/outside/magazine/1197/9711river.html>;

Barry Werth observes, “Kennedy persuaded New York's Mayor Rudolph Giuliani to come up with hundreds of millions of dollars for watershed protection.” By protecting upstate reservoirs, New York City avoided paying for the much more costly filter system. Upstate communities and environmentalists also benefited greatly from the agreement, Werth explains:

In the end, Kennedy brokered a monument to sustainability. New York City got to control the lands surrounding the reservoirs; the city agreed to pay \$1.5 billion to cover environmental safeguards and reimburse upstate localities for lost development opportunities; the people retained the right to sue whoever tried to undermine the arrangement.<sup>80</sup>

Along with honoring Kennedy, the landmark settlement's major participants have extolled several of Riverkeeper's other contributors. For instance, the Trust for Public Land's Phyllis Ruffer recalls, “Riverkeeper attorney Dave Gordon was very knowledgeable about the agreement as a whole and was eternally vigilant for land acquisition issues.”<sup>81</sup> Maintaining an active role, Riverkeeper's watershed program has continued to monitor the reservoirs' surroundings so that New York City receives naturally clean drinking water and avoids a high-priced filter.<sup>82</sup>

In the watershed agreement's wake, Kennedy's rising fame augmented the widespread coverage and respect that Riverkeeper had already long

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<sup>80</sup> Werth, “Somewhere down the Crazy River”; see also: Cronin and Kennedy, 207-227; Revkin, “Rates to Rise 2% at Most Under Plan to Protect City Reservoirs”

<sup>81</sup> Phyllis Ruffer, (Mid-Atlantic Regional Counsel, the Trust for Public Land), in discussion with the author, February 28, 2005.

<sup>82</sup> Marc Yaggi, (senior watershed attorney, [Hudson] Riverkeeper), in discussion with the author, April 3, 2005.



enjoyed. *Time* profiled him and Cronin in its 1997 “Heroes for the Planet” series.<sup>83</sup> That same year, Scribner published the first edition of Cronin and Kennedy’s book, *The Riverkeepers*, which presented the history of Riverkeeper and its HRFA origins. Kennedy and Cronin further spread Riverkeeper’s story and message through the resulting book tours.<sup>84</sup> Around this time, Kennedy also began recruiting increasing numbers of celebrities to help raise money for Riverkeeper projects.<sup>85</sup> Werth observed that by 1997, given Kennedy’s “blend of skill, charisma, name, connections, and ability to frame environmental issues in human terms,” he was already “perhaps the best-known environmental advocate of his generation.”<sup>86</sup>

Kennedy consistently turned his growing stature into a positive for Riverkeeper. The additional press and celebrity support he generated allowed the group to develop, by 2000, a team of scientists and lawyers with a 2 million dollar budget. When Cronin left Riverkeeper that year to pursue a teaching career at Pace University, the organization replaced him with Alex Matthiessen. The group’s new Riverkeeper and executive director had served as an assistant to Interior Secretary Bruce Babbitt, and as a grassroots manager for the Rainforest Action Network. *New York Times* reporter Robert

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<sup>83</sup> Rosenblatt, “Let Rivers Run Deep”

<sup>84</sup> Eleanor Charles, “Talking About Riverkeepers,” *New York Times*, February 22, 1998, 634.

<sup>85</sup> Worth, “A Kennedy and His Mentor Part Ways over River Group”

<sup>86</sup> Werth, “Somewhere down the Crazy River”

Worth acknowledged that Matthiessen is “widely hailed as a skillful manager and negotiator.”<sup>87</sup>

Matthiessen immediately extended the organization’s monitoring abilities by hiring John Lipscomb as a full-time boat captain. Whereas Cronin was often too busy with administrative work to maintain a constant river presence, Lipscomb regularly patrols in the boat, except when the river freezes in winter. He also operates the boat for Riverkeeper’s educational tours and scientific investigations. Lipscomb’s work allows Matthiessen to focus on running the organization as its executive director, while publicly voicing concerns as its Riverkeeper.<sup>88</sup>

Additionally, Matthiessen has increased Riverkeeper’s interaction with its membership. Harnessing the grassroots staple of citizen participation, Riverkeeper successfully encourages its members to write letters, attend events, make presentations to schools, organize fundraising events, investigate development plans, and scrutinize their section or tributary of the Hudson.<sup>89</sup> Matthiessen’s interests in collaboration also surface in dealings with government, such as when he helped convince the EPA to create a 153-mile “No Discharge Zone” on the Hudson. Protecting one of the river’s most ecologically diverse stretches from chronic boat

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<sup>87</sup> Worth, “A Kennedy and His Mentor Part Ways over River Group”

<sup>88</sup> Sara Froikin, (program associate, [Hudson] Riverkeeper), in discussion with the author, February 10, 2005.

<sup>89</sup> Alex Matthiessen, (Riverkeeper and executive director, [Hudson] Riverkeeper), in discussion with the author, February 16, 2005.

sewage discharges, the deal was applauded by Governor Pataki, who said, "By reducing the discharges of harmful wastes into the river, we can protect the health of this historic waterway and expand opportunities for all New Yorkers to enjoy this truly magnificent resource."<sup>90</sup>

Rather than becoming complacent, therefore, Riverkeeper has actually increased its active role in Hudson preservation. Two decades after the 1982 Exxon encounter, *Boating on the Hudson's* Editor and Publisher, John H. Vargo echoes the sentiments of many local observers by referring to Riverkeeper as "the Hudson's foremost environmental advocacy organization."<sup>91</sup> Vargo sees multifaceted strength in the organization, writing, "Since [the Exxon case], Riverkeeper has won over 100 legal battles against river polluters and watershed despoilers which has not only helped to clean up the river but has brought much needed attention to the importance of keeping the river clean."<sup>92</sup> These outcomes certainly help justify Riverkeeper's oft-noted primacy among the Hudson's environmental groups. As Robert Worth notes in his *New York Times* summary of Hudson advocates, "While Scenic Hudson and Clearwater rarely resort to litigation, Riverkeeper has long been the

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<sup>90</sup> United States Environmental Protection Agency. "EPA, New York State, and Riverkeeper Announce End to Boat Sewage Discharges to Hudson River." Region 2 News and Speeches, October 9, 2003, <http://www.epa.gov/region02/news/2003/03119.htm> (April 1, 2005).

<sup>91</sup> John H. Vargo, "The Hudson Riverkeeper." *Boating on the Hudson*. November/December 2000. <http://www.boatingonthehudson.com/backissues/NovDec2000/riverkeeper.htm> (22 February 2005).

<sup>92</sup> Vargo, "The Hudson Riverkeeper"

bulldog of the trio, keeping a close watch for polluters and bringing suits against corporations as large as Exxon and General Electric.”<sup>93</sup>

Beyond praising Riverkeeper’s legal victories, prominent New York environmentalists honor several facets of the organization’s formula. Erik Kulleseid, New York State Program Director for the Trust for Public Land (TPL), presents the land use perspective:

TPL benefits greatly from the work accomplished by Riverkeeper in the Hudson Valley. They are vigilant in making sure that land development that would threaten the health of the Hudson River is seriously evaluated and, frequently, prevented. Several land conservation transactions have come to TPL in recent years because Riverkeeper has managed to stall or prevent inappropriate development on sensitive or publicly important sites.<sup>94</sup>

Matthiessen, meanwhile, emphasizes Riverkeeper’s contributions resulting from its system of on-river monitoring: “There have certainly been other groups involved, but I think that Riverkeeper has really led the charge, both by demonstrating to the public that somebody is out on the water protecting their waterway, and also by acting as a deterrent to would be and existing polluters.”<sup>95</sup> Expanding the organization’s on-water vigilance through hiring Lipscomb, and voicing his admiration for the merits of patrolling, Matthiessen has thus far shown a great appreciation for the Riverkeeper model.

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<sup>93</sup> Robert Worth, “Groups that Defend the Hudson: a Primer,” *New York Times*, November 5, 2000, WE1.

<sup>94</sup> Erik Kulleseid, (New York State Program Director, Trust for Public Land), in discussion with the author, February 28, 2005.

<sup>95</sup> Matthiessen, discussion.

Matthiessen's praise and development of Riverkeeper's unique system reveals the durability and flexibility of the idea first hatched in Robert Boyle's famous book. "So, I like to imagine," Boyle wrote in 1969, "will appear the river keeper of the Hudson in future years.... In essence, giving a sense of time, place, and purpose to people who live in or visit the valley."<sup>96</sup> Boyle revealed further foresight by adding, "We need someone like this on the Hudson and on every major river in the country."<sup>97</sup> In 1988, when Connecticut fishermen approached Cronin and Kennedy about Long Island Sound's problems, Boyle's early dreams of a widespread "river keeper" movement began to materialize.

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<sup>96</sup> Boyle, *Hudson*, 276-7

<sup>97</sup> Boyle, *Hudson*, 277.

## **Riverkeeper's Success Spawns Keepers Nationwide**

**1986 - 1999**

In April 1986, brawny Norwalk lobstermen Chris Stablefeldt and Terry Backer met with Hudson fisherman Bob Gabrielson to buy lobster bait. Mentioning to Gabrielson that chlorine discharges from a Norwalk's sewage treatment plant had obliterated their local oyster beds, the lobstermen complained that the situation seemed hopeless. Gabrielson, who was on Riverkeeper's board, replied that his friends John Cronin and Bobby Kennedy could show them how to fight back.<sup>98</sup>

Stablefeldt and Backer invited the Riverkeeper activists down to Norwalk's coast to observe their devastated fisheries. They explained that Long Island Sound's ecological decline was not only killing fish, but also destroying fishermen's livelihoods. On Cronin and Kennedy's subsequent advice, the lobstermen quickly rounded up other concerned anglers and commercial fishermen from Norwalk, forming the Connecticut Coastal Fishermen's Association (CCFA). Riverkeeper then helped CCFA strategize against Norwalk's sewage problems. The Hudson group introduced CCFA to lawyers from Berle Kass and Case, a New York City environmental law

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<sup>98</sup> Robert F. Kennedy, Jr., (president, Waterkeeper Alliance; chief prosecuting attorney, [Hudson] Riverkeeper; senior attorney, Natural Resources Defense Council), in discussion with the author, December 17, 2004; see also: Cronin and Kennedy, 123.

firm who agreed to serve as CCFA's pro bono counsel. Riverkeeper then joined CCFA in September 1986 press conferences and news releases announcing that the Berle Kass and Case attorneys were preparing lawsuits against the city of Norwalk for twenty-two hundred violations of the Clean Water Act.<sup>99</sup>

Observing the increasing public anger that CCFA and its nearby Riverkeeper mentors had drummed against the sewage spills, the City of Norwalk agreed to rebuild its sewer system and pay \$172,000 out of court. Part of this 1997 payment went to CCFA. With guidance from Riverkeeper, CCFA used their settlement rewards to create a "Soundkeeper" program. In 1988 CCFA hired Terry Backer, their most passionate member, to be the Long Island Soundkeeper.<sup>100</sup> Without delay, Backer began targeting cities along the Sound with threats of additional lawsuits. All of Connecticut's coastal cities east of New Haven started settling with CCFA out of court and improving their sewage systems.<sup>101</sup>

In his 2002 environmental history of Long Island Sound, *This Fine Piece of Water*, author Tom Anderson frequently highlights Backer's successful lawsuits and persuasive speeches as pivotal factors in the recent movement to

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<sup>99</sup> Terry Backer, (Soundkeeper, [Long Island] Soundkeeper; vice president, Waterkeeper Alliance), in discussion with the author, December 30, 2004; see also: Tom Andersen, *This Fine Piece of Water: An Environmental History of Long Island Sound* (New Haven, Connecticut: Yale University Press, 2002) 219; Cronin and Kennedy, 123-6.

<sup>100</sup> Backer, discussion; see also: Jack Cavanaugh, "2 Groups to Use Norwalk Money to Set Up a Soundkeeper," *New York Times*, June 7, 1987, CN2.

<sup>101</sup> Backer, discussion; see also: Cronin and Kennedy, 126.

revitalize the troubled waterway.<sup>102</sup> Forcing sewer improvements, voicing concerns for public health and fisheries, and patrolling in a powerboat, the first man to replicate the Riverkeeper model quickly became a local hero.<sup>103</sup> Cronin and Kennedy recall “Backer for Mayor” signs appearing in Norwalk following the 1987 sewage upgrades, and marvel at the Soundkeeper’s growing impact:

A third-generation lobsterman and a high-school dropout, Terry is Arguably the most effective advocate yet to emerge on behalf of Long Island Sound. By 1990 he had successfully run for the state legislature. He was later appointed to the Environment Committee and the Powerful Appropriations Committee, where he now wields his Substantial weight on state environmental policy.<sup>104</sup>

Despite his statewide political responsibilities, Backer remains primarily dedicated to Long Island Sound, where he has never stopped working as the Soundkeeper.<sup>105</sup> In 1987, Praising Backer’s immediately successful replication of Riverkeeper’s methods, Connecticut Department of Environmental Protection’s Paul Stacy told the *New York Times*, “Terry is right on the water. He’s going to see things that there would be now way I’d see.”<sup>106</sup>

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<sup>102</sup> Anderson, 190, 218-221

<sup>103</sup> Kennedy and Cronin, 125-6; see also: Cavanaugh, “2 Groups to Use Norwalk Money to Set Up a Soundkeeper; Anderson, 190.

<sup>104</sup> Cronin and Kennedy, 126; see also: Jack P. Terceno, “Soundkeeper’s Battle Goes On,” *Stratford Star*, December 18, 2003.

[http://www.zwire.com/site/news.cfm?newsid=10682236&BRD=1349&PAG=461&dept\\_id=415619&rfi=8](http://www.zwire.com/site/news.cfm?newsid=10682236&BRD=1349&PAG=461&dept_id=415619&rfi=8) (April 1, 2005).

<sup>105</sup> Backer, discussion.

<sup>106</sup> Constance L. Hayes, “Fighting Pollution in the Sound: A Seagoing Sentinel,” *New York Times*, June 2, 1988, B1.



Helping Backer create this influential job showed Cronin and Kennedy that the Riverkeeper system was duplicable.<sup>107</sup> Additionally, Soundkeeper's emergence, combined with the growing fame of Cronin and Kennedy's Hudson achievements, created widespread interest:

[By 1988] we were receiving calls from people all over the country who wanted to apply for Riverkeeper jobs on their local waterways. Of course, we had no jobs to offer. We were interested, however, in assisting people who were themselves willing to do the organizing work necessary to start programs in their own communities.<sup>108</sup>

In January 1988, they encouraged the American Littoral Society (ALS), a New Jersey conservation organization who contacted them shortly after Backer's debut, to found the Delaware Riverkeeper program.<sup>109</sup> One year later, University of San Francisco scientist Mike Herz, read an article about the Hudson Riverkeeper, consulted with Cronin and Kennedy, and launched the San Francisco Baykeeper organization.<sup>110</sup> In 1989, impressed with activist Cynthia Poten's progress as Delaware Riverkeeper, and concerned about waterways east of the Delaware, the ALS hired boat builder Andrew Willner as New York / New Jersey Baykeeper.<sup>111</sup>

Each of these similarly named offshoots of the Riverkeeper model were locally funded and controlled in order to maintain the same grassroots

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<sup>107</sup> Kennedy, discussion.

<sup>108</sup> Cronin and Kennedy, 129.

<sup>109</sup> Kennedy, discussion; see also: Hayes, "Fighting Pollution in the Sound: A Seagoing Sentinel"

<sup>110</sup> Leo O'Brien, (executive director, [San Francisco] Baykeeper), in discussion with the author, March 17, 2005; see also: Cronin and Kennedy, 129.

<sup>111</sup> Kennedy, discussion; see also: Cronin and Kennedy, 131.

emphasis as their Hudson forerunner. Still, they remained philosophically linked by all featuring a vigilant and outspoken watchdog on their respective waterways. All of the “Keepers,” as the patrolmen were called generically at the time, worked within supporting nonprofit organizations so that they could collect their own tax-exempt donations and grants. Some of the Keepers, such as San Francisco Baykeeper, founded supporting nonprofit organizations from scratch; others started when preexisting organizations like the American Littoral Society created their staff position.<sup>112</sup>

While Cronin and Kennedy happily taught new Keepers their Hudson system, they remained hesitant to formalize this relationship:

Soon after Long Island Soundkeeper had been established, a prominent national foundation had offered funding to turn the Hudson Riverkeeper into a national organization that would establish chapters throughout the country. The offer was extremely generous but premature. The Hudson Riverkeeper and Long Island Soundkeeper programs emerged out of the needs of their grassroots constituency. We hoped a national organization would emerge in the same fashion, from the bottom up rather than the top down.<sup>113</sup>

The need to create a national organization – albeit one with a “bottom up” structure – became more urgent in 1992. That year, with the admitted goal of relaxing water pollution laws, real estate developers from New York’s Catskills region created a now-defunct group called “upper Delaware Riverkeeper.”<sup>114</sup> Although the developers’ ill-intentioned use of the Keeper

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<sup>112</sup> Backer, discussion; see also: Cronin and Kennedy, 131-2.

<sup>113</sup> Cronin and Kennedy, 132.

<sup>114</sup> Cronin and Kennedy, 238.

name signaled an ironic compliment to the real Keepers' increasing fame and effectiveness as grassroots organizers, Kennedy and Cronin were in no mood for such irony. They decided the Keeper name had to be trademarked to prevent its distortion.<sup>115</sup>

Because the existing Keeper organizations were separately controlled, the 1992 trademarking process developed as follows: San Francisco Baykeeper – by virtue of being the first Baykeeper – would own the Baykeeper trademark; Long Island Soundkeeper received the Soundkeeper mark for the same reason; and the original Riverkeeper thus received the Riverkeeper mark.<sup>116</sup> Forever after, these three local Keepers would be known officially as “Baykeeper,” “Soundkeeper,” and “Riverkeeper,” respectively, out of recognition that they own those trademarks. The other Keeper programs, such as Puget Soundkeeper – founded in 1990 – or Delaware Riverkeeper, would include their waterway as part of their name.<sup>117</sup>

After they agreed on this trademarking, the seven Keeper programs that existed in 1992 implemented additional methods influencing the Keeper movement's future growth. The Keepers wondered how they could codify universal standards for all Keeper groups, despite the fact that Riverkeeper, Baykeeper, and Soundkeeper were separately owned trademarks. As a solution, they created the National Alliance of River, Sound, and Baykeepers,

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<sup>115</sup> Cronin and Kennedy, 238.

<sup>116</sup> Kennedy, discussion.

<sup>117</sup> Kennedy, discussion.

an organization led by Cronin but guided by its independent member groups – all the Keepers. Riverkeeper, Baykeeper, and Soundkeeper still owned their respective trademarks, but the alliance would preserve overarching standards by approving or rejecting new groups’ applications to use any derivation of “Keeper,” the label common to all its member organizations.<sup>118</sup>

As a result of this 1992 agreement, with Riverkeeper retaining its moderately disproportionate influence as the original Keeper, the alliance’s member groups collectively administered the voting process for licensing new Keeper programs:

Before allowing a group to use the Keeper trademark for a new program, Riverkeeper and the alliance must be convinced that there is a need for the program; that its work will not duplicate efforts by another organization in the area; that it has sufficient financial support to sustain itself; that its philosophy is consistent with Riverkeeper’s philosophy, and that there is a qualified person to fill the job.<sup>119</sup>

By creating the National Alliance and its membership standards, this agreement ensured that the Keeper movement would spread in an orderly manner influenced by all its member groups. Simultaneously, this decision preserved the Keeper movement’s grassroots ethos because it did not change the fact that individual Keeper groups manage their own finances and activities.<sup>120</sup>

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<sup>118</sup> Kennedy, discussion.

<sup>119</sup> Cronin and Kennedy, 132.

<sup>120</sup> Kennedy, discussion; Backer, discussion.

Emerging “from the bottom up,” as Cronin and Kennedy had hoped, the National Alliance of River, Sound, and Baykeepers minimally affected the daily work of established Keepers.<sup>121</sup> On the other hand, the number of Keeper groups it comprised grew notably in the mid-1990s. A great deal of this early growth occurred as people learned about a successful Keeper, felt compelled by the system, and started a new Keeper group.<sup>122</sup> For example, Terry Taminen was running a swimming pool maintenance company when he read about San Francisco Baykeeper in *Audubon Magazine*, and subsequently founded the Santa Monica Baykeeper organization in 1993.<sup>123</sup> Taminen – who currently leads the California Environmental Protection Agency for Governor Arnold Schwarzenegger’s environmentally-praised administration – happened to meet the Walt Disney Company’s CEO, Frank Wells, the same year he founded Santa Monica Baykeeper.<sup>124</sup> Riveted by Taminen’s explanation of the watchful and aggressive Keeper philosophy, Wells agreed to help fund the Santa Monica program.<sup>125</sup> Taminen and Wells then founded San Diego Baykeeper in 1994.<sup>126</sup> After Wells died that year in a

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<sup>121</sup> Backer, discussion.

<sup>122</sup> Kennedy, discussion.

<sup>123</sup> Tracy Egoscue, (Baykeeper, Santa Monica Baykeeper), in discussion with the author, January 18, 2005; see also: Cronin and Kennedy, 130.

<sup>124</sup> Egoscue, discussion; Kennedy, discussion.

<sup>125</sup> Kennedy, discussion; see also: Cronin and Kennedy, 130.

<sup>126</sup> Kennedy, discussion; see also: Cronin and Kennedy, 130.

helicopter crash, his wife continued collaborating with Taminen, helping endow Keeper programs in Ventura, Orange County, and Santa Barbara.<sup>127</sup>

Shortly after Taminen first read about San Francisco's Baykeeper, New Jersey taxi dispatcher and angler Bill Sheehan coincidentally saw the same Keeper highlighted on ESPN Outdoors.<sup>128</sup> Sheehan took an interest in Baykeeper's work, thinking, "Any job that has you on the water that much, making a positive impact, has to be a good job."<sup>129</sup> In 1994, therefore, he started volunteering for the nearby NY/NJ Baykeeper program.<sup>130</sup> Baykeeper Andy Willner became so impressed with Sheehan's dedication that he helped him start a separate Keeper program for the Hackensack River and New Jersey Meadowlands.<sup>131</sup> Becoming the Hackensack Riverkeeper in 1997, Sheehan has since taken over twenty thousand "eco-tourists" on his patrol boat to view the Meadowlands' surprisingly rich biodiversity and scenery.<sup>132</sup>

Also in 1997, Kennedy and Cronin record in *The Riverkeepers*, "[T]wenty Keeper programs would crisscross the country from Cook Inlet in Alaska to the Chattahoochee River in Georgia, from Casco Bay in Maine to

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<sup>127</sup> Kennedy, discussion.

<sup>128</sup> Bill Sheehan, (Riverkeeper, Hackensack Riverkeeper; chairman, Meadowlands Conservation Trust), in discussion with the author, April 9, 2004.

<sup>129</sup> Sheehan, discussion, April 9, 2004.

<sup>130</sup> Sheehan, discussion, April 9, 2004.

<sup>131</sup> Andrew Willner, (Baykeeper, New York / New Jersey Baykeeper), in discussion with the author, March 10, 2005.

<sup>132</sup> Sheehan, discussion, April 7, 2005; see also: Robert Sullivan, *The Meadowlands: Wilderness Adventures on the Edge of a City* (New York: Scribner, 1998), 191-200.

San Diego Bay in California."<sup>133</sup> Although most of the Keepers patrolled waterways on the West Coast and Northeast, the Chattahoochee Riverkeeper proved early on that the movement could also succeed in the South.<sup>134</sup> Impressed by Keepers' aggressive defenses of public resources, CNN founder Ted Turner provided funding to start Chattahoochee Riverkeeper in 1994.<sup>135</sup>

Over the next few years, Chattahoochee Riverkeeper Sally Bethea uncovered massive sewage discharges during her monitoring work, and publicized the health threats to the local press.<sup>136</sup> The program gained local and national praise when it defeated Atlanta in a record lawsuit to halt the spills.<sup>137</sup> As Atlanta Journal-Constitution reporter Colin Campbell wrote a week after the outcome, "Despite the fact that the remedy could cost \$2 billion... the agreement is good news and a chance to do things right."<sup>138</sup> Bethea's achievements soon prompted grassroots organizers to form additional Keeper programs in Georgia, such as the Altamaha Riverkeeper in 1999.<sup>139</sup>

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<sup>133</sup> Cronin and Kennedy, 135.

<sup>134</sup> Kennedy, discussion.

<sup>135</sup> Kennedy, discussion; Cronin and Kennedy, 131.

<sup>136</sup> Steven Visser, "Keeper of the River: Grass-roots Organization Patrols, Helps Protect Chattahoochee," *Atlanta Journal-Constitution*, April 8, 1998, D06.

<sup>137</sup> John T. McQuiston, "River Guardians Discuss Setbacks," *New York Times*, June 20, 1999, 34.

<sup>138</sup> Colin Campbell, "Atlanta's Sewers History Needs Flushing Out," *Atlanta Journal-Constitution*, April 16, 1988, CO2

<sup>139</sup> Associated Press, "Interest Groups to form Riverkeeper for Altamaha," *Atlanta Journal-Constitution*, March 2, 1999, B6.

**Waterkeeper Alliance: An International Grassroots Organization**  
**(1999 - Present)**

Towards the end of the 1990s, it became increasingly clear that the Keeper system was replicable nationwide. As Kennedy recalls, “John and I realized that what we had was a winning solution, and we wanted to propagate it.”<sup>140</sup> When *The Riverkeepers* came out in 1997, Cronin told author Barry Werth that he hoped the book would catalyze a hundred new Keeper programs.<sup>141</sup> Although it remains impossible to measure the precise effects that *The Riverkeepers* – or any other vehicle for the Keeper message – had on prompting new programs, anecdotal evidence suggests its significant influence. Celebrated Michigan activist Doug Martz, for example, reports reading it “four times” before deciding to become the St. Clair Channelkeeper in 1999.<sup>142</sup>

While Martz’s subsequent Channelkeeper career has reaped groundbreaking developments in Michigan, when a young man named Murray Fisher read the book in 1998, it was perhaps even more important to the Keeper movement’s growth. Having just graduated from Vanderbilt University, Fisher was considering various career paths. “I read *The Riverkeepers* and loved it,” he explains, “because it was really the first time I had someone articulate my environmental views.” Fisher wrote Kennedy a letter asking for a job at

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<sup>140</sup> Kennedy, discussion.

<sup>141</sup> Werth, “Somewhere Down the Crazy River”

<sup>142</sup> Doug Martz, (Channelkeeper, St. Clair Channelkeeper), in discussion with the author, December 22, 2004.



Riverkeeper, and was hired through their Americorps program. Throughout 1998, Fisher spoke to school groups, monitored waterways, and researched Hudson River history. By 1999, as Cronin increasingly transitioned toward a teaching career, Fisher watched Kennedy take leadership of the National Alliance of River, Sound, and Baykeepers.<sup>143</sup>

Gradually transforming the National Alliance into a networking resource for its member organizations, Kennedy had hired attorney Kevin Madonna in 1998 to coordinate voluntary collaborations among Keepers and to offer them legal counsel on various projects.<sup>144</sup> Kennedy subsequently planned to make the national organization more proactive in its encouragement of prospective Keeper programs.<sup>145</sup> Looking back on that decision, he recalls, “We had the potential to teach people all over the world how to protect their waterways, and it would have been silly for us to squander that.”<sup>146</sup> Kennedy thus sought more growth, but as he also reasoned, “We needed to make sure that as [the movement spread], it did so in an orderly fashion, so that it maintained its value.”<sup>147</sup> By this pivotal point in the movement’s history -- June 1999 -- there were thirty-five Keeper groups.<sup>148</sup> Kennedy and Madonna invited them to a four-day conference,

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<sup>143</sup> Murray Fisher, (former field coordinator, Waterkeeper Alliance), in discussion with the author, January 26, 2005.

<sup>144</sup> Fisher, discussion.

<sup>145</sup> Fisher, discussion; Kennedy, discussion.

<sup>146</sup> Kennedy, discussion.

<sup>147</sup> Kennedy, discussion.

<sup>148</sup> Kennedy, discussion; McQuiston, “River Guardians Discuss Setbacks”

held that month on New York's Peconic Bay, to discuss potential changes and growth for the national organization.<sup>149</sup>

Many of the alterations were largely cosmetic, as Kennedy notes: "Before that meeting, we had 'the National Alliance of River, Sound and Baykeepers,' but we really wanted to change it to 'Waterkeeper Alliance' because we realized that it was less cumbersome and more recognizable for mass marketing."<sup>150</sup>

Therefore, the thirty-five groups copywrote the Waterkeeper name at the Peconic Conference.<sup>151</sup> From that point forward, Keepers were known generically as "Waterkeepers" or, as before, by their specific local names.<sup>152</sup>

Although these changes were merely aimed at improving the national group's marketability so that it attracted more applicants, Kennedy explains, "Some [Waterkeepers] were still nervous that Waterkeeper Alliance would try to come in and take over their grassroots programs, tell them what to do, and take control of their governance. So in those cases it was really a matter of building trust among the organizations."<sup>153</sup>

Indeed, far from abandoning the grassroots ethos passed down through HRFA, Riverkeeper, and the original National Alliance, Waterkeeper Alliance would simply increase its support and resources for prospective, fledgling, and

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<sup>149</sup> Kennedy, discussion; Fisher, discussion.

<sup>150</sup> Kennedy, discussion.

<sup>151</sup> Kennedy, discussion.

<sup>152</sup> Steven Fleischli, (executive director, Waterkeeper Alliance), in discussion with the author, March 10, 2005.

<sup>153</sup> Kennedy, discussion.

even experienced Waterkeeper groups.<sup>154</sup> Waterkeeper Alliance thus blended essential traditions with significant reforms. It maintained its traditional role of licensing new Keepers through a voting process at quarterly board meetings.<sup>155</sup> On the other hand, the revamped national organization would more actively assist applicants and new Waterkeepers in their pursuits of forming effective nonprofit organizations. To that end, Kennedy created a crucial Waterkeeper Alliance staff position, the “field coordinator,” which Fisher filled after the Peconic Conference.<sup>156</sup>

Starting in the fall of 1999, Fisher manned the front lines of Waterkeeper Alliance’s growth until mid-2002. “I was there for almost three years and helped sixty programs start,” He recalls. “So when I left there were ninety-six Waterkeepers.” Initially, he worked directly opposite Kevin Madonna’s desk. This arrangement created a pattern where Fisher guided long phone conversations with prospective Waterkeepers, and Madonna would review his performance thereafter. Because of this high-pressure introduction, Fisher became progressively knowledgeable on how to help activists become effective Waterkeepers:

I helped those sixty Waterkeepers through the process of writing the proposal [for Alliance membership], forming the organization, and submitting their proposal to the board -- although a few of them were ready to go and wrote a good proposal without assistance. Some people even needed me to help teach them to write the grants, form their board,

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<sup>154</sup> Kennedy, discussion.

<sup>155</sup> Fisher, discussion.

<sup>156</sup> Fisher, discussion.

find a boat, or figure out which laws were relevant there and what pollution they faced.

Once the programs had been approved by the Waterkeeper Alliance board -- and reinforced by Fisher's follow-up assistance when needed -- they would be able to write their own grant letters and fight their own battles.<sup>157</sup>

This initiation process for applicants and new Waterkeepers represented a far cry from the services Terry Backer received in 1987:

When I started Soundkeeper, I had Cronin and Bobby to help me, but there wasn't as much information out there. Now if someone starts through our Alliance office, we can teach everything: 'how do they start their 501c3?' to 'how do they draft their letters?' 'where do they find experts?' We started without any of that, and now the size of the organization means that the depth of knowledge and available information has grown exponentially.<sup>158</sup>

These resources expanded considerably under Fisher's watch and that of subsequent field coordinators Sean Larkin and Thomas Byrne.<sup>159</sup> The development not only helped the novice Waterkeepers but also the long-established ones. Even Alex Matthiessen found Riverkeeper's work on the Hudson enhanced by networking with the much newer Waterkeepers:

Though we're the oldest, most established group, everybody is out there doing incredible work, and pursuing solutions to pollution problems on their local waterway. We can pick up lots of ideas from what they're doing elsewhere around the country. We don't have a monopoly by any stretch of the imagination on how to solve pollution problems.<sup>160</sup>

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<sup>157</sup> Fisher, discussion.

<sup>158</sup> Backer, discussion.

<sup>159</sup> Backer, discussion.

<sup>160</sup> Matthiessen, discussion.

The improving opportunities for sharing such information have become especially apparent, Matthiessen adds, at the annual Waterkeeper Conference – a tradition dating back to the Peconic Conference.<sup>161</sup> The Conference has also provided Waterkeepers with environmental seminars as well as chances to bond through recreational activities.<sup>162</sup>

Increasing numbers of Waterkeepers have created further opportunities, moreover, for organized collaboration. Under Thomas Byrne and current Waterkeeper Alliance executive director, Steven Fleischli – who previously had an impressive run as Santa Monica Baykeeper – regional teams of various structures have flourished.<sup>163</sup> Byrne explains the two largest manifestations of this pattern:

In the Chesapeake region, our eleven programs have united to hire a Chesapeake Coordinator, bridging their organizations in the name of common issues. A similar circumstance developed in California, where [several Waterkeepers] decided to start California Coastkeeper Alliance, an additional umbrella organization with the purpose of uniting California Waterkeeper programs with similar causes, policy issues, and enviro-threats.<sup>164</sup>

Byrne also foresees such collaboration taking more formal shape among the more recently expanding Great Lakes Waterkeepers.<sup>165</sup> He notes that these unions fit

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<sup>161</sup> Matthiessen, discussion.

<sup>162</sup> David Whiteside, (director of development, Black Warrior Riverkeeper), in discussion with the author, March 7, 2005.

<sup>163</sup> Egoscue, discussion.

<sup>164</sup> Thomas Byrne, (field coordinator, Waterkeeper Alliance), in discussion with the author, March 16, 2005.

<sup>165</sup> Byrne, discussion, March 4, 2005.

seamlessly within the Waterkeeper movement's grassroots ethos, despite their regional nature:

All of [these collaborations] sprung from the local Waterkeepers' desire to coordinate, and there are subtle differences in accordance with the local Waterkeepers' objectives in organizing a regional operation. Since many local issues have regional implications, these local Waterkeepers recognize a need to be in sync for matters of mutual interest, and it seems to have a very positive affect."<sup>166</sup>

The synergistic relationships show that the Waterkeeper model's local focus need not prevent creative teamwork.

Further harnessing grassroots interests for broader goals, Waterkeeper Alliance also features important national campaigns. Unlike the regional collaborations, these campaigns have been administered through Waterkeeper Alliance's new headquarters in Tarrytown, New York.<sup>167</sup> They entail situations where a local threat becomes common to sufficient numbers of Waterkeepers that the problem might best be tackled through national coordination.<sup>168</sup>

Currently, Waterkeeper Alliance wages national campaigns against mercury and hog farming's damaging effects on waterways and human health.<sup>169</sup>

These national battles have frequently involved Kennedy, president of Waterkeeper Alliance, or Fleischli, the executive director, commenting in news reports on behalf of the local Waterkeepers' collective concerns.<sup>170</sup> Their national legal actions have been particularly significant. Waterkeeper Alliance sued the

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<sup>166</sup> Byrne, discussion, March 4, 2005.

<sup>167</sup> Whiteside, discussion.

<sup>168</sup> Byrne, discussion, February 28, 2005.

<sup>169</sup> Byrne, discussion, February 28, 2005.

<sup>170</sup> Byrne, discussion, February 28, 2005.

EPA in 2004 for creating federal clean-water rules that failed to prevent factory farms' manure from polluting America's waterways.<sup>171</sup> The U.S. Court of Appeals in New York agreed with the Waterkeepers on February 28, 2005, declaring the rule illegal.<sup>172</sup> This result has positive ramifications for all Waterkeepers' patrol areas threatened by manure discharges. In light of the achievement, Byrne avers, "We are surely a step ahead of other environmental organizations in our structure, tying national and international campaigns with local battles."<sup>173</sup>

Speaking of international work, the Waterkeeper Alliance's 1999 founding coincided with the first emergence of Waterkeeper groups outside the United States. That year, at the Peconic Conference, the Alliance approved Daniel LeBlanc's Petitcodiac Riverkeeper program.<sup>174</sup> A native of Moncton, New Brunswick, LeBlanc notes that in his community's longstanding fight against a causeway that had crippled the river's flow, "We realized that there was no way we would win unless we had more powerful tools than just the ongoing lobbying."<sup>175</sup> First meeting with Kennedy in 1996, LeBlanc's eventual utilization of the Petitcodiac Riverkeeper program – and the legal and public relations training that Waterkeeper Alliance membership provides – has allowed him to

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<sup>171</sup> Waterkeeper Alliance, "EPA Factory Farm Pollution Rule Illegal, Says Federal Appeals Court," February 28, 2005, <http://www.waterkeeper.org/mainarticledetails.aspx?articleid=170> (March 29, 2005).

<sup>172</sup> Waterkeeper Alliance, "EPA Factory Farm Pollution Rule Illegal, Says Federal Appeals Court"

<sup>173</sup> Byrne, discussion, February 28, 2005.

<sup>174</sup> Daniel LeBlanc, (Riverkeeper, Petitcodiac Riverkeeper), in discussion with the author, January 27, 2005.

<sup>175</sup> LeBlanc, discussion.

bring the thirty-year old causeway's removal within unprecedented and seemingly inevitable reach.<sup>176</sup>

LeBlanc has also benefited from Waterkeeper Alliance approving subsequent Canadian Waterkeeper programs. After LeBlanc met environmental lawyer Mark Mattson – the Lake Ontario Waterkeeper, approved in 2001 – at the 2001 Waterkeeper Conference, the two Canadian activists began a symbiotic relationship where LeBlanc helped teach Mattson the Waterkeeper Alliance system, and Mattson instructed LeBlanc about Canada's environmental laws.<sup>177</sup> The two joined forces in successfully fining Moncton for landfill pollution of the Petitcodiac.<sup>178</sup> As LeBlanc describes the historic outcome:

This was the first time in Canada that we had a collaborative case between citizens and the government enforcement officers. It was also the first time that senior civil servants, or municipality, or an engineering firm were charged in Canada. So it's had repercussions on other Provinces and other cases around the country.<sup>179</sup>

Mattson and LeBlanc thus form an effective occasional partnership against pollution. They have also served separate terms on the Waterkeeper Alliance board.<sup>180</sup>

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<sup>176</sup> LeBlanc, discussion; see also: Alexander Bruce, "The Riverkeeper," *Atlantic Salmon Journal*, Winter 2004, 60.

<sup>177</sup> LeBlanc, discussion.

<sup>178</sup> LeBlanc, discussion; see also: Lake Ontario Waterkeeper, "Green Groups Applaud Pollution Fine," *Lake Ontario Waterkeeper Newsletter*, September 23, 2003.

<http://www.waterkeeper.ca/lok/index.cfm?DSP=content&ContentID=6518> (March 25, 2005)

<sup>179</sup> LeBlanc, discussion; see also: Lake Ontario Waterkeeper, "Green Groups Applaud Pollution Fine," *Lake Ontario Waterkeeper Newsletter*, September 23, 2003.

<http://www.waterkeeper.ca/lok/index.cfm?DSP=content&ContentID=6518> (March 25, 2005)

<sup>180</sup> LeBlanc, discussion



Paying tribute to Canada's growing Waterkeeper Alliance representation, when Mattson won the Canadian Institute for Environmental Law and Policy's 34<sup>th</sup> Annual award in October 2003, he chose to accept it on behalf of Canada's eight Waterkeepers.<sup>181</sup> Despite the fact that Canada's laws differ from America's, Mattson articulates a substantial common ground across the Alliance, reasoning, "As Waterkeepers our job is to ensure that the public not become confused into believing that there is little that can be done at the local level. We are trying as Waterkeepers to win back what we have lost."<sup>182</sup>

With twenty-two international Waterkeepers approved as of March 8, 2005, Waterkeeper Alliance has made rapid progress around the globe.<sup>183</sup> Still, Kennedy feels the organization can improve its assistance to these groups:

The [international Waterkeepers] are certainly doing really well. The one thing I would try to correct now is to figure out how we can be more helpful to them. We don't always work as well with those groups because a lot of the laws are different. [The international growth] is something that we are still exploring, and it's working well so far. This is a building part of the organization, and we pay a lot of attention to it.<sup>184</sup>

As a support network, it is perhaps true that Waterkeeper Alliance has not yet determined how to assist these groups most effectively. On the other hand, it seems that the Waterkeeper model of on-water patrolling and grassroots

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<sup>181</sup> Lake Ontario Waterkeeper, "Waterkeeper Receives CIELAP Award," *Lake Ontario Waterkeeper Newsletter*, November 1, 2004.

<http://www.waterkeeper.ca/lok/index.cfm?DSP=showletter&NewsID=1337> (March 25, 2005).

<sup>182</sup> Mark Mattson, (Waterkeeper, Lake Ontario Waterkeeper), in discussion with the author, February 2, 2005.

<sup>183</sup> Byrne, discussion, March 17, 2005.

<sup>184</sup> Kennedy, discussion.

leadership resonates worldwide. Fisher observed this common spirit during his work as field coordinator:

Every new call of people interested in starting Waterkeepers from 1999 until August of 2002 all came in directly to me, so I felt that growth and it was overwhelming. It was all over the world; every different kind of person, really being struck by the power of the idea of having a person supported by an organization that protects a body of water.<sup>185</sup>

This universal interest in the Waterkeeper idea continues according to Byrne,

Fisher's successor:

I regularly field inquiries not only from the typical regions -- the east and west coasts of the United States -- but from regions that the Waterkeeper name is just starting to reach: Ireland, the Amazon region, Central Canada. Even within the U.S. there are regions that have been docile until recently, such Austin, Texas and Taos, New Mexico."<sup>186</sup>

Drawing from his observations, Byrne concludes, "The recent growth of Waterkeeper Alliance, I believe, reflects the growing strength and visibility of the Waterkeeper family of names."<sup>187</sup>

With many new programs surfacing domestically and internationally, Waterkeeper Alliance has become, as Kennedy calls it, the "world's fastest growing environmental movement."<sup>188</sup> Following the Alliance' March 8, 2005 board meeting, there are 132 Waterkeeper organizations patrolling more than 100,000 miles.<sup>189</sup> These organizations comprise 348 full-time employees, 125 part-time employees, and 25,000 volunteers contributing 230,000 volunteer

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<sup>185</sup> Fisher, discussion.

<sup>186</sup> Byrne, discussion, January 5, 2005.

<sup>187</sup> Byrne, discussion, January 5, 2005.

<sup>188</sup> Kennedy, discussion.

<sup>189</sup> Byrne, discussion, March 17, 2005.

hours.<sup>190</sup> Addressing the claim of “world’s fastest growing,” Byrne relies on instinct:

As for ‘the fastest growing environmental movement;’ I'm not sure where this is directly supported. But I do think that most anyone who has been exposed to Waterkeeper Alliance and local Waterkeepers would back this up. I don't have direct evidence, personally, for that statement, but I assure you that I would bet a large sum that it's true.<sup>191</sup>

Byrne may be understandably biased in favor of his associates, but he draws upon the unique experience of fielding countless proposals for new Waterkeeper organizations around the world.

It would be difficult for anyone to compare objectively the progress of all environmental organizations, particularly since growth manifests itself in varying forms. “There are a number of ways of measuring it,” Fisher observes, “but in terms of number of new members, number of volunteers on the ground working, number of waterways protected, it’s a compelling case for being the fastest growing environmental movement in the world.”<sup>192</sup> Fleischli makes this case by looking at the movement’s history since the first Waterkeeper Conference at Peconic Bay:

We have grown from thirty-five programs in late 1999 to [132] today. That is, on average, over twenty programs a year. In real terms, that is twenty offices on twenty waterways with twenty full-time Waterkeepers (and all their staff and volunteers) and twenty boats every

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<sup>190</sup> Byrne, discussion, March 16, 2005.

<sup>191</sup> Byrne, discussion, February 28, 2005.

<sup>192</sup> Fisher, discussion.

year, all sharing the same vision and strategy for clean water. No other group comes close to that these days, at least from what I have seen.<sup>193</sup>

Fleischli's analysis reveals that while Waterkeeper Alliance's statistical attributes have risen enormously since 1999, the movement's more practical contribution lies in the increasing number of waterways and communities it protects.

Amidst this rapid growth, the Alliance's licensing standards for prospective Waterkeepers – as well as its networking mechanisms for existing groups – maintains commonalities and strong relationships across the movement. Beyond these bonds, however, Waterkeepers remain linked together by common tenets regarding their roles as stewards. As Cronin and Kennedy wrote in 1997, "As Riverkeepers we protect nature, not so much for nature's sake, but for the sake of humanity."<sup>194</sup> "We think," Fisher adds, "that in the long term, living on a water body that's healthy and clean, productive and full of fish, is going to be better for a community."<sup>195</sup> Waterkeepers' anthropocentric focus surfaces in all its protections of public resources, as well as in Kennedy's ubiquitous speeches and writings. In working to safeguard present and future generations from environmental losses such as polluted fisheries or blocked waterway access, the Waterkeepers view environmentalism in terms of human rights.

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<sup>193</sup> Fleischli, discussion, February 14, 2005

<sup>194</sup> Cronin and Kennedy, 275.

<sup>195</sup> Fisher, discussion.

Elaborating on this common philosophy, NY/NJ Baykeeper's policy director, Debbie Mans posits, "I think that the underlying theme of all Waterkeepers' work is that the public owns the waterways; and this inherent notion can in part be traced back to the Public Trust Doctrine."<sup>196</sup> According to historian Mark Dowie, the Public Trust Doctrine is a "legal principle... which says that common resources such as water are to be held in trust by the state for the use and enjoyment of the general public, rather than private interests."<sup>197</sup> Starting in 528 A.D., Rome's Justinian Institute classified waterways as *res communes* because they were considered "indivisible" public property according to common law.<sup>198</sup> Subsequently, Dowie explains, "Over the course of its fifteen-hundred-year history, use of the Public Trust Doctrine has waxed and waned, depending on political climates and attitudes toward the commons."<sup>199</sup> Kennedy notes, for instance, that "When King John attempted to sell off [England's] fisheries and to erect navigational tolls on the Thames, the public rose up and confronted him at Runnymede in 1215, forcing him to sign the Magna Carta,

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<sup>196</sup> Debbie Mans, (policy director, New York / New Jersey Baykeeper), in discussion with the author, March 10, 2005.

<sup>197</sup> Mark Dowie, "In Law We Trust," *Orion Magazine*, July/August 2003.  
<http://www.oriononline.org/pages/om/03-4om/Dowie.html>

<sup>198</sup> David Bollier, *Silent Theft: The Private Plunder of Our Common Wealth*. (New York: Routledge, 2003), 176; see also: Dowie, "In Law We Trust"; Cronin and Kennedy, 141.

<sup>199</sup> Dowie, "In Law We Trust"; for a thorough history of the Public Trust Doctrine's evolution since Justinian, including specific references to cases and sources, see also: Cronin and Kennedy, 140-152; for greater detail on American cases, see also: John-Mark Stensvaag, ed. *Materials on Environmental Law*. (St. Paul, MN: West Group, 1999), 208-232.

which includes provisions guaranteeing the rights of free access to fisheries and waters.”<sup>200</sup>

Throughout American history, cases such as *Illinois Central Railroad Company v Illinois* [1892], and individual states’ constitutions have frequently denounced the privatization of waterways.<sup>201</sup> However, as America became progressively industrialized in the early twentieth century, Dowie argues, “Courts looked the other way as state legislators granted and sold public properties, including shorelines, tidal flats, and wetlands, to residential developers, landfill operators, and industrial parks.”<sup>202</sup> Increasingly lamenting these losses, citizens began struggling in the 1960s and 1970s to regain control over public resources. Americans waged this environmental battle by issuing legal challenges like the Storm King case, and by assembling large demonstrations such as Earth Day 1970.<sup>203</sup> The 1965 Storm King decision was particularly relevant to the Public Trust Doctrine insofar as it afforded citizens standing to protect resources beyond their own private property. The federal statutes that Storm King and Earth Day helped advance exhibited Congress’ recognition that the commons must be protected from misuse.<sup>204</sup>

America’s environmental statutes are all potentially effective legal tools for safeguarding the commons. They inherently hold government responsible as

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<sup>200</sup> Kennedy, Jr., Robert F., *Crimes Against Nature*. (New York: Harper Collins, 2004), 20-1.

<sup>201</sup> Stensvaag, 208-232; see also Cronin and Kennedy, 140-152.

<sup>202</sup> Dowie, “In Law We Trust”; see also: Stensvaag, 208-232; Cronin and Kennedy, 140-152.

<sup>203</sup> Cronin and Kennedy, 153; see also: Dowie, “In Law We Trust”

<sup>204</sup> Cronin and Kennedy, 155; see also: Dowie, “In Law We Trust”

trustees for public resources, and contain consistent guidelines and provisions for that purpose. In contrast, although the Public Trust Doctrine represents a growing body of common law, it lacks the federal statutes' specificity for legal application.<sup>205</sup> Judges continue to vary in their interpretations and implementations of the Public Trust Doctrine when it is used as the primary basis for litigation.<sup>206</sup> Still, Bollier notes that despite the difficulty defining the Public Trust Doctrine's role in court, "[T]here is sufficient clarity to say that inherently public property belongs to the people... and the state is empowered only to act as a trustee for the public."<sup>207</sup> Therefore, Matthiessen notes, "As a piece of rhetoric that can be used to educate the public and to criticize, frankly, government, companies, and polluters in general about their violations of people's rights, I think its an extremely powerful tool."<sup>208</sup>

Beyond the Public Trust Doctrine's significant rhetorical applications, Willner explains, Waterkeepers can use the principle as a source of organizational guidance:

Core to NY/NJ Baykeeper's mission, and to many of the other Waterkeepers is the concept that 'everyone has the right to use our commonly held natural resources, but no one has the right to use them to the detriment of anyone else.' This is common law and common sense, and helps to guide us in our stewardship of our local waterways.<sup>209</sup>

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<sup>205</sup> Matthiessen, discussion; see also: Bolling, 178.

<sup>206</sup> Mans, discussion.

<sup>207</sup> Bollier, 176.

<sup>208</sup> Matthiessen, discussion.

<sup>209</sup> Willner, discussion.

While all citizens own the commons, Waterkeepers practice a more active form of ownership by serving as paid stewards for local waterways. This responsibility prompts Waterkeepers to be watchful for situations where government fails in its trusteeship over the commons, or where private interests undermine those resources. Consequently, Fleischli points out, “The Public Trust Doctrine from a philosophical standpoint is central to what we do on a daily basis, whether we invoke it by name or not.”<sup>210</sup>

The Public Trust Doctrine indeed serves as a conceptual basis for all Waterkeepers’ work. To varying degrees, individual Waterkeeper organizations use the Public Trust Doctrine as an explicit piece of rhetoric. Philosophy and rhetoric alone, however, cannot protect and restore the public’s waterways. But the Waterkeeper organizational model, more than any abstract concept, differentiates Waterkeepers from other environmentalists, allowing this movement to spread quickly and achieve rapid victories. That system depends on a motivated citizen starting or joining a grassroots organization and becoming its Waterkeeper – the professional watchdog and spokesperson for a watershed – and has reaped historic successes on waterways across the world. As Kennedy and Fleischli explain in the Summer 2004 issue of *Waterkeeper Magazine*, “What sets us apart is the fact that the men and women who comprise the Alliance take

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<sup>210</sup> Fleischli, discussion, February 28, 2005.



personal responsibility for the river, lake, stream, bay or inlet they represent.”<sup>211</sup>

In fighting for those different types of waterways in different sorts of communities, Waterkeepers must devise local solutions to local problems. Therefore, Waterkeeper Alliance allows the individual Waterkeeper organizations autonomy in governance, fundraising, and daily methods, while still holding prospective Waterkeepers to basic standards as Alliance members. Rather than dictating from above, the Alliance represents a valuable, flexible, and growing network for all the Waterkeepers. As its Mission Statement claims, “Waterkeeper Alliance connects and supports local Waterkeeper programs to provide a voice for waterways and their communities worldwide.”<sup>212</sup> Benefiting from the Alliance as well as contributing to it, the world’s Waterkeepers have quickly changed the course of environmental history.

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<sup>211</sup> Steven Fleischli and Robert F. Kennedy, Jr., “Welcome Letter,” *Waterkeeper Magazine*, Summer 2004, 4.

<sup>212</sup> Fleischli, discussion, February 28, 2005.

## Part II: Individual Waterkeeper Organization Studies

### Explanation of Case Studies

The following four case studies highlight four Waterkeeper organizations whose histories illustrate how the Waterkeeper system has materialized in regions not extensively covered in Part I. The case studies fall into two geographic pairs. Once I decided to establish this structure, my choices of case studies came from consulting several Waterkeeper Alliance representatives. I have selected case study pairs from the Southeast (two Alabama Waterkeepers) and the Midwest (two Michigan Waterkeepers).

The case studies show how the Waterkeeper system manages to work well despite geographic differences. All Waterkeeper organizations include a paid, full-time Waterkeeper who patrols their watershed, voices local problems, and seeks solutions on behalf of the community. On the other hand, since Waterkeeper Alliance is truly a grassroots movement, Alabama and Michigan pairs show that even in the same state, Waterkeepers use different strategies to address local issues. I also attempted to present diversity among my case studies in terms of the age and structure of each Waterkeeper program and the type of waterway it patrols. As a result of these research goals, I have covered neither the four most accomplished Waterkeeper programs, nor focused solely on

accomplishments for the four I have chosen.

Although the activities of these four Waterkeeper programs are covered in many newspapers and other sources, I primarily draw on the comprehensive interviews I conducted with the Waterkeepers over the last few months for my discussion of the programs. While news articles tend to highlight controversies or personalities, my interviews cover the organizations' histories more holistically. For each case study, I interviewed the organization's designated Waterkeeper and, when the Waterkeeper recommended it, other staff or board members. I asked each Waterkeeper a uniform series of questions on topics such as their organization's founding circumstances, environmental challenges, favorite victories, and notable collaborations with government agencies, nearby Waterkeepers, and other environmentalists. Each Waterkeeper also discussed the benefits of Waterkeeper Alliance membership and the extent of their reliance on the Public Trust Doctrine. All quotes from these interviews contain the original unedited words of the Waterkeepers.

## Case Study 1:

### Mobile Baykeeper (Mobile, Alabama)

At first glance, Alabama does not appear to be the ideal spawning ground for an effective Waterkeeper program. The state spends less than any other on environmental protection, hosts the nation's largest toxic waste dump, and features one of America's most lenient environmental protection agencies.<sup>213</sup> Nevertheless, Casi Callaway's success as the Mobile Baykeeper has shown that the Waterkeeper system can adapt and flourish in seemingly hostile settings. Her program's local and statewide contributions, in fact, reveal a special role for Waterkeepers in states with traditionally lax environmental standards.

Mobile Baykeeper's origins date back to 1997, when a handful of volunteers founded the West Bay Watch group to oppose a chemical plant proposal. After a year and a half of organizing against the plant, they hired Callaway as their first paid staff member. While an undergraduate at Emory University, Callaway served as the Southeastern Regional College Campus Coordinator for Earth Day 1990. With Callaway working as executive director, the group decided that they should focus on protecting all of coastal Alabama's Mobile Bay.<sup>214</sup>

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<sup>213</sup> Casi Callaway, "Sweet Home: Turning Around Alabama's Department of Environmental Management," *Waterkeeper Magazine*, Winter 2005, 18.

<sup>214</sup> Casi Callaway, (Baykeeper, Mobile Baykeeper), in discussion with the author, February 3, 2005.

Shortly after changing their name to Mobile Bay Watch in 1998, the activists recruited popular singer/songwriter Jimmy Buffet, an environmentally conscious Mobile native, to throw an benefit concert.<sup>215</sup> Raising funds with the help of Buffet – now an honorary board member – Bay Watch began planning its long-term goals. “Around 1999,” Callaway recalls, “we found a lawyer who had heard Bobby [Kennedy] speak. He told us that the Waterkeeper program was the greatest thing since sliced bread. We spent the next six months making our application.” On October 5, 1999, Waterkeeper Alliance officially accepted Mobile Bay Watch’s Mobile Baykeeper program.<sup>216</sup>

Becoming the Mobile Baykeeper of the preexisting Mobile Bay Watch organization, and remaining its executive director, Callaway avoided having to start a new 501c3 organization. She also immediately benefited from joining Waterkeeper Alliance:

If I have a question or a plan, I can pick up the phone or send an e-mail to about a million Waterkeepers who would answer me in a heartbeat and tell me if I’ve got a good or bad idea. They are the first [environmentalists] I’m going to trust, too, because they’re always right. They’ve been there; they’ve done that; they’ve learned it.<sup>217</sup>

Along with gaining from Waterkeeper Alliance’s easily accessible network of likeminded grassroots advocates, Callaway derives a great deal of knowledge and inspiration from attending the Alliance’s annual conferences. “To use some

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<sup>215</sup> Callaway, discussion.

<sup>216</sup> Callaway, discussion; see also: Casi Callaway, “Mobile Bay Watch Officially Designated Mobile Baykeeper,” *Mobile Harbinger*, November 2, 1999, <http://www.theharbinger.org/xviii/991102/callaway.html>

<sup>217</sup> Callaway, discussion.

Alabama football jargon for you,” Callaway jokes, “going to the Waterkeeper Conference is all the coaching I need.”<sup>218</sup>

Buttressed by a small staff of assistants and lawyers that varies with the organization’s changing projects, the Baykeeper also relies on Bay Watch’s board for fundraising and guidance. Callaway feels that her responsibilities as the Mobile Baykeeper – to locate, publicize, and solve the bay’s problems – both symbolize and dictate Bay Watch’s mission. Therefore, she has been gradually working with her board to change the organization’s name to Mobile Baykeeper. In the meantime, the organization now officially calls itself “Mobile Bay Watch / Mobile Baykeeper.” Callaway hopes that her increasing use of the name Mobile Baykeeper on stationary and in the local press will help it eclipse, and then replace, the Bay Watch name.<sup>219</sup>

Callaway further cultivates her organization’s local image by adapting it to the area’s predominantly conservative ethos. Her board consists primarily of “wealthy Republican men,” who help find supporters among the watershed’s countless recreational fishermen and hunters. Callaway often inspires the public by emphasizing pollution’s negative effects on fishing and hunting opportunities. Moreover, she frequently speaks to schools, clubs, and businesses about looming toxic threats. In a region where many environmentalists are still

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<sup>218</sup> Callaway, discussion.

<sup>219</sup> Callaway, discussion.

viewed as “radical hippies,” Callaway’s anthropocentric advocacy helps clarify that the Baykeeper simply remains “committed to public health protection.”<sup>220</sup>

The Baykeeper’s first lawsuit showcased this commitment, and delivered resounding success. Alleging that the Mobile Area Water and Sewer System violated the Clean Water Act over 1000 times in the late-1990s, Callaway filed an initial intent to sue in 1999.<sup>221</sup> She also publicized the problem consistently, through speeches and press releases. This outcry led to a January 2002 settlement when Mobile Area Water and Sewer System agreed to spend sixty million dollars to improve pipes and sewage treatment plants.<sup>222</sup> As *Mobile Register* reporter Bill Finch observed, “[R]ecent customer surveys indicat[ed] that recent media coverage of spills had apparently lowered their tolerance for overflows and increased their willingness to pay for major overhauls.”<sup>223</sup> Both sides felt that the upgrades were needed to avoid dangerous future spills, and that the penalty was nonetheless “quite small compared with similar settlements in other cities, and allowed most of the money to return to the community for water quality improvements.”<sup>224</sup> In fact, Finch noted, “Callaway and Malcolm Steeves, the sewer system’s director, agreed that the settlement is likely to

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<sup>220</sup> Callaway, discussion; see also: *Mobile Register*, “Casi Callaway to speak to Unitarians,” *Mobile Register*, March 5, 2004, 5.

<sup>221</sup> Callaway, discussion; see also: Bill Finch, “Sewer Lawsuit Settled,” *Mobile Register*, January 25, 2002, 1.

<sup>222</sup> Callaway, discussion; see also: Finch, “Sewer Lawsuit Settled.”

<sup>223</sup> Finch, “Sewer Lawsuit Settled.”

<sup>224</sup> Finch, “Sewer Lawsuit Settled.”

become a model that EPA will apply to other cities that have outdated systems and repeated problems with sewage overflows.”<sup>225</sup>

Mobile Baykeeper defeated another major threat to public health when it rallied grassroots opposition against a proposed liquefied natural gas (LNG) facility. Exxon Mobil Corporation hoped to build the six hundred million dollar terminal in Mobile Bay, close to bayside communities. Because of her constant vigilance, Callaway led the fight to halt this project:

We ended up being the people who told the rest of the community about LNG. As usual, we’re the ones who read the public notices in the newspaper. We’re the ones who read the permit applications, and we are the ones who comment on the permit applications if there’s an issue. And we say, ‘This is bad. This is huge. We’re going to fight this tooth and nail. And here’s why.’<sup>226</sup>

The Baykeeper primarily opposed the project on the grounds that, despite LNG’s environmentally friendly potential as an alternative fuel source, its well-established capacity for explosions, particularly as a terrorism target, could result in disaster for the bay and its communities. It had been planned for construction near several schools and residences. The facility’s thermal pollution would also have damaging effects on fisheries. Engaging the grassroots, Callaway led her organization’s twenty five hundred members to post thousands of “No LNG” signs throughout Mobile. Combined with Callaway’s comments in the press, this citizen participation prompted Exxon to abandon its proposal on October 29,

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<sup>225</sup> Finch, “Sewer lawsuit settled.”

<sup>226</sup> Callaway, discussion; see also: *Mobile Register*, “Casi Callaway to speak to Unitarians”; Bill Finch, “Offshore facility raises environment questions,” *Mobile Register*, April 3, 2004, 1.



2004.<sup>227</sup> As Callaway notes, “This was one of those issues where everybody initially says ‘You can’t stop Exxon!’ Why not? Our victory showed the grassroots’ power.”<sup>228</sup>

In her defense of the grassroots’ resources and health, Callaway does not hesitate to scrutinize and announce government’s failings as trustees. Lamenting the well-documented ineptitude of Alabama’s environmental protection agency, the Alabama Department of Environmental Management (ADEM), Callaway voices her concerns in speeches, hearings, and newspaper editorials.<sup>229</sup> The Baykeeper also co-founded the ADEM Reform Coalition (ARC), which unites her with representatives from Black Warrior Riverkeeper, Hurricane Creekkeeper, Choctawhatchee Riverkeeper, Alabama Rivers Alliance, Alabama Environmental Council, and other environmental groups, to discuss strategies for improving ADEM’s trusteeship. Callaway posits that the vigilant and aggressive Waterkeeper groups, with their unique grassroots focus and success, have contributed most to ARC.<sup>230</sup>

According to a *Mobile Register* editorial on January 10, 2005, ARC’s criticisms of longstanding ADEM director, Jim Warr, helped lead to Warr’s firing. The editorial notes that “[A] covey of Alabama’s environmental groups in

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<sup>227</sup> Callaway, discussion; see also: Ben Raines, “Exxon Mobil Drops Mobile LNG Plans,” *Mobile Register*, October 29, 2004, 3; Chris Otts and Bill Finch, “LNG Concerns Expressed at Hearing,” *Mobile Register*, July 14, 2004, 2.

<sup>228</sup> Callaway, discussion.

<sup>229</sup> Callaway, discussion; see also: Casi Callaway, “Back Change at ADEM,” *Mobile Register*, November 14, 2004, 1; Casi Callaway, “Sweet Home: Turning Around Alabama’s Department of Environmental Management”

<sup>230</sup> Callaway, discussion.

2003 called for reform of the agency because, in their well-reasoned opinion... it has been too lax in enforcing environmental laws."<sup>231</sup> Callaway notes that ARC is already pressuring Warr's replacement, Trey Glenn, a controversial former head of Alabama's Office of Water Resources:

[Industry lobbyists] did get another wussy director in place. But he could turn out to be better than they want him to be, because of the stress that we've put on him and because of the setup that we've given it. Every newspaper in the state ran that the environmental community does not like this guy. And so if this guy does not prove a good relationship with the environmental community, he's going to go. Or he's going to get beaten to ribbons.<sup>232</sup>

Despite her local focus as a Waterkeeper, Callaway justifies this work in ARC, noting, "Our watershed is huge, and that's one reason why the statewide work is so important. If ADEM is doing their job well, then nobody's going to pollute Mobile Bay."<sup>233</sup> Thus, the Baykeeper not only carves a successful niche in her section of the environmentally challenged state, but actually uses her local motivations to improve environmental conditions throughout Alabama.

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<sup>231</sup> *Mobile Register*, "Glenn's Challenge: To Lead Agency to Reform," *Mobile Register*, January 10, 2005, 6.

<sup>232</sup> Callaway, discussion; see also: *Mobile Register*, "Glenn's Challenge: To Lead Agency to Reform"

<sup>233</sup> Callaway, discussion.

## Case Study 2:

### **Black Warrior Riverkeeper (Birmingham, Alabama)**

Covering 6,276 square miles of west-central Alabama, the Black Warrior River watershed includes one and a half million people, sixteen counties, and the cities of Tuscaloosa and Birmingham. It also contains 126 species of fish and 48 species of mussels – many of which are endangered; and three fish species are endemic – as well as a multitude of endangered snail, snake, and turtle species. Birmingham, Alabama’s largest city, derives over half of its drinking water from the river and its tributaries. Tuscaloosa, Alabama’s fifth-largest city, derives all of its drinking water from the Black Warrior and tributaries. Despite providing a great deal of biodiversity and drinking water, however, the Black Warrior has been overburdened by sewage, damming, and industrial pollution for decades.<sup>234</sup>

Seeking to protect this important but troubled river, Birmingham residents Roger Conville and David Whiteside founded Black Warrior Riverkeeper in 2001. After seventeen years as an investment advisor, Conville heard about the Waterkeeper system from Whiteside. They decided to start a program for the Black Warrior.<sup>235</sup> Whiteside, a college student, lived near the Black Warrior River and had worked several summers at Riverkeeper for his

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<sup>234</sup> Nelson Brooke, (Riverkeeper, Black Warrior Riverkeeper) in discussion with the author, February 1, 2002; see also: Sandi Dittmer, “The Black Warrior Riverkeeper,” *Natural Awakenings*, Birmingham edition. January 2004, 21.

<sup>235</sup> Katherine Bouma, “Watcher of the Warrior,” *Birmingham News*, April 8, 2002, 1-B.

godfather, Robert F. Kennedy, Jr.<sup>236</sup> Hoping to create needed concern and solutions for the river's numerous problems, Conville and Whiteside started the first citizen-run organization focused on protecting the entire Black Warrior watershed.<sup>237</sup> As Conville explained to the *Birmingham News* on April 8, 2002, "That part of [Alabama] is not as affluent, and the Warrior hasn't had an advocate."<sup>238</sup>

Indeed, while the nearby Cahaba River watershed includes Birmingham's wealthiest and most politically mobilized suburbs, the Black Warrior's basin consists of a predominantly impoverished and disunited mixture of inner-city, agricultural and rural areas. Although only one-third the Black Warrior watershed's size, the Cahaba basin has long enjoyed stronger environmental protection by groups such as the Cahaba River Society. Realizing that the Black Warrior watershed lacks a comparable base for potential fundraising, therefore, Whiteside drew upon his ubiquitous Waterkeeper Alliance connections to find donors from all over the country. After Whiteside wrote a proposal and received Waterkeeper Alliance's approval to start Black Warrior Riverkeeper in September 2001, Conville gained its incorporation as a Birmingham organization in April 2002. Conville increasingly transferred leadership duties to his young

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<sup>236</sup> Whiteside, discussion; see also: Vivi Abrams, "RFK Jr. Criticizes ADEM Handling of Pollution Laws," *Birmingham News*, March 13, 2003. 2-B.

<sup>237</sup> Whiteside, discussion.

<sup>238</sup> Bouma, "Watcher of the Warrior"

associate. Conville left the organization in early 2004, nevertheless retaining due credit as co-founder.<sup>239</sup>

Although out-of-state fundraising would play a crucial role in maintaining Black Warrior Riverkeeper's organizational sustainability, Whiteside knew that the group's grassroots advocacy would dictate its true value.<sup>240</sup> As the organization's initial Riverkeeper, therefore, Whiteside targeted a major pollution case in the watershed.<sup>241</sup> Sloss Industries, a Tampa-based company with a Birmingham coke plant, had been routinely violating its permit to discharge cyanide and other chemicals into Five Mile Creek, a tributary of the Black Warrior River.<sup>242</sup> Whiteside and Mark Martin, Black Warrior Riverkeeper's chief prosecuting attorney, collaborated with two regional environmental organizations in filing federal against Sloss in October 2002.<sup>243</sup> The groups collectively noted in several newspaper articles that Sloss' cyanide had decimated recreational and scenic opportunities in Five Mile Creek, and repeatedly violated the Clean Water Act.<sup>244</sup> In light of this public relations dilemma, according to the *Birmingham News*, Sloss settled in May 2003, paying

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<sup>239</sup> Whiteside, discussion.

<sup>240</sup> Whiteside, discussion.

<sup>241</sup> Whiteside, discussion.

<sup>242</sup> Whiteside, discussion; see also: Katherine Bouma, "Tighter Rules Due for Five Mile Creek," *Birmingham News*, June 25, 2002, 1-B.

<sup>243</sup> Mark Martin, (chief prosecuting attorney, Black Warrior Riverkeeper), in discussion with the author, February 1, 2005; Whiteside, discussion; see also: Val Walton, "Groups Sue Sloss Industries over Water Pollution," *Birmingham News*, October 2, 2002. 1-C.

<sup>244</sup> Walton, "Groups Sue Sloss Industries over Water Pollution"; Bouma, "Tighter Rules Due for Five Mile Creek."

“the largest restitution package paid by a polluter in the state’s history.”<sup>245</sup> Sloss agreed to pay a record fine of \$675,000, plant 25,000 trees along Five Mile Creek, donate 360 acres of undeveloped land to the area (a \$2,600,000 value), and spend \$1,500,000 on coke plant upgrades.<sup>246</sup>

Black Warrior Riverkeeper was proud to work with other environmental groups in helping prompt this historic settlement.<sup>247</sup> As Whiteside explains, “Collaboration with stakeholder groups is key to any successful Waterkeeper program.”<sup>248</sup> “The more eyes, ears, and noses a Waterkeeper program has on the watershed,” he adds, “the more pollution problems they will uncover.”<sup>249</sup> With those ideals of vigilance in mind, Whiteside also recognized that the organization needed to employ a new Riverkeeper who could patrol more often. This replacement would allow Whiteside to spend more time fundraising as the group’s director of development. In 2003, therefore, Whiteside hired Nelson Brooke, a young Birmingham outdoorsman who has notably extended the group’s multifaceted monitoring techniques.<sup>250</sup>

Like all Waterkeepers, Brooke utilizes creative tactics that fit his watershed’s unique conditions. Since pedestrian access to the Black Warrior is often blocked by private property, and because boating can be dangerous in the

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<sup>245</sup> *Birmingham News*, “Sloss Gets Historic Penalty for Polluting Five Mile Creek,” *Birmingham News*, May 7, 2005, 10-A.

<sup>246</sup> *Birmingham News*, “Sloss Gets Historic Penalty for Polluting Five Mile Creek”

<sup>247</sup> Whiteside, discussion.

<sup>248</sup> Whiteside, discussion.

<sup>249</sup> Whiteside, discussion.

<sup>250</sup> Whiteside, discussion.

river's numerous shallow stretches, Brooke frequently patrols in a boat, makes observations from dams and bridges, or analyzes pollution permits in the office. On a less conventional note, Brooke occasionally hires a friend to fly him over the watershed for aerial photography. In 2004 he noticed that a quarry was pumping brown water out of their pit directly into a tributary of the Black Warrior River. Brooke's bird's eye view of the ecologically damaging and illegal quarrying practice prompted his ground investigation where he gathered evidence of sediment discharges. He gave the evidence to Martin, who filed a sixty-day notice of intent to sue Vulcan Materials' Bessemer Quarry for 465 violations of the Clean Water Act.<sup>251</sup>

*Waterkeeper Magazine* published an example Brooke's effective aerial photography in their Fall 2004 issue. They also noted that, frustratingly for Black Warrior Riverkeeper, the Alabama Department of Environmental Management (ADEM) issued an order against Vulcan just before Martin could file the suit. Although ADEM fined Vulcan fifty-thousand dollars and mandated corrective measures and improvement plans, Black Warrior Riverkeeper viewed these minimal charges as a disturbingly typical example of ADEM shielding industrial polluters from environmentalists' suits.<sup>252</sup> Echoing sentiments similar to those posed at ADEM Reform Coalition (ARC) meetings by fellow Alabama Waterkeepers Michael Mullen (Choctawhatchee Riverkeeper), John Wathen

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<sup>251</sup> Brooke, discussion.

<sup>252</sup> Brooke, discussion; see also: Waterkeeper Alliance, "Black Warrior Riverkeeper Calls Vulcan Materials' Bessemer Quarry on Pollution," *Waterkeeper Magazine*, Fall 2004, 48.

(Hurricane Creekkeeper), and Casi Callaway (Mobile Baykeeper), Brooke

laments:

ADEM will step in and pre-empt our lawsuits, usually coming up with less stringent penalties than we would have offered. ADEM would have one think that they are merely trying to help polluters back into compliance through reasonable guidelines and penalties. However, they make it so easy on polluters, especially large industries, that there is little incentive for polluters to truly clean up the mess. Time and time again industries will continue to pollute down the road, content with paying weak fines to ADEM.<sup>253</sup>

On a more positive note, though, Brooke feels that the Alabama Waterkeepers' efforts will change this pattern, positing, "Pressure from citizens with know-how and legal clout will ultimately force ADEM to do its job correctly."<sup>254</sup>

In its most recent case, Black Warrior Riverkeeper appears to have succeeded in applying such pressure on as many as three agencies. The group discovered several years' worth of data confirming that Jefferson County's severely overcrowded Donaldson Prison discharges illegal amounts of raw sewage into Black Warrior tributaries. Because the spills have only worsened since 1999 - when ADEM issued an ineffectual warning to the Department of Corrections (DOC) - Black Warrior Riverkeeper issued notice in November 2004 of their intent to sue the state.<sup>255</sup> They also successfully requested that ADEM

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<sup>253</sup> Brooke, discussion; see also: *Mobile Register*, "Glenn's Challenge: To Lead Agency to Reform"

<sup>254</sup> Brooke, discussion.

<sup>255</sup> Whiteside, discussion; see also: Carla Crowder, "Group Seeks to Halt Prison's Creek Pollution," *Birmingham News*, November 17, 2004, 3-B.



hold a public hearing so that concerned neighbors of the river could discuss Donaldson's violations and its potential permit renewal.<sup>256</sup>

Distributing fliers about the hearing to affected communities, and consistently emailing Black Warrior Riverkeeper's hundreds of members – a support base largely assembled by Whiteside and the organization's board – Brooke helped encourage masses of angry citizens to attend the February 1, 2005 hearing at Oak Grove High School.<sup>257</sup> Brooke chastised the agencies' inaction and informed hundreds at the hearing that he had documented several discharges of 990,000 gallons of sewage per day, far surpassing the 270,000 gallons permit.<sup>258</sup> Some attendees reported their children getting "serious staph infections," after swimming in the river, relating their experiences to Brooke's discoveries.<sup>259</sup> Four days later, a *Birmingham News* editorial reiterated the health risks of these discharges, and reprimanded the Alabama attorney general's office for preempting Black Warrior Riverkeeper's lawsuit.<sup>260</sup>

Interestingly, on March 3, 2005, the *Birmingham Post-Herald's* Daniel Jackson reported that the Alabama Attorney General claims to have "...filed the lawsuit to fix the problem, not to shield the state prison system..." and that he "...welcomes the Riverkeeper's involvement in the lawsuit." Earlier that week,

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<sup>256</sup> Crowder, "Group Seeks to Halt Prison's Creek Pollution"

<sup>257</sup> Daniel Jackson, "Oak Grove Residents Angry over Sewage in River," *Birmingham Post-Herald*, February 2, 2005. 1.

<sup>258</sup> Carla Crowder, "Scores Turn out against Prison Sewage," *Birmingham News*, February 2, 2005. 1-C.

<sup>259</sup> Jackson, "Oak Grove Residents Angry over Sewage in River"

<sup>260</sup> *Birmingham News*, "It's Time for Prison to Clean up its Act." *Birmingham News*, February 6, 2005. 10-C.

Martin had added Black Warrior Riverkeeper as an intervening party in the attorney general's suit so that the activists could make sure that the sewage system improved. The attorney general's statements pointed towards a desire for such improvement, despite the considerable rarity of suing another agency. As the attorney general's office claimed, "[We are] 100 percent committed to serving and defending the best interests of Alabama citizens. If that means other state agencies are lined up on the other side, so be it."<sup>261</sup>

From the standpoint of Black Warrior Riverkeeper and the communities it protects, success in this case obviously depends on whether Donaldson's wastewater treatment improves. The attorney general's comments may represent nothing more than a few transient, crowd-pleasing remarks. Still, the crowds this agency aims to please have apparently grown. Black Warrior Riverkeeper's overall involvement in the case appears to have helped engage the public in defending their neighborhoods. Regardless of the outcome, more people are now aware of one environmental threat facing them. Additionally, at the very least, a few hundred more citizens in the Birmingham area now realize that Black Warrior Riverkeeper fights not on behalf of radical, eccentric, or elitist causes, but for the sake of basic human rights.

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<sup>261</sup> Daniel Jackson, "Prison may Privatize Sewage," *Birmingham Post-Herald*, May 3, 2005. 1.

### Case Study 3:

#### St. Clair Channelkeeper (Harrison Township, Michigan)

As St. Clair Channelkeeper Doug Martz describes his southeastern Michigan patrol area, St. Clair Channel comprises the waterways connecting Lake Huron and Lake Erie – the St. Clair River, Lake St. Clair, and the Detroit River – and their tributaries. The middle portion of this channel, Lake St. Clair, provides over four and a half million people with their drinking water, and serves as a major center for commercial and recreational boating. In a remarkable story, Doug Martz progressed from building houses in a small area around Lake St. Clair to leading groundbreaking environmental campaigns across the entire St. Clair Channel.<sup>262</sup>

On June 13, 1994, Martz was fixing the exterior of a friend's house on the Clinton River, a tributary of Lake St. Clair, when his eyes started to tear, his breath shortened, and he had to run inside. A billion-gallon sewage spill had just passed along the Clinton. Macomb County's beaches subsequently closed for most of that summer, leading to emergency meetings where officials from Michigan's Department of Environmental Quality (DEQ) publicly attributed the shoreline problems to duck droppings and grass clippings. Correctly suspecting that massive sewage overflows were to blame instead, Martz and some

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<sup>262</sup> Martz, discussion.

neighbors decided to start publicizing the issue. Martz founded a group called “Sludgebusters,” whose members wore gasmasks and rain jackets, carried plungers, and drove around Macomb in a Cadillac featuring “Sludgebusters” signs, loudspeakers, and a real toilet on its roof.<sup>263</sup>

Successfully using these conspicuous displays to rally public outcry against the obvious sewage spills, Martz became recognized as the county’s leading grassroots organizer against environmental abuse. Seeing that Martz had the public’s attention, anonymous DEQ officials began sending him records proving that illegally outdated sewage systems were dumping untreated waste throughout Lake St. Clair. In 1995 Martz gave this information to Macomb County prosecutor Carl Marlinga, who asked Martz to join him in suing adjacent Oakland County. A rich community there had been dumping sixty thousand e. coli colonies per hundred milliliters daily, flowing down through Macomb, although the legal limit was three hundred colonies per day. The successful suit required Oakland County to spend \$144,000,000 on sewage system upgrades, and added credibility to Martz’s Sludgebuster persona.<sup>264</sup>

Increasingly realizing that the problem was real and the public outcry was growing, in 1997 Macomb County officials created the Macomb County water quality board and appointed Martz chairman. The water quality board consists

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<sup>263</sup> Martz, discussion; see also: Keith Schneider, “Among Michigan’s Citizen-Led Restoration Projects, Three Noteworthy Models,” *Great Lakes Bulletin News Service*, December 1, 1999. <http://www.mlui.org/landwater/fullarticle.asp?fileid=7842> (March 28, 2005).

<sup>264</sup> Martz, discussion; see also: Schneider, “Among Michigan’s Citizen-Led Restoration Projects, Three Noteworthy Models”

of nine volunteers who advise the county government on environmental issues.<sup>265</sup> The county pays Martz' travel expenses to environmental meetings and events, but he is not a paid government employee. Still, partnerships Martz made through the water quality board afford him crucial allies for the Channelkeeper program he would form in 1999. Martz met Dr. Linda Schweitzer, a chemistry professor from Oakland University, and Dr. Carl Freeman, a biology professor at Wayne State University, on the water quality board. The two scientists now work with Martz both there and as St. Clair Channelkeeper board members. They provide valuable scientific backing for all his environmental pursuits.<sup>266</sup>

Once the Water quality board began looking into other sewage spills in 1997, Martz targeted Bear Creek, a tributary of the Clinton River, which had been used for thirty years by several towns as a drain for several illegal sewage pipes.<sup>267</sup> They focused on Bear Creek first because it was the biggest sewage problem in their county. As Freeman told reporters during investigations, "We're talking about kids getting sick."<sup>268</sup> Nevertheless, a confidential political

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<sup>265</sup> Curt Guyette, "Martz's Mission," *Metro Times*, June 6, 2000.

<http://www.metrotimes.com/editorial/story.asp?id=9> (March 27, 2005).

<sup>266</sup>Martz, discussion.

<sup>267</sup>Martz, discussion; see also: Associated Press, "Environmental Group Agrees with Counties to Clean Polluted Waterway," *Detroit Free Press*, March 29, 2001.

[http://www.freep.com/news/latestnews/pm3351\\_20010529.htm](http://www.freep.com/news/latestnews/pm3351_20010529.htm) (March 28, 2005).

<sup>268</sup> Ben Schmitt, "Dirtiest Waterway to be Cleaned," *Detroit Free Press*, March 30, 2001.

[http://www.freep.com/news/metro/drain30\\_20010530.htm](http://www.freep.com/news/metro/drain30_20010530.htm) (March 27, 2005).

matter ultimately prevented the water quality board from pursuing pollution on that particular creek.<sup>269</sup>

Acknowledging that he needed another method for correcting the spills, Martz approached Waterkeeper Alliance in 1999 about starting a chapter for the St. Clair Channel. Martz had read *The Riverkeepers* and felt that joining the Alliance would add legal expertise and increased public awareness to his Bear Creek campaign.<sup>270</sup> The St. Clair Channelkeeper organization was approved in 1999, and Robert F. Kennedy, Jr. joined Martz in 2000 for a Macomb anti-sewage rally.<sup>271</sup> The event raised enough money for Channelkeeper to organize a Clean Water Act lawsuit against the Bear Creek Inter-County Drainage Board, resulting in a 2001 settlement in which the drainage board agreed to renovate and monitor the sewage system for the first time in thirty years.<sup>272</sup> Freeman tested the pipes before and after the settlement, and found to his satisfaction that "...bacterial counts in the Bear Creek drainage have gone from over three hundred thousand [colonies] per hundred milliliters to five thousand [colonies] in the most polluted drain."<sup>273</sup>

Martz has not had to prepare another lawsuit since the Bear Creek case. Forging increasingly strong ties with the Detroit area press, he can use the media

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<sup>269</sup> Martz, discussion.

<sup>270</sup> Martz, discussion; see also: Guyette, "Martz' Mission"

<sup>271</sup> Gene Schabath, "Rally Aids Pollution Fight," *Detroit News*, May 20, 2000. <http://www.detnews.com/2000/macomb/0005/29/c05-64543.htm> (March 28, 2005).

<sup>272</sup> Martz, discussion; see also: Schmitt, "Dirtiest Waterway to be Cleaned."

<sup>273</sup> Carl Freeman, (board member, St. Clair Channelkeeper), in discussion with the author, March 4, 2005.

as an avenue to publicly coerce industry or government into acting in an environmentally friendly manner.<sup>274</sup> As the Great Lakes Bulletin News Service's Keith Schneider notes, "By the winter of 1995 Mr. Martz had become the most prominent citizen activist in Macomb County and had attracted powerful allies in the county government."<sup>275</sup> *Detroit News* reporter Gene Schabath adds that directly following "Kennedy's creation of the St. Clair Channel Keepers [sic]," Martz's prominence extended throughout the entire Detroit area.<sup>276</sup> Martz used this recognition and respect to lobby successfully for a two and a half million dollar state grant in 2002, creating a fecal pollution monitoring system for the St. Clair Channel.<sup>277</sup> With the monitoring results posted regularly on the Macomb County website, Martz explains, "I don't constantly have to get in one of my two patrol boats and test water -- I've got people testing, and then I can get the data and run out to the press. This situation allows me to concentrate on public awareness as the Channelkeeper."<sup>278</sup>

Public awareness has more recently become an even larger concern for the St. Clair Channelkeeper in light of a major chemical discharge on August 14, 2003. That day, Royal Polymers Ltd of Sarnia, Ontario, spilled three hundred pounds of carcinogenic vinyl chloride into the St. Clair River.<sup>279</sup> The company

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<sup>274</sup> Freeman, discussion.

<sup>275</sup> Schneider, "Among Michigan's Citizen-Led Restoration Projects, Three Noteworthy Models"

<sup>276</sup> Gene Schabath, "Pollution Fighter Relentless," *Detroit News*, November 24, 2002.

<http://www.detnews.com/macomb/0211/27/b05-18576> (March 27, 2005).

<sup>277</sup> Martz, discussion; see also: Schabath, "Pollution Fighter Relentless."

<sup>278</sup> Martz, discussion.

<sup>279</sup> Martz, discussion.

did not notify anybody for five days, while many citizens ten and twenty miles downstream reported rashes and other problems.<sup>280</sup> After Royal Polymers finally reported the spill on August 19, Martz expressed fury in the *Detroit News*, and argued that an improved spill alert system must be implemented.<sup>281</sup> Martz quickly encouraged U.S. representative Candice Miller, and state senator Jud Gilber to call for updated protections, noting that Canadian industries also caused seven hundred chemical spills into the St. Clair River from 1986 to 2001.<sup>282</sup>

Reflecting on such situations where the St. Clair Channelkeeper helps the public through working with government, the Macomb Health Department's director, Thomas J. Kalkofen observes, "Doug is very comfortable walking with the elected officials and the representatives of various agencies, and he is respected and listened to, but he also has the ability to never lose his touch with the citizenry"<sup>283</sup> Martz's lobbying in this spill case obtained, by late 2004, \$650,000 in federal aid to set up a drinking water monitoring system that would alert Macomb and St. Clair counties of future chemical spills.<sup>284</sup> Further

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<sup>280</sup> Freeman, discussion; see also: Gene Schabath, "Chemical Spill Spurs Action," *Detroit News*, September 3, 2003. <http://www.detnews.com/2003/macomb/0309/08/c05-261299.htm> (March 27, 2005).

<sup>281</sup> Martz, discussion; see also: Gene Schabath, "Toxic Spill Angers Macomb," *Detroit News*, August 22, 2003. <http://www.detnews.com/2003/metro/0308/22/d01-251157.htm> (March 28, 2005).

<sup>282</sup> Martz, discussion; see also: Schabath, "Chemical Spill Spurs Action."

<sup>283</sup> Thomas J. Kalkofen. (director and health officer, Macomb Health Department), in discussion with the author, March 9, 2005.

<sup>284</sup> Linda Schweitzer, (board member, St. Clair Channelkeeper), in discussion with the



protecting against spills, Martz collaborates with Lake Ontario Waterkeeper Mark Mattson on convincing Canada to pass a proposed law allowing substantial fines for companies polluting the river.<sup>285</sup> He also works closely with Canada's Detroit Riverkeeper, Ken Cloutier, to devise protection strategies for both the Canadian and American sides of the St. Clair Channel.<sup>286</sup> As Martz asserts, "The best [environmental] groups that I deal with are the other Waterkeepers in the area."<sup>287</sup>

While the St. Clair Channelkeeper team awaits the chemical monitoring system's launch, they will attempt to expand the organization. Martz – the only paid staff member – and Schweitzer and Freeman have not been able to raise much money lately while busy with channel advocacy. Tom Morley, a local businessman, has recently joined as Channelkeeper board president to help manage the finances, recruit new board and staff, and create a new website and newsletter.<sup>288</sup> Meanwhile, Schweitzer asserts that Martz can remain an extremely effective Channelkeeper regardless of the organizational circumstances, noting, "He has the ear of the public, the politicians fear and/or respect him, and the

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author, March 1, 2005; see also: Chad Selweski, "Officials Praise Tough Stance of Canadian Government," *Macomb Daily*, December 16, 2004.

[http://www.macombdaily.com/stories/121604/loc\\_polluter001.shtml](http://www.macombdaily.com/stories/121604/loc_polluter001.shtml) (March 28, 2005).

<sup>285</sup> Martz, discussion.

<sup>286</sup> Martz, discussion.

<sup>287</sup> Martz, discussion.

<sup>288</sup> Freeman, discussion.

press follows him around. Doug Martz has single-handedly done more for water quality than anyone else in the state of Michigan.”<sup>289</sup>

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<sup>289</sup> Schweitzer, discussion.

**Case Study 4:**  
**Grand Traverse Baykeeper (Traverse City, Michigan)**

Like St. Clair Channelkeeper Doug Martz, Grand Traverse Baykeeper John Nelson became invested in environmentalism after observing something unwanted in his local waterway. Whereas Martz witnessed a massive sewage spill, however, Nelson simply noticed some algae near his family's beach on Grand Traverse Bay.<sup>290</sup> Such is the nature of this bay, located on Michigan's northwest Mitt, which is so clean that a relatively minor algae problem can cause alarm. Indeed, as northern Michigan reporter Sandra Serra Bradshaw notes, "Grand Traverse Bay is thought to have the highest water quality of any of the larger bays on Lake Michigan."<sup>291</sup> Nelson holds that opinion as well, having grown up on the bay as a fifth generation resident of the Traverse City area.<sup>292</sup> The former U.S. Naval Reserve commander noticed the algae in 1997, shortly after moving back to Traverse City following twenty-eight years of teaching science at a Portland, Maine, high school.<sup>293</sup> During Nelson's years in Maine, Grand Traverse Bay's beauty attracted increasing waterfront development,

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<sup>290</sup> Erin Anderson, "The Baykeeper," *Active Years*, a supplement to *Traverse City Record-Eagle*, January 2005. <http://www.record-eagle.com/activeyears/2005jan/janay7.pdf> (March 23, 2005).

<sup>291</sup> Sandra Serra Bradshaw, "The Watershed Center Appoints a Full-time Baykeeper to Help Residents Protect Grand Traverse Bay," *Northern Express*, October 3, 2002. <http://www.northernexpress.com/editorial/features.asp?id=691> (March 23, 2005).

<sup>292</sup> John Nelson, (Baykeeper, Grand Traverse Baykeeper), in discussion with the author, December 20, 2004; see also: Anderson, "The Baykeeper"

<sup>293</sup> Anderson, "The Baykeeper"

leading to a gradual but notable decline in water quality.<sup>294</sup> Lamenting the apparent decline that had occurred during his absence, Nelson asked the Grand Traverse Bay Watershed Center about the algae.<sup>295</sup>

The Watershed Center was founded in 1990 to research Grand Traverse Bay issues and educate the public about the Bay's ecology.<sup>296</sup> After contacting them about the algae, Nelson recounts, "I showed an interest in their work, and before long I was invited to serve on their board."<sup>297</sup> The nonprofit organization had been hoping to complement its education programs with advocacy, so Nelson recommended joining Waterkeeper Alliance.<sup>298</sup> While in Portland, he had been aware of the Casco Baykeeper's success, and in 2000 he decided to duplicate that model within the Watershed Center.<sup>299</sup> Nelson studied Casco Baykeeper as well as Northern Michigan's nearby Tip of the Mitt Waterkeeper, eventually gaining Waterkeeper Alliance's approval to launch the Grand Traverse Baykeeper program in January 2002.<sup>300</sup>

Since then, Nelson has served as Grand Traverse Baykeeper, a Waterkeeper program and a staff position within the Watershed Center. The Baykeeper program increased the Watershed Center's advocacy focus, while

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<sup>294</sup> Bradshaw, "The Watershed Center Appoints a Full-time Baykeeper to Help Residents Protect Grand Traverse Bay"

<sup>295</sup> Anderson, "The Baykeeper"

<sup>296</sup> Anderson, "The Baykeeper"

<sup>297</sup> Anderson, "The Baykeeper"

<sup>298</sup> Nelson, discussion; see also: Bradshaw, "The Watershed Center Appoints a Full-time Baykeeper to Help Residents Protect Grand Traverse Bay"

<sup>299</sup> Nelson, discussion; see also: Bradshaw, "The Watershed Center Appoints a Full-time Baykeeper to Help Residents Protect Grand Traverse Bay"

<sup>300</sup> Nelson, discussion; see also: Bradshaw, "The Watershed Center Appoints a Full-time Baykeeper to Help Residents Protect Grand Traverse Bay"

enhancing its education and research pursuits through Nelson's work on the water and in the surrounding communities. In turn, the Watershed Center's sound reputation provided Nelson with instant local credibility, while its preexisting structure made it easier to start a Baykeeper program. The Watershed Center already had an executive director, administrative assistant, projects coordinator, board of directors, and supportive membership with whom Nelson could work immediately.<sup>301</sup>

By serving as the bay's eyes and voice, Nelson's presence in the field has become valuable in collaborations benefiting the watershed. Shortly after the Watershed Center joined forces with Waterkeeper Alliance, the Leelanau Conservancy's Matt Heiman commented, "One of the main roles the Baykeeper can play is to educate the public on the value of the aquatic ecosystems unique to the Grand Traverse Bay Watershed."<sup>302</sup> To that end, Nelson worked with the Leelanau and Grand Traverse Regional Conservancies to create a comprehensive bay protection plan that the Michigan Department of Environmental Quality (DEQ) approved in 2004.<sup>303</sup> While the conservancies preserve delicate watershed land threatened by new development, Nelson speaks to current property owners about their role in maintaining the Bay's quality:

We have huge growth up here because it's such a beautiful spot. A lot of impervious surfaces follow the growth. A lot of people build very

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<sup>301</sup> Nelson, discussion.

<sup>302</sup> Bradshaw, "The Watershed Center Appoints a Full-time Baykeeper to Help Residents Protect Grand Traverse Bay"

<sup>303</sup> Nelson, discussion.

expensive homes along the shore, and they destroy the coastal wetland to put in a sandy beach. And so we are constantly educating people that if everyone does that, it destroys the whole bay, and then why did you move here in the first place?<sup>304</sup>

Out patrolling the bay, making presentations, and responding to citizen calls, Nelson has capitalized on many opportunities to share those concerns.

Absent of industrial polluters, Grand Traverse Bay requires less litigation and more public outreach than most Waterkeepers' patrol areas. The Watershed Center's longstanding emphasis on research and education reinforces that focus for the Baykeeper's typical work. Still, the Baykeeper program's emergence within the Watershed Center has added a more pro-active advocacy role. When a 2003 bridge and highway proposal threatened the watershed, Nelson wrote a letter of concern to DEQ, warning "[This is] the largest project impacting the water quality of the Boardman River that I can recount. Since some 30 percent of the water discharged into Grand Traverse Bay comes from the Boardman River, the water quality of the Bay is also directly impacted."<sup>305</sup> Nelson's letter initiated the process of catching the overextended DEQ's attention, allowing other environmental groups to follow up with their own tactics. For example, the Northern Michigan Environmental Action Council (NMEAC), a more litigious

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<sup>304</sup> Nelson, discussion.

<sup>305</sup> Kelly Thayer, "Great Park or Bad Bridge?" *Great Lakes Bulletin News Service*, July 10, 2003. <http://www.mlui.org/print.asp?fileid=16516>. (March 23, 2005).

group for which Nelson serves as co-chairman, cited his Baykeeper letter on water quality in their lawsuit against the project.<sup>306</sup>

This process represents the Watershed Center's usual strategy in advocacy now that they have joined Waterkeeper Alliance. The Baykeeper first raises a concern to the appropriate government agency – often before other groups notice the problem, because the Baykeeper actively patrols the watershed. Like the St. Clair Channelkeeper, Nelson feels that the DEQ's willingness and ability to follow up on his concerns has improved dramatically since the more environmentally-conscious Jennifer Granholm replaced John Engler as Michigan's governor.<sup>307</sup> Still, because the DEQ lacks the staff and budget necessary for adequate patrolling on Grand Traverse Bay, "They rely on [Baykeeper] to keep them posted about what is going on."<sup>308</sup>

If the government fails to address these alerts, Baykeeper provides documented scientific evidence, and citizens' complaints, to more litigious groups such as NMEAC for use in their lawsuits. While these other groups sue, Nelson can continue his hands-on approach to patrolling the watershed for new problems, and educating the public about their impact on the Bay.<sup>309</sup> One of his most recent projects involves rallying public support for designating Grand Traverse Bay as an "Outstanding State Water Resource."<sup>310</sup> Nelson leads this

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<sup>306</sup> Nelson, discussion; see also: Thayer, "Great Park or Bad Bridge?"

<sup>307</sup> Nelson, discussion; see also: Thayer, "Great Park or Bad Bridge?"

<sup>308</sup> Nelson, discussion.

<sup>309</sup> Nelson, discussion.

<sup>310</sup> Nelson, discussion.

local campaign to convince watershed communities that a temporary expense to upgrade wastewater treatment systems – which the DEQ’s potential designation mandates – would result in long term benefits for the areas economy and ecology.<sup>311</sup>

Although the Grand Traverse Baykeeper program and its host Watershed Center are admittedly less litigious than many Waterkeepers, the Waterkeeper system, above all, centers on a full-time advocate taking personal responsibility for a waterway. Due to Grand Traverse Bay’s relative dearth of major polluters worth suing, the Baykeeper must instead identify and prevent invasive species and citizens’ misuses of shoreline property. Nelson remains most proud of this sort of work, especially in the examples of his unprecedented shoreline walk and his eye-catching boat tour.<sup>312</sup> Over thirty-two days in 2002, he walked the bay’s entire 132-mile shore to document its natural and unnatural inventory.<sup>313</sup> This impressive and widely publicized walking tour supplemented his initial kayaking patrols, but it soon became clear that the Baykeeper needed something more to help survey the bay’s nearly 1,000 square mile watershed. Therefore, in summer of 2003 the Watershed Center’s board began raising money to build a boat for the Baykeeper program.<sup>314</sup>

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<sup>311</sup> Associated Press, “Discharges May End at Grand Traverse Bay,” *Detroit News*, January 11, 2005, <http://www.detnews.com/2005/metro/0501/11/B06-56212.htm> (March 23, 2005).

<sup>312</sup> Nelson, discussion.

<sup>313</sup> Nelson, discussion; see also: Bradshaw, “The Watershed Center Appoints a Full-time Baykeeper to Help Residents Protect Grand Traverse Bay”

<sup>314</sup> Nelson, discussion.



The Watershed Center launched the Baykeeper's twenty-three foot, sixty-five thousand dollar tugboat on July 22, 2004.<sup>315</sup> The boat is trailerable, and is unusually capable of withstanding cold temperatures. It runs "green" on an efficient biodiesel engine, and includes a composting head.<sup>316</sup> "The tugboat was built as a symbol for us being out on the watershed," Nelson explains, "but it's also an excellent research platform."<sup>317</sup> Revealing this new resource, the 2004 summer tour helped solidify the Baykeeper's role in the area.<sup>318</sup> As Nelson recounts, "We went to every marina with our boat, and would then set up tent on shore while the boat would be at the dock. We'd have our banner and information in the tent, all about water quality issues. And we'll do that next summer too!"<sup>319</sup>

Nelson's patrol tour exemplifies the many ways that Waterkeeper Alliance membership has aided the Watershed Center. The Alliance's emphasis on actively monitoring waterways prompted the Watershed Center to build Nelson a boat, resulting in widespread local publicity, and significantly enhancing the Watershed Center's ability to take the lead role in identifying and publicizing threats to the bay.<sup>320</sup> Nelson also notes benefiting from the fact that Waterkeepers around the Great Lakes have been increasing efforts to share

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<sup>315</sup> Carol South, "Boat Benefits Baykeeper," *Grand Traverse Herald*, July 28, 2004, <http://www.gthermal.com/herald/2004/jul/28tug.htm> (March 23, 2005).

<sup>316</sup> Nelson, discussion.

<sup>317</sup> Nelson, discussion.

<sup>318</sup> South, "Boat Benefits Baykeeper"; see also: Anderson, "The Baykeeper"

<sup>319</sup> Nelson, discussion.

<sup>320</sup> South, "Boat Benefits Baykeeper"; see also: Anderson, "The Baykeeper"

information and strategies on Great Lakes issues.<sup>321</sup> Above all, becoming a Waterkeeper has allowed Nelson to provide dedicated vigilance and voice for Grand Traverse Bay's lasting vitality as an ecosystem and a public resource. As the *Traverse City Record-Eagle's* October 17, 2002 editorial argues, "Our future as a community might well depend on how successful he is."<sup>322</sup>

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<sup>321</sup> Nelson, discussion.

<sup>322</sup> *Traverse City Record-Eagle*, "Baykeeper to Help Ensure Quality of GT Bay's Waters," *Traverse City Record-Eagle*, October 17, 2002, <http://www.record-eagle.com/2002/oct/101702.htm> (March 23, 2005).

## Conclusion

Across the state from St. Clair Channelkeeper, Michigan's Grand Traverse Baykeeper program seems, in many ways, a world apart. With different founding circumstances, personal skills, organizational methods, and environmental goals, the Grand Traverse Baykeeper program has quickly emerged as a symbol of the Waterkeeper Alliance movement's versatility. Indeed, while the St. Clair Channelkeeper has fought frequent chemical and fecal abuses of his degraded channel, Grand Traverse Baykeeper has focused on maintaining the remarkable quality of a pristine bay. As Baykeeper John Nelson explains, "Our geography makes us fairly different from other Waterkeepers," Nelson explains. "The bay is deep, cold, high oxygen, low nutrients, very high quality water. Our job is to keep it that way."<sup>323</sup>

Upon John Nelson's installation as the first Grand Traverse Baykeeper, the *Traverse City Record-Eagle* put this contrast into proper perspective:

Elsewhere in Michigan, the Alliance chartered a 'keeper' organization a few years ago in Macomb County to help clean up Lake St. Clair and adjacent waterways. As the [B]aykeeper for Grand Traverse Bay, Nelson will be a full-time watchdog in and around the bay. His appointment came at just the right time. While pollution issues affecting the Grand Traverse Bay are certainly not as severe as those the Alliance has dealt with in other areas, there is no reason to let the situation get out of hand here.<sup>324</sup>

Indeed, while both Waterkeepers hold important roles, the contrasts in their

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<sup>323</sup> Nelson, discussion.

<sup>324</sup> *Traverse City Record-Eagle*, "Baykeeper to Help Ensure Quality of GT Bay's waters"

watersheds create significant differences in their daily activity. St. Clair Channelkeeper uses connections with media and government to halt polluters or change protection policies, while Grand Traverse Baykeeper studies shoreline development and speaks to waterside homeowners in order to prevent the bay's gradual decline. Despite these differing settings, and the divergent methods they necessitate, both activists have locally implemented the Waterkeeper model of spokesman and patrolman advocating for the health of their waterway. In doing so, both Waterkeepers fight not only for their waterway but also for their community.

Apropos of stylistic differences among Waterkeepers, and the common bonds these activists nevertheless retain, one could view the Waterkeeper system's flexibility as one of its greatest assets. Having contrasted his program with that of St. Clair Channelkeeper Doug Martz, Nelson ponders the adaptable nature of Waterkeeper Alliance through his differences with the movement's earliest organization:

Like St. Clair Channelkeeper, at [Hudson] Riverkeeper, they patrol a more impaired water body, so they have a meeting at the beginning of each year to stake out who they are going to sue, whereas we talk about the restoration projects we're going to do. These differences absolutely show the grassroots variety within Waterkeeper Alliance. And our membership reacts well to that.<sup>325</sup>

Nelson's membership "reacts well" because it is he, in fact, who continually reacts to them. When the aforementioned bridge project threatened some of

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<sup>325</sup> Nelson, discussion.

their neighborhood's ecological, scenic, and recreational traditions, he immersed himself in litigation. At other times, however, walking surveys and tugboat tours more than suffice to not only impress his membership, but also set foundations for their lasting support. In fact, despite lacking knowledge of the contrast Nelson draws between Grand Traverse Baykeeper and the movement's original program, Alex Matthiessen continues as if following in conversation with the Michigan Waterkeeper: "I think that [flexibility] is why we're so effective. It's about claiming responsibility for your local resource, engaging the public in the fight, and using whatever advocacy tools you can: the law, science, media, grassroots organizing, whatever it is, to make sure that waterway is accorded special protection."<sup>326</sup>

Underlying all these various methods of grassroots stewardship, theoretically at least, is the Public Trust Doctrine. While the common law background varies among states and nations, this concept of restoring public resources to the public resonates across Waterkeeper Alliance. Daniel LeBlanc reveals the implicit primacy of this concept in his work:

One of our goals is to make the river fishable and swimmable for everyone in five or ten years. If the people can do that, go out with the tidal bore and swim in it, then we have done well. These rights have been taken away from us for the last forty years. That's going to change. So the Public Trust Doctrine is implicit in everything I do. I'll be proud to remove the causeway, but ultimately I want to restore everyone's rights to the river.<sup>327</sup>

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<sup>326</sup> Matthiessen, discussion.

<sup>327</sup> LeBlanc, discussion.

Through this notion of entitlement, Waterkeepers can assert organizational aims such as general public ownership of the waterways. However, although most if not all Waterkeepers agree with this concept, it should not be seen as the central factor in the Waterkeeper Alliance's growth and success. After all, Waterkeeper Alliance is not a philosophical society, but rather, a systematic movement dedicated to generating real results for waterways and the communities that use them.

In fact, the Waterkeeper system presents benefits that even the most effective grassroots organizations lack. The titles these advocates hold, such as "Delaware Riverkeeper," combining the waterway and the job in one name, reinforce the special nature of the Waterkeeper model. As Fleischli explains:

A Waterkeeper accepts personal responsibility for cleaning up and protecting their local water body. They are full time, paid advocate so they can be more effective than other groups that rely entirely on volunteers. There is that accountability that comes with having a job to do.<sup>328</sup>

Additionally, the tools of this job, so to speak, are the federal and local laws available to Waterkeepers and, significantly, the benefits afforded by Alliance membership, according to Whiteside:

We receive a litigious reputation that strikes fear in the polluters, we receive legal support to back up our efforts in pursuing litigation, we get support from a network of Waterkeepers, as many have similar pollution problems, and finally we get national financial support from individuals and foundations that comes from these foundations and individuals recognizing and respecting the Riverkeeper name.<sup>329</sup>

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<sup>328</sup> Fleischli, discussion, February 28, 2005

<sup>329</sup> Whiteside, discussion.

Thus, as the growing Waterkeeper Alliance has empowered more citizens, it has reconnected them with their ancient – and in fact current – rights to clean waterways and healthy communities. More simply stated, as Fisher recalls from his conversations with fledgling and prospective Waterkeepers, “The greatest thing we did at Waterkeeper Alliance was giving hope to people who felt isolated in the community fighting an uphill battle.”<sup>330</sup>

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<sup>330</sup> Fisher, discussion.