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## COMMENTS

### INDIGENOUS PEOPLES, THE INTERNATIONAL TREND TOWARD LEGAL PERSONHOOD FOR NATURE, AND THE UNITED STATES

*Hannah White*\*

The struggle between different people groups over valuable lands is one that pervades all times, places, and cultures. Many indigenous groups have deep cultural and spiritual connections to their traditionally inhabited lands, as well as the associated natural resources that have sustained their lives and those of their ancestors.<sup>1</sup> For this reason, indigenous peoples often have a great interest in the preservation and conservation of land and natural resources. The systematic stripping of these sacred aspects of indigenous culture due to rampant conquest is deeply embedded in the histories of many nations.<sup>2</sup> As globalization increased and a human rights framework emerged following World War II, the international community built a stage on which advocates and abused alike can challenge the “taker” mentality of the past three centuries. This stage also raises awareness of indigenous peoples’ concrete rights that have traditionally been denied.<sup>3</sup> Now, the inherent right of indigenous peoples to their ancestral lands and natural resources is recognized internationally by the International Labour Organization Convention No. 169, as well as through the United Nations Declaration on the Rights of Indigenous Peoples.<sup>4</sup>

Despite the growing recognition of such rights, international human rights mechanisms do not provide a binding solution that addresses the

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1. Eric Dannenmaier, *Beyond Indigenous Property Rights: Exploring the Emergence of a Distinctive Connection Doctrine*, 86 WASH. U. L. REV. 53, 71 (2008).

2. *Id.* at 63.

3. *Id.* at 57.

4. Jide James-Eluyode, *Collective Rights to Lands and Resources: Exploring the Comparative Natural Resource Revenue Allocation Model of Native American Tribes and Indigenous African Tribes*, 29 ARIZ. J. INT’L & COMP. L. 177, 178 (2012). *See generally* International Labour Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, arts. 13-19, June 27, 1989, 28 I.L.M. 1382 (entered into force Sept. 5, 1991), <http://www.refworld.org/docid/3ddb6d514.html>. *See also* G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007) [hereinafter UNDRIP].

struggle between native and non-native inhabitants over the land and resources that interest both groups. Countries seeking to rectify past wrongs must come up with their own solutions to allocate the land and resources in a way that balances the rights of indigenous peoples, which include their cultural, historical, and spiritual interest in the land and resources, as well as the societies that have developed in the region. Many countries have done just that by joining traditional indigenous ideologies that view land as a “being” needing protection and preservation in order to prevent resource depletion.<sup>5</sup>

The United States continues to be inhabited by native peoples with spiritual and cultural connections to the land—land that colonists methodically acquired and used to build their empire. Before colonization, an estimated several million Native Americans lived in the territory now defined as the United States, but the native population decreased significantly due to “disease, war, enslavement and forced relocation.”<sup>6</sup> Now, about 1.7% of the population of the United States, or 5.2 million people, identify as Native American or Alaska Native.<sup>7</sup> Recognized Native American tribes in the United States are treated as sovereign and self-governing nations with rights to their ancestral lands, but they remain under the power of the United States government as “domestic dependent nations.”<sup>8</sup> This diminishes whatever rights they may have to original lands and territories and subordinates them to the interest of the federal government.<sup>9</sup> Today, many Native Americans live on reservations or exclusively native-controlled lands set aside by the federal government, but these lands are likely not those they historically occupied, nor do they compare in size, resources, or spiritual value to those they once held.<sup>10</sup>

Native American interest in the preservation of land and resources goes beyond physical and economic aspects of ownership and control. Rather, Native Americans’ desire for the respect of lands and natural resources is

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5. *Rights of Nature*, AUSTRALIAN EARTH LAWS ALLIANCE, <https://www.earthlaws.org.au/what-is-earth-jurisprudence/rights-of-nature/> (last visited Sept. 17, 2018).

6. S. James Anaya, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on the Situation of Indigenous Peoples in the United States of America*, 32 ARIZ. J. INT'L & COMP. L. 51, 53 (2015).

7. *Id.*

8. *Id.* at 56.

9. *Id.* at 55.

10. Peter J. Gardner, *The First Amendment's Unfulfilled Promise in Protecting Native American Sacred Sites: Is the National Historic Preservation Act a Better Alternative?*, 47 S.D. L. Rev. 68, 76-77 (2002).

rooted in their spiritual beliefs regarding the sacred nature of the land.<sup>11</sup> Many Native Americans believe that some places are sacred because they possess certain power and spirits and should therefore be protected.<sup>12</sup> It is because of a similar spiritual connection to nature that a New Zealand group, the Iwi, reached an agreement with the government regarding lands and a river that were traditionally sacred to them.<sup>13</sup> New Zealand recognized the Whanganui River and Te Urewera National Park as a “legal person” with accompanying rights and obligations.<sup>14</sup> The Ecuadorian constitution also granted rights to nature due in part to beliefs held by indigenous peoples regarding the way that human beings should interact with nature.<sup>15</sup>

Although seemingly radical at first, this Comment will show how granting rights to nature has been successful in New Zealand, Ecuador, Bolivia, and some United States municipalities. Generally, as discussed throughout this Comment, these rights are successfully recognized when they relate to indigenous peoples, the environment, or a combination of the two. Allowing a natural body to be a “person” under the law eliminates the need for one group or another to have full and complete control or ownership over it. Instead, this allows all parties to bring claims for protection and preservation of lands and natural resources—whether for environmental or spiritual reasons, or for no reason at all. Unsurprisingly, the United States seemed to scoff when a similar solution to the depletion of a major natural resource was proposed through the filing of a lawsuit on behalf of the Colorado River.<sup>16</sup> This Comment will explore granting personhood rights to nature—the unique, yet growing, solution nations are implementing to solve environmental issues and long-existing tensions between native and non-native groups. This Comment will discuss whether the United States could consider this a valid way to mend ties with Native Americans and preserve our increasingly scarce resources.

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11. Robert Charles Ward, *The Spirits Will Leave: Preventing the Desecration and Destruction of Native American Sacred Sites on Federal Land*, 19 *ECOLOGY* L.Q. 795, 797 (1992).

12. *Id.* at 825-26.

13. See discussion *infra* Section II.D.

14. See discussion *infra* Section II.D.

15. See discussion *infra* Section II.A.

16. Defendant’s Motion to Dismiss Amended Complaint at 13-14, *Colo. River Ecosystem v. Colorado*, No. 1:17-CV-02316-NYW (D. Colo. Sept. 25, 2015).

### *I. International Framework and the United States*

The movement towards recognizing the rights of indigenous peoples to access their traditionally owned lands and natural resources arguably began on the international stage.<sup>17</sup> Though the United States has theoretically recognized various international bodies and documents that put forth guidelines directly relating to indigenous peoples' rights to land and natural resources, it has not done so in practice.<sup>18</sup> The government continues to deprive Native Americans of lands and resources.<sup>19</sup> Because the United States generally does not allow international law to interfere with domestic affairs, the current international framework is providing little redress.<sup>20</sup> However, it is important to note the relevant bodies of international law the United States claims to support, as the granting of legal personhood to lands and natural resources is a potential solution to domestically implementing international treaty obligations while protecting both indigenous and environmental interests in the resources.

#### *A. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*

The adoption by the United Nations General Assembly in 2007 of the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>21</sup> was a historic step for the relationship between indigenous peoples and nation states.<sup>22</sup> Prior to the UNDRIP, the following three instruments recognized human rights for all people: the Universal Declaration of Human Rights of 1948,<sup>23</sup> the International Covenant on Civil and Political Rights of 1976,<sup>24</sup> and the International Covenant on Economic, Social, and Cultural Rights of

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17. *The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, INDIAN LAW RESOURCE CTR., <http://indianlaw.org/undrip/home> (last visited Sept. 19, 2018).

18. Meghan Theresa McCauley, *Empowering Change: Building the Case for International Indigenous Land Rights in the United States*, 41 ARIZ. ST. L.J. 1167, 1168-69 (2009).

19. See generally Elizabeth A. C. Thompson, Casenote, *Babbitt v. Youpee: Allotment and the Continuing Loss of Native American Property and Rights to Devise*, 19 U. HAW. L. REV. 265 (1997).

20. McCauley, *supra* note 18, at 1169.

21. UNDRIP, *supra* note 4.

22. Karla E. General, *Treaty Rights and the UN Declaration on the Rights of Indigenous Peoples*, INDIAN LAW RESOURCE CTR., <http://indianlaw.org/content/treaty-rights-and-un-declaration-rights-indigenous-peoples> (last visited Sept. 20, 2018).

23. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

24. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

1976.<sup>25</sup> Even so, indigenous people groups were continually disregarded and excluded from this progress toward equal and full rights.<sup>26</sup> In the early 1980s, the Economic and Social Council created the Working Group on Indigenous Populations to set a minimum standard of protection for these traditionally marginalized groups.<sup>27</sup> A first draft declaring the rights of indigenous peoples was presented to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and approved in 1994. It was then reviewed by the U.N. Commission on Human Rights.<sup>28</sup> The approval process was slow-moving due to concerns with certain provisions, including “the right to self-determination of indigenous peoples and the control over natural resources existing on indigenous peoples’ traditional lands.”<sup>29</sup> Therefore, in 1995, a working group was created to collaborate on the draft and produce something the General Assembly could adopt. However, a draft resolution was not adopted until 2006.<sup>30</sup> In 2007, the Declaration was finally adopted by a vote of 144 to 4, with eleven abstentions.<sup>31</sup>

The Declaration is now the most comprehensive instrument on the rights of indigenous peoples and sets a standard for protection of the dignity, well-being, and fundamental freedoms of native groups worldwide.<sup>32</sup> The provisions acknowledge the rights conferred upon indigenous peoples by the preceding human rights instruments and protect equality, self-determination, autonomy, self-governance, preservation of culture, political systems, community, and religion.<sup>33</sup> Article 8 requires prevention of and redress for any cultural deprivation, removal of lands, dispossession of resources, forcible transfer, or discrimination.<sup>34</sup> Further, article 26

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25. International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

26. ADVOCATES FOR HUM. RTS., INDIGENOUS PEOPLES RIGHTS IN THE UNITED STATES (n.d.), [http://www.theadvocatesforhumanrights.org/uploads/indigenous\\_rights\\_fact\\_sheet\\_2013\\_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/indigenous_rights_fact_sheet_2013_2.pdf).

27. *United Nations Declaration on the Rights of Indigenous Peoples: Historical Overview*, UNITED NATIONS: UNDESA DIVISION FOR INCLUSIVE SOCIAL DEV. INDIGENOUS PEOPLES, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples/historical-overview.html> (last visited Oct. 16, 2018).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. UNDRIP, *supra* note 4, art. 2-5.

34. *Id.* art. 8.

acknowledges the right of indigenous peoples to develop and control traditionally owned lands, territories, and resources.<sup>35</sup> States are charged with protecting indigenous peoples' customs and traditions.<sup>36</sup> The Declaration requires the "free, prior, and informed consent" of indigenous peoples before governing bodies relocate individuals, take property, adopt legislation affecting them, or otherwise use or develop lands and resources belonging to them.<sup>37</sup>

This document seems like a victory for indigenous people groups at first glance, especially regarding the reacquisition of lands taken by non-native settlers. The language of article 26 states that "[i]ndigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired"; that they "have the right to own, use, develop, and control the lands"; and that states should protect them consistent with traditional beliefs.<sup>38</sup> Article 27 requires states to establish a process "to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources."<sup>39</sup> Finally, article 28 provides for redress in accordance with these processes.<sup>40</sup> However noble, these goals seem lofty when considering the lands and resources that were wrongfully taken from indigenous peoples worldwide; in America, this includes at least half of the country.<sup>41</sup> The biggest difficulty with these goals is that they are non-binding under international law, and therefore claims of violations of rights under the UNDRIP remain difficult to assert against a state.<sup>42</sup> These rights are merely aspirational, despite potential arguments that rights under the Declaration represent customary international law and therefore are binding. It is more likely that rights under the Declaration represent an emerging consensus to protect indigenous peoples and set goals for how to best protect their rights.<sup>43</sup>

Unfortunately, this international system has little bearing on the rights of Native Americans in the United States and provides no means by which

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35. *Id.* art. 26.

36. *Id.*

37. *Id.* art. 10-11, 19, 28-29, 32.

38. *Id.* art. 26.

39. *Id.* art. 27.

40. *Id.* art. 28.

41. Karen E. Bravo, *Balancing Indigenous Rights to Land and the Demands of Economic Development: Lessons from the United States and Australia*, 30 COLUM. J.L. & SOC. PROBS. 529, 546-47 (1997).

42. Cindy S. Woods, *The Great Sioux Nation v. The "Black Snake": Native American Rights and the Keystone XL Pipeline*, 22 BUFF. HUM. RTS. L. REV. 67, 89 (2015-2016).

43. *Id.*

native people could assert a right to sacred lands or natural resources. The United States was one of four countries originally voting against the Declaration, despite its participation in its formation.<sup>44</sup> The United States expressed concern about the provisions requiring free, prior, and informed consent (FPIC) and thought this could potentially give indigenous groups veto power over laws that “may” affect them.<sup>45</sup> In 2010, however, the United States “fully endorsed” the Declaration, with the caveat that it believes the UNDRIP is not legally binding, does not represent customary international law, and that the FPIC provisions only require “meaningful *consultation* with tribal leaders.”<sup>46</sup> Although the United States theoretically desires to respect Native American rights, including rights to land and natural resources as set forth in the Declaration, the federal government may still act as it wishes, regardless of consent.<sup>47</sup> Land is therefore vulnerable to the deprivation of its spiritual and cultural value. Native Americans have to advocate for the preservation of lands and resources, regardless of who controls them. If governments continue to do as they wish with both peoples and lands, moving quickly toward the point of destruction, creative solutions may be required to protect them, especially in a nation that is generally averse to accepting and implementing international solutions.

#### *B. Inter-American Human Rights System*

The Inter-American Human Rights System is another international mechanism that has recognized indigenous rights to land. However, the interactions of the United States with the Sioux Nation regarding the Keystone XL pipeline project further prove the United States will disregard international obligations when it finds other interests more compelling. The Keystone XL pipeline was purposed to “carry tar sands oil from Alberta, Canada across the U.S. Great Plains” to the Texas gulf coast, crossing sovereign lands of the Sioux Nation in Nebraska.<sup>48</sup> The Sioux tribal president stated that their “‘people [are] . . . stewards of this land’ and have a duty to protect it, both spiritually and environmentally.”<sup>49</sup> The Sioux view the underlying Ogallala Aquifer as sacred water that they rely on physically

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44. *Id.* at 88.

45. *Id.*

46. *Id.* at 89 (emphasis added).

47. *Id.*

48. *Id.* at 68-71.

49. *Id.* at 78.

and spiritually.<sup>50</sup> In 2014, the Senate defeated the bill under which this project would be completed, but it passed in Congress only one year later.<sup>51</sup> President Obama vetoed the bill, leaving Congress unable to find the necessary votes to overcome the veto.<sup>52</sup> To the continued distress of native groups, Congress vowed to pass a similar bill.<sup>53</sup>

Throughout the entire process, the United States ignored its commitment to consult with indigenous groups affected by the proposal, and ultimately their lands are still in danger.<sup>54</sup> In March of 2017, two months after President Trump took office, he signed an executive order granting the permit for construction of the Keystone Pipeline in the name of job creation.<sup>55</sup> This permit was approved by the Nebraska Public Service Commission in November of 2017, providing an alternative route.<sup>56</sup> The State Department said that the signatory of the permit, the undersecretary, “considered a range of factors, including but not limited to foreign policy; energy security; environmental, cultural and economic impact; and compliance with applicable law and policy” when deciding whether or not to proceed.<sup>57</sup> Even so, President Obama expressed concerns in 2015 regarding the environmental impact of the project.<sup>58</sup>

The lack of communication with indigenous people groups violates the free, prior, and informed consent provisions of the UNDRIP, though it is not legally binding, while also going against the Inter-American Human Rights System.<sup>59</sup> This system is composed of both the Inter-American Commission and Court on Human Rights; however, the United States is not bound by the court.<sup>60</sup> The system is based upon the American Declaration

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50. *Id.* at 77.

51. *Id.* at 68.

52. *Id.*

53. *Id.*

54. *Id.* at 68-69.

55. Brady Dennis & Steven Mufson, *As Trump Administration Grants Approval for Keystone XL Pipeline, An Old Fight Is Reignited*, WASH. POST (Mar. 24, 2017), [https://www.washingtonpost.com/news/energy-environment/wp/2017/03/24/trump-administration-grants-approval-for-keystone-xl-pipeline/?utm\\_term=.8295734c69ee](https://www.washingtonpost.com/news/energy-environment/wp/2017/03/24/trump-administration-grants-approval-for-keystone-xl-pipeline/?utm_term=.8295734c69ee).

56. Steven Mufson, *Keystone XL Pipeline Gets Nebraska's Approval, Clearing a Key Hurdle in 9-Year Effort and Allowing Trump to Claim a Win*, WASH. POST (Nov. 20, 2017), [https://www.washingtonpost.com/news/energy-environment/wp/2017/11/20/keystone-xl-pipeline-gets-nebraskas-approval-clearing-a-key-hurdle-in-9-year-effort-and-allowing-trump-to-claim-a-win/?noredirect=on&utm\\_term=.ec537453ff16](https://www.washingtonpost.com/news/energy-environment/wp/2017/11/20/keystone-xl-pipeline-gets-nebraskas-approval-clearing-a-key-hurdle-in-9-year-effort-and-allowing-trump-to-claim-a-win/?noredirect=on&utm_term=.ec537453ff16).

57. Dennis & Mufson, *supra* note 55 (internal quotation marks omitted).

58. *Id.*

59. *See* Woods, *supra* note 42, at 89.

60. *Id.* at 89-90.

on the Rights and Duties of Man and the American System of Human Rights.<sup>61</sup> Signatories of the American Declaration are members of the Organization of American States and are subject to the jurisdiction of the Commission.<sup>62</sup> The United States has signed but not ratified the American Declaration.<sup>63</sup> Article 23 of the American Declaration<sup>64</sup> enumerates the right to property, and the Commission has interpreted this to mean that states cannot deprive indigenous peoples of their land without consent and fair compensation.<sup>65</sup> In the 2002 case *Mary & Carrie Dann v. United States*, “[t]he Danns, members of the Western Shoshone tribe, contended that the [United States] had illegally confiscated their ancestral lands” and therefore violated their right to property found in the American Declaration.<sup>66</sup> The Commission considered developing norms and principles of international law and found that member states are obligated to ensure that indigenous peoples maintain rights to traditionally held title and land.<sup>67</sup> Further, member states must receive the mutual consent of indigenous groups when seeking to affect traditionally held lands.<sup>68</sup> The Commission found the same obligation to obtain consent in a case regarding Mayan lands.<sup>69</sup>

As far as the Keystone Pipeline is concerned, these cases mean that indigenous peoples do have an enforceable right to traditionally owned lands that the United States is obligated to respect. Therefore, before beginning construction through Sioux lands, the federal government should have meaningfully consulted with the tribe.<sup>70</sup> However, if the United States continues to not acknowledge these rights as recognized under international law, it is difficult to see how indigenous peoples or environmentalists could protect these sacred lands from potential harm.<sup>71</sup>

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61. American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L./V/I.4 Rev. 9 (2003), <http://www.corteidh.or.cr/docs/libros/Basingl01.pdf>.

62. *Id.*

63. Woods, *supra* note 42, at 89.

64. Inter-American Commission on Human Rights (IACHR), *American Declaration of the Rights and Duties of Man*, REFWORLD (May 2, 1948), <http://www.refworld.org/docid/3ae6b3710.html>.

65. Woods, *supra* note 42, at 90-91.

66. *Id.* at 91 (citing *Mary & Carrie Dann v. United States*, Case 11.140, Inter-Am. C.H.R., Report No. 75/02, OEA/Ser.L./V.II.117, doc. 1 rev. 1 ¶ 140 (2002)).

67. *Id.*

68. *Id.*

69. *Id.* at 91-92.

70. *Id.* at 92-93.

71. *Id.* at 93-94.

*C. The Universal Declaration of the Rights of Mother Earth and Tribunal*

The Universal Declaration of the Rights of Mother Earth has emerged as an international document that codifies rights of nature. Bolivia, discussed below, has emerged as a leader in promoting the rights of nature. The nation hosted the World People's Conference on Climate Change and the Rights of Mother Earth in 2010.<sup>72</sup> This conference included over 32,000 people, a large number of which were indigenous.<sup>73</sup> The result of this conference was the document entitled the "Act of the Rights of Mother Earth," or the Earth Rights Declaration.<sup>74</sup> The Earth Rights Declaration embodies Mother Earth as a living being with rights, including the right to live, exist, regenerate, and be protected and respected.<sup>75</sup> These ideas are consistent with the beliefs of many indigenous people that their lives are intertwined with Mother Nature and that it is their duty to live peacefully with and protect her.<sup>76</sup> Ecuador and Bolivia have implemented these beliefs consistent with their historically indigenous ideologies and overall growing concern for the environment. However, the Declaration itself is not binding, but rather serves as a resolution to be placed on the UN agenda.<sup>77</sup> The United States was present at the conference but is unlikely to ultimately endorse the resolution or implement it domestically given current environmental policies.<sup>78</sup>

Additionally, the International Rights of Nature Tribunal was created by the Global Alliance for Rights of Nature (GARN), which is guided by the worldview set forth under the Universal Declaration of the Rights of

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72. *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth*, COUNCIL OF CANADIANS, <https://canadians.org/rightsofnature> (last visited Oct. 16, 2018).

73. *Rights of Mother Earth: Restoring Indigenous Life Ways of Responsibility and Respect*, INDIGENOUS ENVTL. NETWORK, <http://www.ienearth.org/rights-of-mother-earth-restoring-indigenous-life-ways-of-responsibility-and-respect/> (last visited Aug. 7, 2018).

74. Plurinational Legislative Assembly, Act of the Rights of Mother Earth (Dec. 7, 2010), [http://f.cl.ly/items/212y0r1R0W2k2F1M021G/Mother\\_Earth\\_Law.pdf](http://f.cl.ly/items/212y0r1R0W2k2F1M021G/Mother_Earth_Law.pdf) [hereinafter Act of the Rights of Mother Earth].

75. *Id.* art. 2.

76. *Id.* art. 4.

77. Andrew Martin, *The Universal Declaration of the Rights of Mother Earth*, COLLECTIVE EVOLUTION (Aug. 24, 2014), <https://www.collective-evolution.com/2014/08/24/the-universal-declaration-of-the-rights-of-mother-earth/>.

78. See Oliver A. Houck, *Noah's Second Voyage: The Rights of Nature as Law*, 31 Tul. Env'tl. L.J. 1, 24-25 (2017).

Mother Earth.<sup>79</sup> The Tribunal was first convened in Ecuador in 2014 and has since conducted hearings all over the world regarding issues such as “hydraulic fracturing (“fracking”), mining, [and] the Great Barrier Reef.”<sup>80</sup> The goal of the tribunal is to hear cases relating to violations of earth rights and to make recommendations on potential remedies and solutions.<sup>81</sup> “The Tribunal has a strong focus on enabling indigenous peoples and local communities to share their unique concerns and solutions about land, water and culture with the global community.”<sup>82</sup> Two American judges currently sit on the tribunal, and one of the tribunal’s regional hearings was hosted in San Francisco in October of 2014.<sup>83</sup> The goal of these regional hearings is the same as the International Tribunal, but the recommendations and findings put forth “remain[] outside formal government consideration.”<sup>84</sup> Because the tribunal is a “peoples’ tribunal,” meaning it is not recognized by individual governments or enforceable under international law, it has no authority to penalize or implement decisions.<sup>85</sup> For this reason, countries, including the United States, are free to disregard the tribunal’s decisions.<sup>86</sup> Despite this, the tribunal serves to raise public awareness regarding environmental issues and “pressure governments [towards] greater accountability.”<sup>87</sup> Both the Declaration on Rights of Mother Nature and this Tribunal show that the international community wants to protect natural resources in a way inspired by traditionally indigenous views on nature. Because international mechanisms do not create binding and absolute solutions, individual states must create laws consistent with international views in order to have tangible effects.

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79. Press Release, Glob. All. for the Rights of Nature, International Rights of Nature Tribunal in Bonn Finds Legal Systems Incapable of Preventing Climate Change and Protecting Nature (Nov. 10, 2017), <https://therightsofnature.org/wp-content/uploads/Press-release-Bonn-Tribunal-final-2.pdf>.

80. Cormac Cullinan, *A Tribunal for Earth: Why It Matters*, GLOBAL ALLIANCE FOR THE RTS. OF NATURE, <https://therightsofnature.org/a-tribunal-for-earth-why-it-matters/> (last visited Aug. 7, 2018).

81. Michelle Maloney, *Building an Alternative Jurisprudence for the Earth: The International Rights of Nature Tribunal*, 41 VT. L. REV. 129, 130 (2016).

82. *3rd International Rights of Nature Tribunal-Paris*, GLOBAL ALLIANCE FOR THE RTS. OF NATURE, <http://therightsofnature.org/rights-of-nature-tribunal-paris/> (last visited Sept. 28, 2018).

83. Cullinan, *supra* note 80.

84. Maloney, *supra* note 81, at 136-37.

85. *Id.* at 140-41.

86. *Id.* at 141.

87. *Id.* at 141-42.

## II. The Worldwide Trend

### A. Ecuador

The “rights of nature” movement began with one country recognizing the importance of protecting natural resources and creating a means through which to do so within their domestic legal system.<sup>88</sup> In 2008, Ecuador approved a new constitution containing provisions granting such rights—the first of its kind.<sup>89</sup> The articles granted inalienable rights to nature, stating that it “has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”<sup>90</sup> These articles fall under the section of the constitution outlining fundamental rights, and the article that declares “[p]ersons, communities, peoples, [and] nations . . . [as] bearers of rights” also states that “Nature [is] subject [to] those rights that the Constitution recognizes for it.”<sup>91</sup> The Preamble to the amended constitution even includes nature in its very purpose, declaring that nature and Pachamama are to be celebrated and vowing to “build [a] new form of public coexistence, in diversity and in harmony with nature . . . .”<sup>92</sup> Pachamama, meaning “World Mother” or “Mother Earth,” is the goddess of the indigenous peoples of the Andes Mountains and is believed to preside over everything that creatures of the Earth need to sustain life.<sup>93</sup> Some believed that when the land was not treated with the respect it deserved, she would cause earthquakes to remind the people to honor her.<sup>94</sup> As recently as 2015, one of Ecuador’s most-read newspapers published a letter to the editor calling for people to recognize certain volcanic activity as the anger of Pachamama and urging leaders to take action.<sup>95</sup> This letter reflects how the

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88. Andrew C. Revkin, Opinion, *Ecuador Constitution Grants Rights to Nature*, N.Y. TIMES (Sept. 29, 2008, 8:34 a.m.), <https://dotearth.blogs.nytimes.com/2008/09/29/ecuador-constitution-grants-nature-rights/>.

89. *Id.*

90. REPUBLICA DEL ECUADOR, CONSTITUCION DE 2008 [REPUBLIC OF ECUADOR CONSTITUTION OF 2008] art. 71 (Oct. 20, 2008), <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

91. *Id.* art. 10.

92. *Id.* at pmb1.

93. Widdershins, *Pachamama – Goddess of the Elements*, ALTFAITHS.COM (Sept. 9, 2016), <https://web.archive.org/web/20160910232137/http://altfaiths.com/2016/09/09/pachamama-goddess-of-the-elements/>.

94. *Id.*

95. Kyle Pietari, *Ecuador’s Constitutional Rights of Nature: Implementation, Impacts, and Lessons Learned*, 5 WILLAMETTE ENVTL. L.J. 37, 39-40 (2016), <http://willamette>.

beliefs of indigenous people pervade modern-day Ecuador and continue to be intertwined with the path of the country.

The language surrounding the rights granted to nature in the Ecuadorian constitution embodies traditional indigenous beliefs regarding nature and came about because of a political climate particularly situated to enumerate rights consistent with these beliefs.<sup>96</sup> President Correa was elected in 2006 and led the movement for this constitutional reform. The indigenous people of Ecuador, who make up a large part of the population, influenced and supported Correa.<sup>97</sup> His goal was to demonstrate a progressive agenda, make change, and actually implement the new law—a concept that was foreign to many Ecuadorians at the time of his election.<sup>98</sup> Ecuador's environment was routinely harmed and its natural resources stripped. The leaders of the reform saw this as an opportunity to try something different that had the potential to solve the country's internal issues and set an example for the world as a better way for humans to interact with nature.<sup>99</sup> Given the growing awareness of climate change and the spreading realization that people could not continue to interact with nature as they had been, Ecuador offered itself as a test case for a creative, new way to combat environmental issues influenced by an indigenous mindset.<sup>100</sup> This approach was “seen as both experimental and radical.”<sup>101</sup> Though many local environmentalists were excited, there was also skepticism as to how, or if, these rights would be implemented and enforced. Historically, the judiciary in Ecuador enforced very few environmentally-related provisions and gave only one environmental ruling in the ten years leading up to the constitutional reform.<sup>102</sup> People in Ecuador and abroad watched closely to see how this experiment would unfold.

The first successful case regarding the rights given to nature through the new constitution was “presented before the Provincial Court of Justice of

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edu/law/resources/journals/welj/pdf/2016/2016-f-welj-pietari.pdf (citing and translating Hugo Romo Castillo, *Pachamama*, EL COMERCIO (Sept. 24, 2015) (letter to the editor)).

96. *Id.* at 47-48.

97. *Id.* at 48.

98. *Id.*

99. *Id.* at 50.

100. *Id.*

101. *Ecuador Passes New Constitution Acknowledging Indigenous Rights*, RIGHTS & RESOURCES INITIATIVE BLOG (Oct. 23, 2008), <https://rightsandresources.org/en/blog/ecuador-passes-new-constitution-acknowledging-indigenous-rights/>.

102. Pietari, *supra* note 95, at 51.

Loja on March 30, 2011.”<sup>103</sup> A constitutional injunction was granted in favor of the Vilcabamba River against the Government of Loja.<sup>104</sup> This case arose out of a project to widen the Vilcabamba-Quinara Road, where for three years, large amounts of rock, sand, gravel, and trees were excavated and dumped into the river.<sup>105</sup> There was no environmental study done on the future impacts of this project and no environmental license obtained.<sup>106</sup> The result was that discarded material increased the flow and grew the river in a way that caused flooding during the winter rains, impacting the rights of the river and those who lived along its banks and utilized its resources.<sup>107</sup> The banks of the river were disfigured and some of the riverside land destroyed.<sup>108</sup> The court granted a constitutional injunction in favor of nature, overturning the lower court’s holding on lack of legal standing and instead declaring that the government violated its rights.<sup>109</sup> The injunction required the government of Loja to present a remediation and rehabilitation plan within thirty days, present environmental permits, implement measures to prevent the rubbish from entering the river, comply with the recommendations by the Ministry of Environment, provide follow-up on the ruling, and publicly apologize for operating without proper environmental license.<sup>110</sup> The case was filed by “[t]wo North Americans who owned land near the river,” who, rather than seeking compensation for themselves, “sought restoration of the river system” as relief.<sup>111</sup>

In a more extreme case, the government used military force to destroy over two hundred pieces of mining equipment after finding that a mining operation was polluting water sources in 2011.<sup>112</sup> The Criminal Court of Pichincha approved the government’s measure of destroying “all items, devices, tools, and other utensils that constitute a serious danger to Nature.”<sup>113</sup> This was a severe response by the government, hinting that

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103. Natalia Greene, *The First Successful Case of the Rights of Nature Implementation in Ecuador*, GLOBAL ALLIANCE FOR THE RTS. OF NATURE, <http://therightsofnature.org/first-ron-case-ecuador/> (last visited Oct. 17, 2018).

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. Pietari, *supra* note 95, at 53.

112. *Id.* at 55.

113. *Id.* (internal quotation marks omitted).

there may have been other motivations for these extreme actions. Nonetheless, the result favored nature.<sup>114</sup>

A number of additional cases to enforce the rights of nature have been filed in Ecuador since these findings. Some have been successful, while others have not.<sup>115</sup> Many such lawsuits are filed in civil or constitutional courts and generally request preventative or restorative action.<sup>116</sup> Criminal lawsuits are another way of punishing guilty parties for “environmental crimes,” while the Ministry of Environment also retains the right to punish through administrative action under the Rights of Nature.<sup>117</sup> The biggest issue in Ecuador has been that the government benefits from the exploitation of natural resources. Because of this, efforts to create secondary laws have been unsuccessful.<sup>118</sup> However, despite the constitution being the only protecting body, cases have seen increasing success because judges have become more aware of the law regarding rights of nature and developed jurisprudence.<sup>119</sup> Ecuador shows that earth rights can be successfully created and enforced given the correct political climate and widespread social awareness, even through initially weak laws contrary to governmental agendas.

### *B. Bolivia*

Faced with melting glaciers, rising temperatures, and mudslides due to “problems from the mining of tin, silver, gold, and other raw materials” for hundreds of years, Bolivia is home to a new social movement toward respect for the rights of nature consistent with the beliefs of its indigenous peoples.<sup>120</sup> Bolivia hosted over one hundred countries at the World People’s Congress on Climate Change and the Rights of Mother Earth in Cochabamba, where the Universal Declaration on the Rights of Mother

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114. *Id.*

115. Craig M. Kauffman and Pamela L. Martin, Testing Ecuador’s Rights of Nature: Why Some Lawsuits Succeed and Others Fail 1 (Paper Presented at the Int’l Studies Ass’n Annual Convention, Atlanta, Ga., Mar. 18, 2016), <http://static1.squarespace.com/static/55914fd1e4b01fb0b851a814/t/5748568c8259b5e5a34ae6bf/1464358541319/Kauffman++Martin+16+Testing+Ecuador+RoN+Laws.pdf>.

116. *Id.* at 5.

117. *Id.*

118. *Id.* at 4.

119. *Id.* at 19.

120. John Vidal, *Bolivia Enshrines Natural World’s Rights with Equal Status for Mother Earth*, GUARDIAN (Apr. 10, 2011), <https://www.theguardian.com/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights>.

Earth (“UDRME”) was drafted.<sup>121</sup> The Legislative Assembly of Bolivia then followed Ecuador’s example and voted to support an act in their domestic system entitled the “Ley de Derechos de La Madre Tierra,”<sup>122</sup> or the Law of Mother Earth.<sup>123</sup> This law, passed in 2012, creates a framework of the legal rights of nature.<sup>124</sup> President Evo Morales, Latin America’s first indigenous president, led the environmental movement.<sup>125</sup> Like Ecuador, Andean indigenous culture values Pachamama and views Mother Earth as “a sacred home” and a “living dynamic system made up of the undivided community of all living beings.”<sup>126</sup> This spiritual ideology places Mother Earth at the center of all life and views humans as equal to all other entities.<sup>127</sup> The law passed in Bolivia consistent with this ideology creates new rights for Mother Nature, including the right to life, diversity, water, clean air, equilibrium, restoration, and pollution-free living.<sup>128</sup>

Pursuing the Law of Mother Earth is a large step for Bolivia, considering its history is one built upon extractive industries that have greatly contributed to its environmental desolation.<sup>129</sup> Since the discovery of silver by the Spanish in the sixteenth century, Bolivia has exploited its natural resources and exported them to European countries. When the bill was passed in 2010, minerals, gas, and oil still accounted for 70% of its exports.<sup>130</sup> The difficulty in the transition stems from “opposition from powerful sectors . . . to any ecological laws that would threaten profits.”<sup>131</sup> Therefore, advocates understand the movement toward “earth law” will be a slow one.<sup>132</sup> The law requires far more regulation of economic activity, including assessing environmental impacts, auditing companies, transitioning to renewable energy, regulating emissions, and requiring

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121. Maloney, *supra* note 81, at 130-31.

122. Act of the Rights of Mother Earth, *supra* note 74.

123. Ryan Hewlett, *Bolivia's Law of Mother Earth*, DAILY GOOD (July 15, 2016), <http://www.dailygood.org/story/1337/bolivia-s-law-of-mother-earth-ryan-hewlett/>.

124. Franz Chavez, *Bolivia's Mother Earth Law Hard to Implement*, INTER PRESS SERV. (May 19, 2014), <http://www.ipsnews.net/2014/05/bolivias-mother-earth-law-hard-implementation/>.

125. Vidal, *supra* note 120.

126. Nick Buxton, *The Law of Mother Earth: Behind Bolivia's Historic Bill*, GLOBAL ALLIANCE FOR THE RTS. OF NATURE, <https://therightsofnature.org/bolivia-law-of-mother-earth/> (last visited Aug. 7, 2018) (internal quotation marks omitted).

127. *Id.*

128. *Id.*; see also Act of the Rights of Mother Earth, *supra* note 74.

129. Buxton, *supra* note 126.

130. *Id.*

131. *Id.*

132. *Id.*

ecological accountability from companies as well as individuals.<sup>133</sup> The goal is not to immediately shut down all mines, but to gradually transition away from the exploitative extraction industry and invest in sustainable development models.<sup>134</sup>

Despite the goals of the legislation, it has proven difficult to turn this noble ideology into action.<sup>135</sup> The director of the office, called the “plurinational authority for Mother Earth,” was appointed in February 2014 pursuant to article 4, and set up a team and office thereafter.<sup>136</sup> This office is responsible for preparing for climate change and adapting to its effects, consistent with the new laws.<sup>137</sup> The office began by hosting a workshop on climate change to involve the community and receive input on potential policies.<sup>138</sup> The law and the interactions with the community have led to growing environmental awareness, but even so, it is hard to assess the implementation of the law because it sets out no specific targets.<sup>139</sup> President Morales is still in office and recently waived a hands-off law, an action which could open up Isiboro Secure National Park to logging, ranching, farming, and hosting a new highway.<sup>140</sup> There has been a wave of industrial growth since the law was enacted and what appears to be little to no implementation of the law.<sup>141</sup> Bolivian people would like to see amendments to the law, but given the current administration and the overall corruption of the government, this does not seem likely.<sup>142</sup> Despite the failure of the law thus far, indigenous people and environmentalists staged a demonstration in response to the waiver of protection for Isiboro, showing that the Bolivian people still desire and support “Mother Earth” laws.<sup>143</sup>

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133. *Id.*

134. *Id.*

135. Chavez, *supra* note 124.

136. *Id.*

137. *Programa BioCultura: Living in Harmony with Mother Earth*, SWISS CONFEDERATION: DEV. & COOPERATION, [https://www.eda.admin.ch/deza/en/home/activities-projects/projekte-fokus/Project-database.par\\_projectfilter\\_page175.par\\_projectfilter\\_0\\_page17.html/content/dezaprojects/SDC/en/2007/7F05448/phase2](https://www.eda.admin.ch/deza/en/home/activities-projects/projekte-fokus/Project-database.par_projectfilter_page175.par_projectfilter_0_page17.html/content/dezaprojects/SDC/en/2007/7F05448/phase2) (last updated June 11, 2018).

138. Chavez, *supra* note 124.

139. *Id.*

140. Mac Margolis, *Bolivia's Morales Goes Down an Ugly Road*, BOLIVIAN THOUGHTS IN AN EMERGING WORLD (Aug. 20, 2017), <https://bolivianthoughts.com/2017/08/20/>.

141. Anna Hernandez, *Defending Mother Earth in Bolivia*, CULTURAL SURVIVAL (June 19, 2016), <https://www.culturalsurvival.org/news/defending-mother-earth-bolivia>.

142. *Id.*

143. Margolis, *supra* note 140.

*C. Belize*

Although not incorporated into its constitution or laws and not motivated by indigenous belief systems, Belizean courts reached a finding in 2010 that is consistent with Ecuador's decision to recognize nature as more than just "property."<sup>144</sup> Spurring this finding was a case brought on behalf of the Belizean government against a ship owner because a ship grounded upon the Belize Barrier Reef, the second-largest barrier reef in the world.<sup>145</sup> A "World Heritage Site," the Belize Barrier Reef is the longest barrier reef in the Western Hemisphere and includes a variety of reef types, habitats, and sea life.<sup>146</sup> The ship "Westerhaven" grounded upon the barrier reef inside the area of the Caye Glory Spawning Site Marine Reserve, one of eighteen of Belize's Marine Protected Areas.<sup>147</sup> The parties agree that "considerable damage was done to the Barrier Reef."<sup>148</sup> In the claim filed on January 16, 2009, against the ship owners for negligent damage to the Belizean government's property, the government described itself as "the owner of Belize's Barrier Reef" and described the Reef as "the property."<sup>149</sup> The estimated damage to the reef upon valuation by the Department of the Environment was over \$15.5 million.<sup>150</sup> Later, in an amended claim filed by the Belizean government, it "deleted the statement that the Barrier Reef was 'its property,'" but listed that it was "'the owner and custodian'" of the reef and proceeded to add "guardian" later.<sup>151</sup>

The main issue on appeal was how the damages to the reef would be quantified and whether or not damages would be limited.<sup>152</sup> One of the main issues became whether or not the "living reef ecosystem and the services it provides are . . . the 'property' of anyone."<sup>153</sup> This was stated by one of the Belizean government's main witnesses at trial, Dr. McField, who assessed the damages of the reef after the grounding and submitted a health

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144. In the Court of Appeal of Belize, A.D. 2011. Civil Appeal No. 19 of 2010, <http://www2.ecolex.org/server2.php/libcat/docs/COU/Full/En/COU-159759.pdf>.

145. *Id.* ¶¶ 3, 10.

146. *Id.* ¶ 10 (citing E. COOPER, L. BURKE & N. BOOD, WORLD RES. INST., COASTAL CAPITAL: BELIZE: THE ECONOMIC CONTRIBUTION OF BELIZE'S CORAL REEFS AND MANGROVES (2008), [http://pdf.wri.org/coastal\\_capital\\_belize\\_brochure.pdf](http://pdf.wri.org/coastal_capital_belize_brochure.pdf)).

147. *Id.* ¶ 13.

148. *Id.*

149. *Id.* ¶ 15 (internal quotation marks omitted).

150. *Id.*

151. *Id.* ¶¶ 17-18.

152. *Id.* ¶ 18.

153. *Id.* ¶ 24 (internal quotation marks omitted).

assessment.<sup>154</sup> She went on to discuss how the reef is not “property” because it “cannot be bought or sold”; in fact, she pointed out how the tourism industry attempted but failed to lease part of it.<sup>155</sup> Instead, she sees the Belize Reef as “part of the nation’s natural capital and public assets, capable of providing revenue generation and valuable ecosystem services for millennia to come, if its functional integrity is maintained.”<sup>156</sup>

Ultimately, the court allowed for Belize to recover damages for the barrier reef but qualified the “property” assertion set out at the forefront of litigation.<sup>157</sup> The ship owners attempted to claim that if the reef was not the “property” of the country of Belize, then it could not claim damages.<sup>158</sup> The court, however, did not buy that argument. The court recognized Belize as a capable “custodian and keeper of the precious environmental resource” that is the barrier reef.<sup>159</sup> Further, the court acknowledged the validity of Dr. McField’s recommendation to use the recovered damages to aid the Barrier Reef Foundation.<sup>160</sup> The Supreme Court of Belize ordered the ship owners to pay \$6 million in damages to the government, a landmark decision in protecting the ecosystem.<sup>161</sup> This was an example of successful litigation to protect the rights of environmental bodies separate from natural persons, while still balancing the fact that some relation between the natural and juridical persons cannot be completely avoided. Importantly, this decision was made without requiring constitutional reform, and instead simply recognized that these ecosystems and natural structures must be protected in a sustainable way in order for them to continue to grow and thrive in the future.

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154. *Id.* ¶ 23.

155. *Id.* ¶ 24.

156. *Id.*

157. *Id.* ¶ 92.

158. *Id.* ¶¶ 6, 8-9.

159. *Id.* ¶ 102.

160. *Id.* ¶ 103.

161. *Belize Takes Action to Protect the Value of Its Coral Reefs, Case of GOB vs. Westerhaven Concludes*, WORLD RESOURCES INSTITUTE, <https://www.wri.org/our-work/top-outcome/belize-takes-action-protect-value-its-coral-reefs>.

#### D. New Zealand

##### 1. The Park

The Maori, indigenous to New Zealand, were once hunter-gatherers, as all peoples were for an estimated 160,000 years.<sup>162</sup> Like most indigenous peoples, their beliefs regarding nature are quite contrary to those of the Western world; humans are not seen as dominators, but guardians of nature.<sup>163</sup> The British recognized the Maori as sovereign over New Zealand until 1840, when the British settled New Zealand pursuant to the Treaty of Waitangi between them and the Maori people.<sup>164</sup> The British only acquired a portion of New Zealand pursuant to the Treaty, claiming that doing so was necessary for Maori protection.<sup>165</sup> The Maori governed the rest of the land.<sup>166</sup> However, the first article of the treaty stated that the Queen of England had sovereignty over the Maori chiefs and provided for the right of British preemption over Maori land, were they to sell it.<sup>167</sup> It was intended that the English text of the treaty be translated into Maori.<sup>168</sup> However, doing so resulted in a nearly opposite meaning, where the Maori retained sovereignty and ceded only limited rights to the British.<sup>169</sup> Only the Maori version was presented at the signing on February 5, 1840, causing the “Maori [to] believe[] the promises . . . [and] sign[] the Treaty.”<sup>170</sup> While it is likely that only the missionaries knew of the different versions, the Privy Council has stated that the Treaty of Waitangi validly ceded Maori sovereignty to the British.<sup>171</sup> The Privy Council has indicated that the Maori can neither enforce their rights in international fora nor in New Zealand courts.<sup>172</sup>

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162. Catherine J. Iorns Magallanes, *Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology that Protects the Environment*, 21 WIDENER L. REV. 273, 276 (2015).

163. *Id.* at 281-82.

164. Gr. Brit.-United Tribes of N.Z., Feb. 6, 1840, <https://www.waitangitribunal.govt.nz/treaty-of-waitangi/english-version/> [hereinafter Treaty of Waitangi], cited in Magallanes, *supra* note 162, at 284.

165. Magallanes, *supra* note 162, at 284-85.

166. *Id.*

167. Treaty of Waitangi, *supra* note 164, art. 1, 2.

168. Magallanes, *supra* note 162, at 285.

169. *Id.* at 285-86.

170. *Id.* at 286.

171. *Id.* at 286-87.

172. *Id.* at 287 (citing *Te Heuheu Tukino v. Aotea Dist. Maori Land Bd.* [1941] NZLR 590, AC 308 (PC)).

From 1840 through the 1850s, the Maori outnumbered the British in New Zealand and largely maintained their autonomy.<sup>173</sup> However, in the 1860s, the settlers became the majority and the settler self-government began to control more and more Maori affairs.<sup>174</sup> A war broke out between the settlers and Maori government over land use and sale in relation to violations of the Treaty.<sup>175</sup> The settler government took significant amounts of Maori land when they won.<sup>176</sup> “After initial contact in Te Urewera,” a forested hill country in the North Island of New Zealand, “the Crown wrongly confiscated a large area . . . in the Eastern Bay of Plenty” from the native Tūhoe people, members of the Maori.<sup>177</sup> In the mid-1860s and early 1870s, the Crown conducted multiple brutal invasions of this district, leading to the steady confiscation of these valuable lands.<sup>178</sup> In 1895, Parliament legislated the Te Urewera Native District Reserve Act between the Crown and the Tūhoe that supposedly created a Maori-controlled reserve protecting resources and intending to be “self-governed by a council of Te Urewera people.”<sup>179</sup>

At the passage of the new bill, the Treaty of Waitangi Negotiations Minister stated that the laws “settle[d] the historical claims of [the] Tūhoe, who suffered some of the worst breaches by the Crown in the country’s history, involving large scale confiscation . . . and unjust land purchases.”<sup>180</sup> The Te Urewera Board website sets out the impact of this Act on the use of the land.<sup>181</sup> At the close, it reminds readers to “remember Te Urewera is a living place, more than just forests, rivers and land, it deserves yours and our respect and care.”<sup>182</sup> The bill rectifies past wrongs, protects the park environmentally, and creates a framework under which indigenous and non-

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173. *Id.* at 288.

174. *Id.* at 289.

175. *Id.*

176. *Id.*

177. Mihingarangi Forbes, *Crown Mistreated Te Urewera People*, RNZ (Dec. 23, 2015), <http://www.radionz.co.nz/news/national/292852/crown-mistreated-te-urewera-people>.

178. Dr. Vincent O'Malley, *Encircled Lands: Te Urewera, 1820–1921*, REVS. IN HIST. (Nov. 2011), <http://www.history.ac.uk/reviews/review/1167>.

179. Forbes, *supra* note 177.

180. *Tūhoe Claims Settlement and Te Urewera Bills Passed*, N.Z. DEP'T OF CONSERVATION (July 24, 2014), <http://www.doc.govt.nz/news/media-releases/2014/tuhoe-claims-settlement-and-te-urewera-bills-passed/>.

181. *Te Urewera*, TŪHOE, <http://www.ngaituhoe.iwi.nz/te-urewera> (last visited Aug. 7, 2018).

182. *Id.*

indigenous citizens can use and enjoy the park in a manner consistent with traditional Maori beliefs.

## 2. *The River*

The Iwi are local Maori residents that survive on the Whanganui River, or the Te Awa Tupua, in New Zealand.<sup>183</sup> They believe they are one and the same with the 180-mile river and view it as “an indivisible and living whole.”<sup>184</sup> To them, the river is an ancestor, and the only correct way to treat it, as stated by the tribe’s lead negotiator, is as a living entity.<sup>185</sup> The New Zealand Parliament passed the Te Awa Tupua bill consistent with this belief on March 14, 2017.<sup>186</sup> The bill followed 140 years of negotiation and eighty years of litigation; the conflict had been prolonged essentially since the initial Treaty of Waitangi.<sup>187</sup> In the late nineteenth and early twentieth centuries, the Crown undertook to establish a steamer service on the Whanganui River by extracting minerals from its bed and destroying fisheries, which degraded not only the river’s physical qualities, but also the cultural and spiritual qualities sacred to the Iwi.<sup>188</sup> The first petition to Parliament by the Iwi regarding the river arose in 1870.<sup>189</sup> The Iwi have

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183. Daniel Melfi, *New Zealand Grants Whanganui River Legal Personhood, Settles Case Dating Back to 1870s*, NAT’L POST (Mar. 15, 2017, 3:33 PM), <http://nationalpost.com/news/world/new-zealand-grants-whanganui-river-legal-personhood-settles-case-dating-back-to-1870s>.

184. Colin Dwyer, *A New Zealand River Now Has the Legal Rights of a Human*, NAT’L PUB. RADIO (Mar. 16, 2017, 6:09 PM), <http://www.npr.org/sections/thetwo-way/2017/03/16/520414763/a-new-zealand-river-now-has-the-legal-rights-of-a-human> (internal quotation marks omitted).

185. Jan Lee, *Governments: Glaciers and Rivers Are Legal Persons and Have Rights*, TRIPLE PUNDIT (Apr. 6, 2017), <https://www.triplepundit.com/2017/04/governments-glaciers-rivers-legal-persons-rights/>.

186. Kelly Buchanan, *New Zealand: Bill Establishing River as Having Own Legal Personality Passed*, LIBRARY OF CONGRESS: GLOBAL LEGAL MONITOR (Mar. 22, 2017), <http://www.loc.gov/law/foreign-news/article/new-zealand-bill-establishing-river-as-having-own-legal-personality-passed/>.

187. Diane Covington-Carter, *When Rivers are Granted Legal Status as Persons*, SIERRA CLUB (May 9, 2017), <http://sierraclub.org/sierra/green-life/when-rivers-are-granted-legal-status-persons>; Johnathan Pearlman, *New Zealand River to Be Recognised as Living Entity After 170-year Legal Battle*, TELEGRAPH (Mar. 15, 2017, 2:18 p.m.), <https://www.telegraph.co.uk/news/2017/03/15/new-zealand-river-recognised-living-entity/>; <https://www.telegraph.co.uk/news/2017/03/15/new-zealand-river-recognised-living-entity/>.

188. *Innovative Bill Protects Whanganui River with Legal Personhood*, N.Z. PARLIAMENT (Mar. 28, 2017), <https://www.parliament.nz/en/get-involved/features/innovative-bill-protects-whanganui-river-with-legal-personhood/>.

189. *Id.*

continued to advocate for the river over many years and through many courts<sup>190</sup> up until the present, where the Crown has recognized the river for what it has always been to the Iwi.<sup>191</sup>

“The Whanganui River was the world’s first natural resource granted its own legal identity,” and hundreds of Iwi Maori celebrated at the passage of the bill through song and dance in the legislative chamber.<sup>192</sup> The bill creates an office called the Te Pou Tupua to represent the river, composed of two members, one chosen by the Crown and one by the Iwi.<sup>193</sup> These officers uphold the legal status of the river by promoting its health and speaking for it.<sup>194</sup> The attorney-general and minister for treaty negotiations from New Zealand, Chris Finlayson, stated: “I know some people will say it’s pretty strange to give a natural resource a legal personality, but it’s no stranger than family trusts, or companies, or incorporated societies.”<sup>195</sup> This was a unique approach, but considering the history between the Maori and the Crown, a unique solution was warranted to find a sustainable way to reach a consensus. This agreement included an eighty million-dollar settlement as redress for the actions done by the Crown to the river since the 1800s.<sup>196</sup> This money supports the legal office and advances the health and restoration of the river.<sup>197</sup> For New Zealand, granting rights to nature was a successful means of protecting natural resources while respecting indigenous culture and beliefs.

#### *E. India*

The Whanganui River in New Zealand was the first river to receive legal personhood, but not long after, India attempted to follow suit. The Uttarakhand High Court granted legal personhood to the Ganges River just five days after the bill passed in New Zealand.<sup>198</sup> In Hinduism, the prominent religion in India, water is seen as sacred and rivers are believed

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190. *Id.*

191. *Id.*

192. Covington-Carter, *supra* note 187.

193. Laura Walters, *If the Whanganui River Is a Person, Is It Just like You and Me?*, STUFF (Mar. 16, 2017), <http://www.stuff.co.nz/national/90516475/if-the-whanganui-river-is-a-person-is-it-just-like-you-and-me>.

194. *Id.*

195. Pearlman, *supra* note 187 (internal quotation marks omitted).

196. *Innovative Bill Protects Whanganui River with Legal Personhood*, *supra* note 188.

197. *Id.*

198. *Id.*

to house holy places; the Ganges is the “most sacred of rivers.”<sup>199</sup> The Ganges is a 1553 mile-long river stretching across India and named after the Hindu goddess, Ganga.<sup>200</sup> “[M]any believe[] it has healing properties.”<sup>201</sup> Because of the sacred nature of this river, ashes are cast into it and many people bathe in the river daily as part of a morning cleansing ritual.<sup>202</sup> Despite the importance of the Ganges to the Hindu religion, it is one of the most polluted rivers in the world and has been abused and exploited “to a shocking extent.”<sup>203</sup> In March of 2017, 1.5 billion liters of raw sewage and 500 million liters of industrial waste entered the river daily, which led to the decision of the highest court in the northern Indian state of Uttarakhand to recognize the river and its tributary as legal entities.<sup>204</sup> Because the population relies upon the Ganges as a water source, the judges making the decision stated it was a necessary step in protecting the rivers from “losing their very existence.”<sup>205</sup>

As the economy in India has developed, rivers have become dirtier despite pollution laws, government clean-up efforts, and sewage plants.<sup>206</sup> The case arose after officials claimed local governments in the region were not cooperating with federal preservation efforts.<sup>207</sup> The recognition of the Ganges and its tributary as legal persons gives courts in India the ability to intervene in the rivers’ management. Different than New Zealand’s arrangement for both the Iwi and the government to protect the river, India entrusts the protection of the Ganges to three court-designated officials.<sup>208</sup>

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199. Chad A. West, *For Body, Soul, or Wealth: The Distinction, Evolution, and Policy Implications of a Water Ethic*, 26 STAN. ENVTL. L.J. 201, 210 (2007).

200. Michael Safi, *Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings*, GUARDIAN (Mar. 21, 2017), <https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings>.

201. *India Grants Ganges and Yamuna Rivers ‘Legal Person’ Status*, DW (Mar. 21, 2017), <http://www.dw.com/en/india-grants-ganges-and-yamuna-rivers-legal-person-status/a-38045248>.

202. *Id.*

203. Ashish Kothari, Mari Margil & Shrishtee Bajpai, *Now Rivers Have the Same Legal Status as People, We Must Uphold Their Rights*, GUARDIAN (Apr. 21, 2017), <https://www.theguardian.com/global-development-professionals-network/2017/apr/21/rivers-legal-human-rights-ganges-whanganui>.

204. Safi, *supra* note 200.

205. *India Grants Ganges and Yamuna Rivers ‘Legal Person’ Status*, *supra* note 201 (internal quotation marks omitted).

206. Safi, *supra* note 200.

207. *India Grants Ganges and Yamuna Rivers ‘Legal Person’ Status*, *supra* note 201.

208. See discussion *supra* Section II.D.

The Ganga Management Board was established to help protect the river and was supposed to begin work in the three months following the decision.<sup>209</sup>

In a separate proceeding in April of 2017, about a week after the rivers were given legal status, the Indian High Court also gave glaciers, lakes, and forests in the Himalayas the rights of legal persons in an effort to prevent environmental harm.<sup>210</sup> These glaciers, which sustain India's water supply, are declining as a result of human interference.<sup>211</sup> They feed the Ganges and the Yamuna, which is 850 miles long and supplies water to the nation's capital.<sup>212</sup> The two glaciers now protected are quickly receding, which in turn affects the two rivers and the meadows, forests, and lakes they feed.<sup>213</sup> These bodies were granted status as legal entities through this High Court decision.<sup>214</sup>

In July of 2017, however, the Indian Supreme Court reviewed objections to this determination, ultimately overturning the landmark decision that gave the Ganges legal personhood while also suspending the river's rights.<sup>215</sup> Some argued that it was not practical to give the same legal status as people to rivers.<sup>216</sup> They feared this recognition could lead to complicated situations in which people are charged with assault and murder for damaging the river or where people could sue the river after flooding or drowning.<sup>217</sup> The state was concerned that the lower court's ruling was not clear enough regarding liability in these situations, be it the government, the appointed guardians or custodians, or no one at all.<sup>218</sup> There was a concern that the state originally granting the right did not consider the other places and states in India through which the river flows, and therefore it was beyond the ability of the court to make such a decision, especially since the legal guardians were appointed from this region.<sup>219</sup> Nonetheless, the

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209. Safi, *supra* note 200.

210. Lee, *supra* note 185.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *India's Ganges and Yamuna Rivers Are 'Not Living Entities'*, BBC NEWS (July 7, 2017), <http://www.bbc.com/news/world-asia-india-40537701>.

216. *Id.*

217. *Id.*

218. *Rivers Do Not Have Same Rights as Humans: India's Top Court*, PHYS.ORG (July 7, 2017), <https://phys.org/news/2017-07-rivers-rights-humans-india-court.html>.

219. Bhadra Sinha, *SC Puts on Hold Uttarakhand HC Order Declaring River Ganga a Living Entity*, HINDUSTAN TIMES (July 7, 2017), <https://www.hindustantimes.com/india->

petitioner in the case that originally granted rights to the river states that he “will present [his] case before the court and convince them.”<sup>220</sup>

Though it is not clear if India will ultimately reinstate the river’s rights, current efforts to clean up and protect rivers and other natural bodies are proving futile. There are unanswered questions and weighty concerns associated with potentially granting the rivers the status of a legal person. Both spiritual and environmental preservation depend upon either the answering of these questions or coming up with another creative approach to ensure the longevity of India’s most important natural resources. Granting the Ganges legal personhood could be a successful way to do this if higher courts choose to follow the lead of other countries and reinstate the river’s rights. Regardless, India has caught the attention of the international community and raised awareness within its own nation regarding the importance of protecting and preserving natural resources.

### *III. The United States and Rights of Nature*

Current international and domestic law are failing to protect lands and natural resources in the United States from both environmental harm and unlawful deprivation from Native American people who have historical and spiritual interests in them. Though not a conventional solution, the United States already has the legal framework to permit the recognition of non-natural bodies, like lands and natural resources, as legal persons. In the United States, a “person” is legally classified into two groups: a natural person and a juridical person.<sup>221</sup> A natural person is an individual human being who can assume obligations and hold rights.<sup>222</sup> However, “the word[] ‘person’ . . . include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”<sup>223</sup> These “juridical” persons, or artificial or fictitious legal beings, are designated by states and are given powers and rights under the law.<sup>224</sup> Such persons are recognized under common law or statutory law and are able to

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news/sc-puts-on-hold-uttarakhand-high-court-order-declaring-ganga-a-living-entity/story-IYqkaehoLhAyWfjAP8GYOO.html.

220. *Rivers Do Not Have Same Rights as Humans: India's Top Court*, *supra* note 218.

221. Jessica Berg, *Of Elephants and Embryos: A Proposed Framework for Legal Personhood*, 59 HASTINGS L.J. 369, 372 (2007).

222. Elvia Arcelia Quintana Adriano, *The Natural Person, Legal Entity or Juridical Person and Juridical Personality*, 4 PENN. ST. J.L. & INT’L AFF. 363, 366 (2015).

223. 1 U.S.C. § 1 (2012).

224. Berg, *supra* note 221, at 380.

“hold and sell property, and sue or be sued.”<sup>225</sup> This recognition is necessary to protect the interests of the entity and also the interests of other natural persons.<sup>226</sup> “Recognition of rights of juridical persons ultimately may benefit or harm the rights of natural persons,” and that is why natural persons have an interest in recognizing non-natural entities.<sup>227</sup> However, juridical persons do not have free will or decision-making capabilities as natural persons do and are therefore only assigned rights and duties or obligations.<sup>228</sup>

In the case *Burwell v. Hobby Lobby*,<sup>229</sup> the United States Supreme Court allowed business corporations, as legal persons, to assert religious claims and exemptions. In *Citizens United v. Federal Election Commission*,<sup>230</sup> the Court allowed “corporations to assert political rights and claim the protection of freedom of speech . . . under the First Amendment . . . .”<sup>231</sup> Law is evolving to grant more rights to non-natural persons, and it is not outside the ability of courts to do the same for environmental bodies.

#### A. Pennsylvania Laws

Communities in the United States have already begun to follow the lead of other nations in granting rights to nature or natural resources. The Community Environmental Legal Defense Fund, which helped Ecuador and Bolivia in the development of their laws, has helped a number of communities in the United States create laws similar to the provisions in Ecuador’s constitution that “change the status of ecosystems from being regarded as property under the law to being recognized as rights-bearing entities.”<sup>232</sup> As of 2016, approximately two hundred municipalities created and “passed [local] ordinances that grant rights to nature in some manner.”<sup>233</sup>

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225. J. Margaret Datiles, *What Exactly Is “Constitutional Personhood”? The Definition of Personhood and Its Role in the Life Debate*, AM. UNITED FOR LIFE, <http://www.aul.org/2010/04/what-exactly-is-constitutional-personhood-the-definition-of-personhood-and-its-role-in-the-life-debate/> (last visited Oct. 18, 2018).

226. Berg, *supra* note 221, at 376.

227. *Id.* at 385.

228. Adriano, *supra* note 222, at 369.

229. 134 S. Ct. 2751 (2014).

230. 558 U.S. 310 (2010).

231. Eric W. Orts, *Theorizing the Firm: Organizational Ontology in the Supreme Court*, 65 DEPAUL L. REV. 559, 560 (2016).

232. Revkin, *supra* note 88 (internal quotation marks omitted).

233. Pietari, *supra* note 95, at 38.

The Community Environmental Legal Defense Fund began working with the community of Tamaqua Borough, Pennsylvania, in 2006 to draft similar laws codifying the Rights of Nature, making it the first United States municipality to do so.<sup>234</sup> The law was drafted to abolish the illegitimate “rights” of corporations to engage in the land application of sewage sludge in the Borough and instead “recognizes that ecosystems in Tamaqua possess enforceable rights against corporations.”<sup>235</sup> The ordinance allows Tamaqua residents to bring lawsuits to vindicate the rights of nature.<sup>236</sup> The root of this movement as stated by Ben Price, the Projects Director of the Community Environmental Legal Defense Fund, is that the law of the Western world is responsible for the “destruction of ecosystems and natural communities.”<sup>237</sup> Western culture’s traditional view of “natural systems as ‘property’ with no rights that governments or corporations must respect” has led to this destruction.<sup>238</sup> Municipalities across Pennsylvania and the region have passed similar ordinances.<sup>239</sup>

In response to these ordinances, the attorney general has filed five different suits across Pennsylvania, stating that these ordinances are illegal and unconstitutional.<sup>240</sup> Despite the initial assumption that such an approach is far too “radical environmentalist,” citizens of Pennsylvania seem to see the value and pragmatism of treating nature in the same way as a corporation.<sup>241</sup> These natural laws are increasingly viewed as necessary in order to protect and preserve resources, especially considering how corporations have flourished since being granted legal personhood.<sup>242</sup>

In Grant Township, Pennsylvania, in 2012, another movement in favor of the rights of nature in the wake of a booming fracking climate proved

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234. *Advancing Legal Rights of Nature: Timeline*, COMMUNITY ENVTL. LEGAL DEF. FUND (Nov. 9, 2016), <https://celdf.org/rights/rights-of-nature/rights-nature-timeline/>; Tamaqua Borough, Schuylkill County, Pa., Tamaqua Borough Sewage Sludge Ordinance (No. 612, 2006), <http://files.harmonywithnatureun.org/uploads/upload666.pdf>.

235. Press Release, Community Env'tl. Legal Def. Fund, Pennsylvania Borough Strips Sludge Corporations of “Rights”, Becomes First Municipality in the United States to Recognize the Rights of Nature (Sept. 20, 2006), <http://www.thealliancefordemocracy.org/html/eng/2533-AA.shtml>.

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. Kate Beale, *Rights for Nature: In PA’s Coal Region, A Radical Approach to Conservation Takes Root*, HUFFINGTON POST (Feb. 2, 2009, 5:12 AM), [https://www.huffingtonpost.com/kate-beale/rights-for-nature-in-pas\\_b\\_154842.html](https://www.huffingtonpost.com/kate-beale/rights-for-nature-in-pas_b_154842.html).

241. *Id.*

242. *Id.*

successful.<sup>243</sup> The Environmental Protection Agency (“EPA”) planned to allow an oil-and-gas exploration company, Pennsylvania General Energy, to cease trucking wastewater miles away into Ohio and instead develop a wastewater injection well in small-town Pennsylvania to save around \$2 million.<sup>244</sup> A retired member of the community investigated the proposition and learned that the wastewater was toxic.<sup>245</sup> Pennsylvania General Energy planned to pump 42,000 gallons of wastewater per day into the ground beneath the homestead and creek she enjoyed.<sup>246</sup> By 2013, concerned community members filed a complaint and assumed the EPA would protect them from any potential harm caused by the well.<sup>247</sup> Contrary to this assumption, the EPA approved the injection well in March of 2014.<sup>248</sup> The community later realized that they could not rely on other environmental agencies to protect their land and resources and needed to take action on their own.<sup>249</sup> Grant Township followed the precedent of Tamaqua and adopted an ordinance that allowed them to self-govern, avoid the EPA’s mandate, and grant the right to sue on behalf of nature.<sup>250</sup>

The co-founder of the Community Environmental Legal Defense Fund, Thomas Linzey, recognizes that granting rights to nature sounds “frightening or laughable” at first.<sup>251</sup> He references the 1972 paper “Should Trees Have Standing? Toward Legal Rights for Natural Objects” written by Christopher Stone, which Linzey read in law school.<sup>252</sup> In Stone’s paper, he states that rights conferred upon previously unrecognized bodies always sound foreign at first because they are unfamiliar.<sup>253</sup> He says this was true for young children working in factories, women who did not have the right to vote, be a jury-member, or sue, and for African Americans.<sup>254</sup> “[U]ntil the rightless thing receives its rights, we cannot see it as anything but a

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243. Justin Nobel, *How a Small Town Is Standing Up to Fracking*, ROLLING STONE (May 22, 2017, 3:35 PM), <http://www.rollingstone.com/politics/news/how-a-small-town-is-standing-up-to-fracking-w482577>.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

thing for the use of ‘us’—those who are holding rights at the time.”<sup>255</sup> It seems, then, that something without rights must first receive those rights before it makes sense to traditional right-holders. Perhaps someday we will look back and wonder how that thing ever existed without those rights.

*B. The Colorado River*

On September 26, 2017, the Colorado River sued the state of Colorado for the recognition of various rights and the granting of legal personhood.<sup>256</sup> Such recognition would give it standing to, hypothetically, sue and be sued as a legal person.<sup>257</sup> This lawsuit was the first time a suit was filed in the United States to recognize the rights of nature, despite the recently emerging worldwide trend towards the recognition of natural bodies or resources as legal entities.<sup>258</sup> Traditionally, ecosystems and natural resources have been treated as property, with rights only as related to the rights of human beings.<sup>259</sup> Because of the framework in which natural bodies are treated, environmental law is failing to protect them from disasters such as climate change and the depletion of natural resources.<sup>260</sup>

The Colorado River is such a resource, as it is relentlessly consumed by humanity in its pursuit of absolute power. The complaint alleged that our current “system of law has failed to stop the degradation of the natural environment, and . . . has failed to protect the natural and human communities which depend on it.”<sup>261</sup> The complaint further stated that the Colorado River is one such damaged ecosystem. The river suffers from droughts as a result of climate change and consumption that have decreased its flow and caused some of its tributaries to recede, such that it no longer reaches the sea.<sup>262</sup> The depletion not only affects the properties of the river itself, but also the “human and natural” communities whose existence is intertwined with it.<sup>263</sup> For those reasons, the Colorado River sued the state of Colorado, represented by “next friends” of the court, which include: the

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255. *Id.*

256. Will Falk, *Why Does the Colorado River Need to Sue for Rights?*, SAN DIEGO FREE PRESS (Sept. 25, 2017), <https://sandiegofreepress.org/2017/09/why-does-the-colorado-river-need-to-sue-for-rights/>.

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. Complaint at 2, *Colo. River Ecosystem v. Colorado*, No. 1:17-CV-02316 (D. Colo. Sept. 25, 2017).

262. *Id.*

263. *Id.*

Deep Green Resistance, a radical environmentalist organization; the Southwest Coalition, a subcommittee of the Deep Green Resistance; and five individuals who are members of the Deep Green Resistance.<sup>264</sup> The solution they offered for the river is legal personhood, and they asked the court to follow the lead of other countries around the world by granting the River itself rights and allowing communities to sue for damage on its behalf.<sup>265</sup> The rights claimed are the rights to “exist, flourish, regenerate, and naturally evolve.”<sup>266</sup> This detaches environmental bodies from human interests and instead allows the ecosystem to recover directly without harm having been caused to a user.<sup>267</sup>

Despite this desired individuality, the complaint recognizes that the Colorado River is responsible for facilitating both human and non-human life.<sup>268</sup> The representatives attempted to describe the river’s role in the greater Colorado climate and the “infinite” relationships it has with the surrounding ecosystems, illustrating how the water interacts with gravity to mold the mountains and with the atmosphere to create rain and snow.<sup>269</sup> The complaint explains in a storybook-like manner how the fallen Colorado River rain becomes groundwater and how streams that build momentum carve rock, trees, and banks to create the flow that is the Colorado River.<sup>270</sup> Before the creation of the Glen Canyon Dam in 1963, the headwaters of the Colorado River began in La Poudre Pass in the Rocky Mountains of the state of Colorado and continued 1450 miles into the Pacific Ocean in Sonora, Mexico.<sup>271</sup> Since then, the complaint alleges, it has “rarely connected with the sea.”<sup>272</sup> Along with the previously listed concerns, the next friends also outlined the vast impact the Colorado River has on the life of plants, grass, trees, animals, birds, bugs, and fish in the surrounding area and how 40 million people depend upon it for water.<sup>273</sup>

The dependence upon the Colorado River in the region is clear. The issue is the river’s steady depletion at an unsustainable rate as humans use and divert the water for consumption and agriculture, which affects the network

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264. *Id.* at 7-8.

265. *Id.* at 2.

266. *Id.* at 2-3.

267. *Id.*

268. *Id.*

269. *Id.* at 3.

270. *Id.* at 3-4.

271. *Id.* at 4.

272. *Id.*

273. *Id.* at 4-6.

of life that flows from it. The Colorado River Compact initially allocated the water from the River in 1922 between seven different states and set the average annual flow at 15 million acre feet in order to divide the resource between them.<sup>274</sup> However, as of 2012, the river's average has since declined to 14.7 million acre feet per year, 78% of which is consumed by agriculture and 45% of which is diverted to other basins that serve major cities like Los Angeles, Denver, and Salt Lake City.<sup>275</sup>

Additionally, though only mentioned briefly in the complaint filed on behalf of the river, "[t]hirty-four Native American reservations exist within the Colorado River Basin, many of whom seek new water rights not contemplated in the Colorado River Compact."<sup>276</sup> The Colorado River Compact is like the "bible of Colorado River water law" and has not been amended in eighty-five years, despite the significant changes to the environment and population since 1922.<sup>277</sup> Because of global warming, it is likely that the estimated water supplies relied upon at the drafting of the Colorado River Compact are no longer a possibility and that the water shortages will continue to cause lack of fulfillment of the compact.<sup>278</sup> Even more alarming is the fact that Native American tribes and Mexico were both excluded from the initial compact negotiation.<sup>279</sup> Compact negotiators ignored completely the possibility that tribes should be part of negotiations, despite the fact they had been recognized as independent sovereigns under federal law.<sup>280</sup> Racial bigotry towards tribes at this time was severe, and even though the Bureau of Indian Affairs supposedly represented tribal interests, it "apparently failed to recognize or fulfill that trust duty during the negotiations."<sup>281</sup> The document simply states that "[n]othing in [the] compact shall be construed as affecting the rights of Indian tribes,"<sup>282</sup> an article that Herbert Hoover affectionately referred to as "the wild Indian article."<sup>283</sup>

Now, "[m]any Native Americans living in the arid Colorado River Basin lack access to running water in their homes . . . and the infrastructure to put

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274. *Id.* at 6.

275. *Id.*

276. *Id.*

277. Robert W. Adler, *Revisiting the Colorado River Compact: Time for a Change?* 28 J. LAND RESOURCES & ENVTL. L. 19, 19-22 (2008).

278. *Id.* at 32.

279. *Id.* at 34-39.

280. *Id.* at 36.

281. *Id.* at 36-37.

282. *Id.* at 37.

283. *Id.*

water to use for agriculture . . . .”<sup>284</sup> Because of this problem, claims and suits continue to be filed, resulting in the allocation of approximately 2.9 million acre feet of water to tribes through settlements.<sup>285</sup> There continue to be settlements re-awarding tribes the rights to water to which they initially had unfettered access.<sup>286</sup> However, the more water that is allocated to tribes, the less water the compact states are receiving, causing tension as the water supply declines.<sup>287</sup> Additionally, allocating and transporting clean water to tribes is costly.<sup>288</sup> These tasks are supported mainly by the federal government.<sup>289</sup> Native Americans now hold 20% of the Colorado River Basin’s rights, and their interest in the sustainability of this resource works against the interests of the seven states in the basin.<sup>290</sup> The tribes are concerned that those with more power and influence will infringe upon their water rights, while “other Colorado River users worry that water supplies will diminish as tribes expand irrigation or develop water-consuming businesses on their reservations.”<sup>291</sup>

Further south, the depletion of the Colorado River has caused problems for tribes in Mexico.<sup>292</sup> The Cupuca, a native Indian group, farmed in northwestern Mexico in the delta of the Colorado River.<sup>293</sup> The name Cupuca means “the people of the river,” and their livelihood stems from fishing and farming to the rhythm of the river “[f]or at least a thousand years.”<sup>294</sup> In the spring, the snow from the Rocky Mountains in present-day Colorado would melt and flow south, flooding into the delta.<sup>295</sup> After this, “the Cupuca planted beans, melons, and squash” in the fertilized, nutrient-filled dirt left behind.<sup>296</sup> They also fished for sea bass and grew grains, all

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284. Bret C. Birdsong, *Mapping the Human Right to Water on the Colorado River*, 48 WILLAMETTE L. REV. 117, 135 (2011).

285. Brett Walton, *In Drying Colorado River Basin, Indian Tribes Are Water Dealmakers*, CIRCLE OF BLUE (July 1, 2015), <https://www.circleofblue.org/2015/world/in-drying-colorado-river-basin-indian-tribes-are-water-dealmakers/>.

286. Birdsong, *supra* note 284, at 135.

287. *Id.* at 137.

288. *Id.* at 140.

289. *Id.* at 141.

290. Walton, *supra* note 285.

291. *Id.*

292. Sandra Postel, *Grabbing the Colorado from the “People of the River”*, NAT’L GEOGRAPHIC (Dec. 19, 2012), <https://voices.nationalgeographic.org/2012/12/19/grabbing-the-colorado-from-the-people-of-the-river/>.

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

made possible by the flow of the Colorado—the same water that so many United States citizens rely upon today for their farming, fishing, and overall livelihood.<sup>297</sup>

However, the compact in 1922 created issues for these indigenous peoples.<sup>298</sup> The Colorado River's water was divided between the seven states, and not a single Mexican representative was present at the table.<sup>299</sup> Significantly later, in 1944, revisions were made to include Mexico in the allocation, giving it 10% of the river's flow; however, the tribes were not included in this award.<sup>300</sup> The United States built dams, reservoirs, and canals up and down the river.<sup>301</sup> Water was used and diverted over years and years.<sup>302</sup> The delta currently is a ghost of what it once was.<sup>303</sup> On a good year, the flow barely makes it across the international boundary.<sup>304</sup> Once having as many as 5000 members, only approximately 300 Cupuca remain in the desert today, as they risk extinction alongside the river.<sup>305</sup> Currently, this people group has scarcely enough resources to sustain their livelihood.<sup>306</sup>

Beyond their historical dependence upon and right to the water in the Colorado River, Native American belief systems view water as sacred.<sup>307</sup> The Native American resistance to the Keystone Pipeline is proof of this. A Lakota version of the phrase “water is life” became a protest anthem against the building of the pipeline.<sup>308</sup> Indigenous peoples view the rivers as sacred places, and have a similar desire to live in cooperation with nature as groups from New Zealand and Ecuador do.<sup>309</sup> The Blackfeet, Lakota, and tribes of the great plains, all living in an arid region of the United States, especially believe this.<sup>310</sup> They even have a spiritual respect for beavers

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297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. Rosalyn R. LaPier, *For Native Americans, a River Is More than a 'Person,' It Is Also a Sacred Place*, CONVERSATION (Oct. 8, 2017), <http://theconversation.com/for-native-americans-a-river-is-more-than-a-person-it-is-also-a-sacred-place-85302>.

308. *Id.*

309. *Id.*

310. *Id.*

because they divert water to create fresh ponds.<sup>311</sup> Native people have the same view of the Colorado River, and for this reason, they hope it is granted legal personhood consistent with the belief that it is a sacred being.<sup>312</sup>

The Colorado River as a resource has been stretched thin nationally and internationally, and there are many competing interests in its ability to continue providing for future life. It is possible that, due to the competing interests, the focus is only on the current use of the water and not the longevity of the river. At the end of the day, to ignore what is happening to the river will only lead to continued depletion. At that point, the sustenance of life will depend on creative decision-making. What the Deep Green Resistance did was call for this type of creative solution now, in a moment when the situation is not as dire as it may become. Though radical at first glance, the Deep Green Resistance followed a growing global trend toward the legal recognition of natural bodies and ecosystems as “persons” with rights and obligations. A deeper look at what other countries have begun to do has shown that perhaps this is not as radical as it seems. Instead, it is only a question of whether or not the United States would have similar success or if the status quo is too deeply ingrained in our government and citizens to make this type of change.

Despite this promising first step, in December of 2017, the case filed by the Deep Green Resistance on behalf of the Colorado River was dismissed.<sup>313</sup> The Colorado Attorney General filed a motion to dismiss prior to the first hearing, stating that the suit had no legal basis, and that Flores-Williams, the attorney for the River, failed to make a reasonable inquiry as to the law and the facts.<sup>314</sup> After Flores-Williams amended the complaint, the Attorney General sent a letter threatening sanctions if Flores-Williams did not voluntarily withdraw the amended complaint with prejudice.<sup>315</sup> Ultimately, Flores-Williams dismissed the suit.<sup>316</sup> He stated that “what is

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311. *Id.*

312. *Id.*

313. *Colorado River vs Colorado Lawsuit Dismissed*, KGNU NEWS (Dec. 4, 2017), <http://news.kgnu.org/2017/12/colorado-river-vs-colorado-lawsuit-dismissed/>.

314. Lance Maggart, *Attorney in Colorado River Lawsuit Refuses to Withdraw Suit Despite Threats of Sanctions from State*, ASPEN TIMES (Dec. 1, 2017), <https://www.aspen-times.com/news/attorney-in-colorado-river-lawsuit-refuses-to-withdraw-suit-despite-threats-of-sanctions-from-state/>.

315. *Id.*

316. Lindsay Fendt, *Colorado River ‘Personhood’ Case Pulled by Proponents*, ASPEN JOURNALISM (Dec. 5, 2017), <https://www.aspenjournalism.org/2017/12/05/colorado-river-personhood-case-pulled-by-proponents/> (internal quotation marks omitted).

best for the rights of nature movement is not to get involved in a lengthy sanctions battle, but to move forward with seeking environmental justice.”<sup>317</sup> Flores-Williams stated that despite the dismissal and those protesting the case, the movement for the rights of nature had begun and would continue in the United States.<sup>318</sup>

*C. Issues with the Rights of Nature in the United States*

Despite the general success in New Zealand, Ecuador, Belize, India, and municipalities in the United States, the failure of the Colorado case proves there are many challenges to consider in pursuing personhood rights for nature throughout the United States. In response to the dismissal, the Colorado Attorney General noted the conviction behind those suing on behalf of the river but stated that the attempt “unacceptably impugned the state’s sovereign authority to administer natural resources for public use.”<sup>319</sup> Though likely unintentional, the word “use” represents a still-pervasive American ideology of commoditization, perhaps similar to that of the original colonists. Will Falk, a member of the Deep Green Resistance that represented the river as next-of friend, points to the traditional American legal mindset that views nature as property.<sup>320</sup> Further, he finds it ironic that the United States grants “abstract legal contraptions like corporations” the same rights as citizens but refuses to do so for “natural communities [that] give us life.”<sup>321</sup> However, the fact that corporations have such well-established rights and protections could be a factor in the current and future difficulty of recognizing Earth rights in the United States. Where new rights are granted, other rights are limited in some way, and corporations have a large interest in preserving systems that create the least-limited access to natural resources as possible.<sup>322</sup> Much like Ecuador and Bolivia, the United States is dependent upon industrial access to natural materials to keep our economy thriving. Shifting social and political mindsets away from this will be difficult. In late 2017, the current administration shrank protections over Bears Ears and Grand-Staircase Escalante National Monuments in Utah, opening the land up to potential

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317. *Id.*

318. *Id.*

319. *Id.*

320. Will Falk, *Time to Escalate? First-Ever Rights of Nature Lawsuit Dismissed*, DEEP GREEN RESISTANCE NEWS SERV., <https://dgrnewsservice.org/resistance/indirect/lobbying/time-escalate-first-ever-rights-nature-lawsuit-dismissed/> (last visited Oct. 18, 2018).

321. *Id.*

322. *Id.*

mining and extraction activities in the name of “wonder and wealth.”<sup>323</sup> If leadership does not value preserving and protecting nature and its resources, it will be difficult to begin movements that support enshrining these protections through legal mechanisms.

Ecuador and Bolivia have shown it is helpful to have a receptive cultural and political climate when first offering the recognition of the rights of nature as a solution to environmental harm. It is necessary to consider that none of these transformations have happened overnight, and it would not have been so with the Colorado River. Beyond the fact that the United States historically has a “taker” mindset and has favored corporations, one shortcoming compared to the international successes was the failure of the Deep Green Resistance to point out the significance of the river to native peoples in the United States. The natural resources in Ecuador, Bolivia, New Zealand, and India all had either spiritual or historical significance to indigenous peoples. It is initially difficult to conceptualize the rights of nature when it is not facially and directly tied to or made up of human beings, as people may visualize that more easily than corporations. Connecting the rights of nature with the rights of Native Americans could make the movement more palatable for governmental bodies and more beneficial for indigenous groups. Raising awareness of the spiritual value of the Colorado River, the Utah Monuments, or the land beneath the Keystone Pipeline could change how many people view them. The native mindset is traditionally more aligned with conservation and preservation, and the more that people can open their minds and see land through the eyes of Native Americans, the more likely it is that the earth rights movement can begin to put down roots in the United States. Implementing the rights of nature would be an entirely different hurdle, taking time, thought, creative legislation, and years of jurisprudence. If it could be done for corporations, though, it would not be impossible for the Earth. The Colorado River case could be the spark that starts a fire, moving into action indigenous and environmentalists alike—or even just those who are beginning to realize that nature will not give forever, and maybe it is time we give a little back.

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323. Julie Turkewitz, *Trump Slashes Size of Bears Ears and Grand Staircase Monuments*, N.Y. TIMES (Dec. 4, 2017), <https://www.nytimes.com/2017/12/04/us/trump-bears-ears.html>.