

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

**The Blackstone Headwaters Coalition, Inc. v. Gallo Builders, Inc.,
RH Gallo Builders, Inc., Arboretum Village, LLC, Steven A. Gallo,
and Robert H. Gallo**

Blackstone Headwaters · No. 4:16-cv-40053-MRG · Decided December 8, 2025

SUMMARY

The court holds that it, rather than the jury, must decide whether a state agency diligently prosecuted a comparable Clean Water Act action. The issue concerns the availability of civil penalties and was reserved for a bench trial after the defendants moved to bifurcate relief issues from the jury trial on the merits, without opposition from the plaintiff.

CASE DETAILS

COURT	United States District Court for the District of Massachusetts
WRITING FOR THE COURT	Margaret R. Guzman
JURISDICTION	United States District Court for the District of Massachusetts
DECIDED	December 8, 2025
DOCKET	4:16-cv-40053-MRG
DISPOSITION	other
PROCEDURAL POSTURE	Memorandum and order determining whether the Clean Water Act diligent-prosecution issue should be decided by the jury or by the court in a bifurcated trial.
PRECEDENTIAL VALUE	Unknown; memorandum and order from a federal district court

TOPICS

[clean water act](#) [civil procedure](#) [jury instructions](#) [environmental law](#) [remedies](#)

PRACTICE AREAS

[environmental law](#) [civil procedure](#) [remedies](#)

QUESTIONS PRESENTED

- Whether the Clean Water Act diligent-prosecution bar is an issue for the jury or the court.

2. Whether defendants waived jury consideration of the diligent-prosecution issue by moving to bifurcate relief and requesting that relief and penalties be determined exclusively by the trial judge.

HOLDINGS

1. The court, not the jury, must determine whether a state agency diligently pursued a comparable action under the Clean Water Act because the issue concerns relief, was reserved for a bench trial, and was excluded from jury consideration through the parties' bifurcation arrangement.
2. Defendants waived consideration of the diligent-prosecution issue by unopposedly moving to bifurcate relief from the jury trial and expressly requesting that relief and penalties be determined exclusively by the trial judge.

KEY QUOTATIONS

“Accordingly, it is the solely the Court which must consider and decide whether a state agency has diligently pursued a comparable action under the Clean Water Act.”

“In moving to bifurcate relief, the Defendants explicitly contemplated that determining relief and penalties will “present intensely factual issues” but that such determination should still “rest exclusively with the trial judge.””

FACTUAL BACKGROUND

Plaintiff brought a citizen suit under the Clean Water Act seeking potential relief based on alleged violations. The court identified the diligent-prosecution question as relevant to whether civil penalties could be recovered when a state agency had pursued a comparable action. Defendants sought, without opposition, to bifurcate relief from the merits trial and stated that relief and penalties should be determined exclusively by the judge.

PROCEDURAL HISTORY

The case is a Clean Water Act citizen suit proceeding toward trial. Defendants moved without opposition to bifurcate the forms of potential relief from the jury trial on the merits and expressly requested that relief and penalties be determined exclusively by the trial judge. The court held that the defendants waived jury consideration of the relief issue and ruled that the court, rather than the jury, must decide whether a state agency diligently pursued a comparable Clean Water Act action.

DISPOSITION

other

CASES CITED

- Tull v. United States, 481 U.S. 412, 427 (1987)
- Blackstone Headwaters Coal., Inc. v. Gallo Builders, Inc., 32 F.4th 99, 105 (1st Cir. 2022)
- Perdoni Bros. v. Concrete Sys., Inc., 35 F.3d 1, 5 (1st Cir. 1994)
- Lincoln v. Board of Regents, 697 F.2d 928, 934 (11th Cir.)

- Ohio Valley Env't Coal., Inc. v. Maple Coal Co., 808 F. Supp. 2d 868, 883-84 (S.D.W. Va. 2011)
- S. River Watershed All., Inc. v. DeKalb Cnty., Georgia, 484 F. Supp. 3d 1353, 1368 (N.D. Ga. 2020), aff'd, 69 F.4th 809 (11th Cir. 2023)
- Roanoke River Basin Ass'n v. Duke Energy Progress, LLC, No. 1:16CV607, 2017 WL 5654757, at *5 (M.D.N.C. Apr. 26, 2017)
- United States v. Dudley, 100 F.4th 74, 81 (1st Cir. 2024)
- United States v. Teixeira, 62 F.4th 10, 19 (1st Cir. 2023)
- Williams v. Illinois, 567 U.S. 50, 69, 132 S. Ct. 2221, 2234-35, 183 L. Ed. 2d 89 (2012)
- Smith v. Arizona, 602 U.S. 779 (2024)

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