Rights of rivers enter the mainstream

By offering a solution to the environmental challenges of our day, Earth law may be the next great rights-based movement. The belief that non-human nature – including the species and ecosystems that comprise our world – has inherent rights has galvanized an international movement. Building on the breakthrough of three rivers securing rights recognition, Earth Law Center works on the front line by partnering with local communities to secure rights for rivers and wider ecosystems. Empowering nature also empowers communities because when advocates see themselves as rights defenders, the stakes are raised, and the relationships between people and the environment are transformed. Based on this background, this article explores the origins of Earth law, the importance of rivers, how Earth law can strengthen river protections and current river initiatives, and it also details how to get involved.

Grant Wilson and Darlene May Lee

About the authors

Grant is the Directing Attorney, and Darlene an Executive Director, of Earth Law Center (for more information see www.earthlawcenter.org).

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The famed eco-theologian Thomas Berry proposed the idea that a deep understanding of the functioning of the evolving, interdependent universe as a whole could inspire and guide our own effective functioning as individuals. His writings exhorted readers to embrace the idea that "the universe is a communion of subjects rather than a collection of objects" (Swimme and Berry, 1992: 243). And therefore, Berry (2015: 13) writes:

> Our relationship with the earth involves something more than pragmatic use, academic understanding, or aesthetic appreciation. A truly human intimacy with the earth and with the entire natural world is needed. Our children should be properly introduced to the world in which they live.

There is no better time than now to embrace a worldview that sees humans as integral parts of the living network, instead of separate from and 'above' it.

One embodiment of this worldview is an emerging grassroots legal movement for the rights of rivers. Rivers across the world suffer from pollution, habitat destruction, overfishing, excessive diversions and a flurry of dam building. Current environmental laws, while important, are unable to reverse this relentless trend of degradation. The key reason is that our overarching legal system treats rivers as *property* under the law – something that can be bought and sold for profit. Instead, we need to acknowledge waterways as complex living entities – subjects rather than objects – that possess rights. The legal movement for the rights of rivers may be our best hope of restoring and protecting Earth's precious river ecosystems.

At least three rivers worldwide now enjoy recognition of their fundamental rights, putting into practice an innovative legal approach to change our relationship with waterways. These are the Vilcabamba River in Ecuador, the Whanganui River in New Zealand and the Atrato River in Colombia. Legal rights now possessed by these rivers include the rights to flow, to perform essential functions within their ecosystems, to be free from pollution, to feed and be fed by sustainable aquifers, to retain their native biodiversity and to undergo restoration.

These are only a few examples of putting rights-based theory into practice in the protection and restoration of rivers. Advocates for this approach hope that, one day, governments will recognize the legal rights of all rivers, just as human rights law has evolved to recognize the rights of all people. If these hopes are fulfilled, rivers will not only survive but flourish.

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Rivers at risk

Rivers are the lifeblood of Earth. They feed us, nourish us and refresh our spirits. They support not only countless ecosystems but also almost all terrestrial life on this planet as a vital component of the water cycle. Rivers are born wild. They follow gravity, flowing towards the oceans. They flood, nourishing floodplain habitat – critical feeding and spawning grounds for fish. But we have diverted, polluted and tamed our rivers. Those who knew the planet's waters a few generations ago would be hard-pressed to recognize them today.

One major threat to rivers is dams, which disrupt flooding cycles, reduce flows and drain wetlands. There are over 57,000 large dams worldwide and thousands more are planned. Considering dams and other forms of hydro-modification, only one-third of the world's largest 177 rivers are still free-flowing (International Rivers, 2018). Dams transform a river from a free-flowing river ecosystem to an artificial slack-water reservoir habitat. Changes in temperature, chemical composition, dissolved oxygen levels and the physical properties of a reservoir are often toxic to the aquatic plants and animals that evolved with a given river system. Reservoirs also tend to host non-native and invasive species (*e.g.* snails, algae and predatory fish) that further undermine the river's natural ecosystems.

Some rivers are so over-diverted and physically altered that they no longer reach the ocean. For example, the massive Colorado River in the US once fed a 2-million-acre delta but now typically peters out long before reaching the sea. Furthermore, many rivers are on life support from excessive pollution. Half the world's major rivers are being seriously polluted or depleted (Nature Conservancy, 2015). For example, more than half of streams and rivers in the US are so polluted that they may not support aquatic life (Environmental Protection Agency, 2009). Some rivers have been built over entirely, with the pressures of incessant human growth being prioritized over the ancient lives of rivers. Such so-called 'invisible rivers' still flow under layers of urban concrete in Mexico City, London, New York, Paris and Moscow.

In sum, rivers across the world suffer from an onslaught of harms. This not only threatens the rivers and their ecosystems, but also humans, who rely upon clean, bountiful fresh water to survive. Fortunately, we are not too late. Earth's watersheds are sick but not dead. When given the chance, rivers restore themselves to health, just as all of nature does. We must choose a new destiny and consider the needs of all other species who call Earth home, not to mention future generations.

Earth jurisprudence as a solution

Laws safeguarding rivers and other ecosystems have not kept pace with rapidly expanding human activity. Not only are the challenges greater today than when many landmark environmental laws were passed, but our understanding of the complexity of ecosystems has evolved as well. The good news is that a solution has appeared, in the form of a legal and ethical framework which recognizes that nature has inherent rights to exist, thrive and evolve. This framework has been variously termed 'Earth jurisprudence', 'wild law' and 'Earth law'.

One of the earliest landmarks of Earth jurisprudence is Christopher Stone's famous essay 'Should trees have standing?' (Stone, 1972), which was perhaps the first work to systematically lay out the precedent and legal argument for rights of nature. South African environmental attorney Cormac Cullinan published *Wild Law* in 2002 (with a second edition in 2011), building on Stone's arguments to offer practical applications and reach a broader audience. In 2009 the UN established the Harmony with Nature programme to help define a non-anthropocentric relationship with nature and track global developments of the rights of nature (www.harmonywithnatureun.org). An accessible and detailed survey of the current state of Earth jurisprudence is David Boyd's (2017) *Rights of Nature*.

Establishing legal rights for nature has many benefits. It enables ecosystems to defend their rights in court via representation by designated guardians

(similar to the way that legal entities such as corporations are represented). It also gives nature a 'seat at the table' so to speak – ensuring that laws and policies are written in the interest of *all* life. Finally, under this new paradigm, the burden of proof can shift to those proposing activities that are potentially harmful to nature, rather than the other way around.

The rights of nature movement is already well underway. Globally, Ecuador became the first nation to amend its constitution to include rights of nature in 2008 (Romero, 2008). In 2012, Bolivia passed its first of two national rights of nature laws (Vidal, 2011). In the US, dozens of communities have passed local laws recognizing nature's rights, including an ordinance in Santa Monica, California, in 2013 and a resolution in Crestone, Colorado, in 2018 (Saguache News, 2018).

Of course, the rights of nature approach to strengthening river protection and restoration is not without its challenges. For instance, multiple human stakeholders with conflicting interests can make appointing guardians difficult. Property and commercial interests can complicate the enforcement of river rights, particularly since few judges and lawmakers have in-depth knowledge about Earth jurisprudence. The consideration of local community rights also needs to be factored into any decision for river health, so the complexity of balancing different rights increases when rivers gain legal rights.

Rights of rivers

The last several years have seen a number of important developments for the rights of rivers. These include the following examples:

- Ecuador's 2008 Constitution recognizes the inherent rights of nature, including nature's right to be restored. These rights were put to the test in a 2011 case regarding the Vilcabamba River, which had been impaired from a road-widening project. The river, defending its own rights as the plaintiff, won a judgment from the Provincial Court of Justice of Loja, which ordered the river to be restored (Pecharroman, 2018).
- In March 2017, New Zealand's Parliament formally enacted a treaty that recognized the Whanganui River as a legal person with fundamental rights, including the right to sue, making it the first stand-alone river in the world to gain recognized legal rights. The Whanganui Act also allocated NZ$80 million towards river restoration, helping ensure that its rights would be enforced (Roy, 2017).
- Just days after the Whanganui River victory, the Uttarakhand High Court in India recognized two rivers – the Ganga and Yamuna – as 'living entities' with fundamental rights, also allowing designated humans to represent the rivers in court (Safi, 2017). Later, unfortunately, the Supreme Court of India overturned this decision (Vaidyanathan, 2017).
- In May 2017, Colombia's Constitutional Court granted rights to the Atrato River and ordered the government to clean up its waters (Ebus, 2017). This case was brought on behalf of Afro-Colombian and Indigenous communities affected by the degradation of the river from gold mining and other pollution sources. The Court found that the Atrato River is "subject to the rights that implicate its protection, conservation, maintenance and in this specific case, restoration."
- In April 2018, Colombia's Supreme Court recognized the entire Colombian Amazon (including the Amazon's waterways and all related ecosystems) as an 'entity subject of rights'. The legal victory was initiated by a group of Colombian youth, who challenged the government's inaction on climate change, particularly as arising from the deforestation of the Amazon (Moloney, 2018).

Globalizing the rights of rivers movement

These handful of legal victories are only the beginning of an emerging movement to give rights to all rivers. Through Earth Law Center, we work with organizations worldwide to make this global goal a reality. Other groups have launched their own campaigns as well.

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Legal changes that recognize the inherent rights of species and ecosystems will create more effective and durable mechanisms for protecting the natural world. Beginning with one town or region and extending locally creates both community commitment to the environment and governmental protections that span jurisdictions and support a cleaner and healthier environment. Victories at the local level also build interest and a sense of momentum about Earth law. As time goes by, and more governments grant rights to riparian ecosystems, the idea will gain in political credibility and develop a groundswell of support. Local work does not happen in isolation: victories for the rights of nature anywhere in the world help to build international legal norms, and the political will for collective solutions to global problems.

As a practical tool for groups wishing to pursue this approach to the protection of rivers, Earth Law Center and partners developed a Universal Declaration of the Rights of Rivers (Earth Law Center, 2017). This Declaration also aims to build international consensus on the fundamental rights to which all rivers are entitled. It is based on international legal precedent as well as ecological principles of river health. Already, the Declaration is a primary basis for rights of rivers campaigns around the world. Below are a few examples:

- A coalition of leading water experts are seeking legal rights for several rivers in Mexico. One is the Magdalena River – the last free-flowing river in Mexico City from an original complement of 45 (Inzunza, 2016). Another is the heavily polluted Atoyac River in Puebla, where the 2018 Living Rivers Forum brought together rights of rivers experts from across the world with the goal of restoring this troubled waterway to health. The third is the San Pedro Mezquital, a near pristine river ecosystem threated by a large dam project.
- Earth Law Center and the River Ethiope Trust Foundation have launched an initiative to establish legal rights for the River Ethiope in Nigeria. This waterway is sacred to local communities and is believed the be the deepest inland waterway in Africa. If this campaign is successful, the River Ethiope could be the first river in Africa to gain legal rights recognition (Dafe, 2013).
- Earth Law Center, Earth Thrive and International Rivers are seeking legal rights for rivers in Serbia. Serbia is home to many of Europe's last free-flowing rivers, especially in the Balkans. But these waterways are under threat from over 800 planned dams in Serbia alone. Establishing legal rights for rivers would give local communities and environmentalists the ability to enforce the right of these rivers to flow (Earth Law Center, 2018).
- Several communities in the US are working to establish legal rights for local rivers and their watersheds. For example, the organization Boulder Rights of Nature (of which Earth Law Center is a member) seeks legal rights for the entire Boulder Creek Watershed. By focusing on the watershed level, the campaign seeks to align the law with the functions of ecosystems (see www.boulderrightsofnature.org).

These are only a few examples of many, with Colombia, Canada, Pakistan and France being amongst the other places where Earth Law Center and partners are working to establish rights for rivers. With growing global support, we are excited to be part of the new victories that will be won over the years to come.

Looking ahead

Christopher Stone observed decades ago, "Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable" (Stone, 1972: 453). From just a few voices musing about the mere possibility of rights of nature, this idea is now entering the mainstream of legal thought. As the developments outlined above show, in a short amount of time we have moved from the unthinkable to the doable.

As more and more legal precedent emerges, the idea of giving rights to

nature is becoming increasingly common. Legislators, lawyers, judges, educators and business people are all realizing that we can thrive in harmony with the planet under this new paradigm. Each catastrophic flood, heat wave, and reported extinction serves to remind us of the pressing ecological challenges of our day. Concurrently, each rights of nature victory reminds us that we have an inspiring grass-roots solution that is taking hold.

According to a study published in June 2018 by researchers at the University of Pennsylvania, roughly 25% of people need to take a stand before large-scale social change occurs (Centola *et al.*, 2018). So, the effectiveness of legal changes will ultimately depend on a broader cultural shift, without which the enforcement of Earth law cannot happen. With respect to rivers, each of us has many things we can do today to contribute to such a shift:

- Consider joining a local river clean-up campaign.
- Sign the Universal Declaration of the Rights of Rivers (https://is.gd/ELCrr).
- Start your own river rights group (for advice on how to do so, contact Earth Law Center, via info@earthlaw.org).
- Sign up for the Earth Law Center's monthly newsletter (https://is.gd/ELCnl), volunteer (https://is.gd/ELCvol) or donate (https://is.gd/ELCdon).
- Write to your local city council or board of trustees to ask for consideration of river rights. ■

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