THE RIGHT TO EXIST: ENSURING THE COLORADO RIVER'S HEALTH AND SUSTAINABILITY FROM SOURCE TO MOUTH

*Astacia Carter**

ABSTRACT

This paper examines the transformative potential of recognizing the Colorado River as a legal person endowed with inherent Rights of Nature. It critiques the dominant anthropocentric water law doctrines, particularly prior appropriation, which prioritize human uses and property rights at the expense of the river's ecological health and long-term sustainability. Drawing on landmark international legal precedents that grant rivers personhood and establish guardianship models, the paper advocates for adopting a similar rights-based framework for the Colorado River. Indigenous legal principles and sovereignty are emphasized as essential to legitimizing and strengthening these efforts by integrating cultural stewardship, reciprocity, and ecological restoration into water governance. While acknowledging significant challenges—including entrenched legal doctrines, political conflicts, and enforcement gaps—the paper proposes strategic pathways combining litigation, public engagement, and scientific evidence to institutionalize Rights of Nature in U.S. water law. Ultimately, the recognition of the Colorado River's legal personhood is presented not only as a legal innovation but a moral imperative to protect one of the American West's most vital natural lifelines and to reshape environmental governance towards equity, sustainability, and intergenerational justice.

* Astacia Carter is a Law & Policy undergraduate student under the direction of Professor Angel Cabrera Silva, SJD, at the University of Washington School of Interdisciplinary Arts & Sciences.

INTRODUCTION

At approximately 1,450 miles, the Colorado River is the fifth longest river in the United States.[1] It supports the roughly 40 million residents of the southwestern United States and northwestern México. The river serves as boundary line for the US states Nevada-Arizona, California-Arizona, and Baja California/Sonora. In response to numerous conflicts over water rights, the adjoining states and the federal government established the Colorado River Compact in 1922[2], apportioning the river's water between the Upper Basin comprising of Colorado, New Mexico, Utah, and Wyoming and the Lower Basin of Arizona, California, and Nevada[3].

The Homestead Act of 1862 sent white U.S. residents pouring into the Louisiana Territory. On the East side of the Mississippi, property owners had riparian water rights. This English common law concept that gave landowners the right to use water that touches their property. This did not convert well in the arid lands of the central U.S. This legislation established a new doctrine of prior appropriation for water rights. Based in Spanish civil law, three parts of prior appropriation are: First, the water must be used for a beneficial purpose. "Beneficial use" is the basis, measure, and limit of the right to use water. Second, actual use of said water. Prior appropriation water rights can be forfeit if the water is not used over time, a principle commonly referred to as "use it or lose it." Third, water rights are allocated according to the order of appropriation, following a priority rule known as "first in time, first in right." This means that in times of shortage, senior rights (those established earlier) receive water before junior rights.[4] Nowhere in this is the river's right to merely exist from source to mouth. This paper seeks ways to litigate for the benefit of the river to exist as

1 J.C. Kammerer, Largest Rivers in the United States, U.S. Geological Survey (May 1990), https://pubs.usgs.gov/of/1987/ofr87-242/.
2 WALTER GORDON CLARK, THE COLORADO RIVER: HISTORY, SEVEN-STATES COMPACT AND FUTURE DEVELOPMENT 15 (1924).
3 *Colorado River Compact, 1922*, 43 U.S.C. § 617G.
4 FRED W WELDEN, HISTORY OF WATER LAW IN NEVADA AND THE WESTERN STATES 2 (2003).

a whole being. I begin with the presumption that the river meets the definition of a legal personality established by Gilbert.[5]

I will first review the major water rights cases regarding the Colorado River. Next, I will review More-Than-Human Rights and Rights of Nature cases from the around the world to find better ways to establish personhood for the enormous entity that is the Colorado River and its adjacent ecosystem. Lastly, a case for the Colorado River to flow from its source in the glaciers of the Rocky Mountains to its terminus into northernmost tip of the Gulf of California.

HISTORY

In 1862, Congress created the Homestead Act.[6] It was created to encourage white settlers into the area known as the Louisiana Purchase. One popular location was a cloudy tributary of the Missouri River named the Milk River by Lewis & Clark in the north-central region of what is now Montana. After numerous treaties and government residences, the Fort Belknap Indian Reservation was created for the Nakoda and Aaniiih tribes in north-central and eastern Montan. It was fraction of the 17.5 million acres of the tribes' ancestral lands and was originally established without any clearly delegated water rights. *Winters v. United States*[7] was decided in 1908, stemmed from a May 1888 agreement that established Justice McKenna's decision was only four pages, he based the court's opinion in common law, stating that because the federal government had reserved the land for the tribes, it therefore had reserved the water required to make the arid land arable as well[8]. It also made clear that tribal water rights were exempt from prior appropriation. It was quickly given the moniker "The Winters Doctrine" and became a factor in all water rights considerations.

[5] Jérémie Gilbert, *Human Rights & the Rights of Nature: Friends or Foes?*, 47 FORDHAM INTERNATIONAL LAW JOURNAL 447, 455 (2024).
[6] *Homestead Act (1862)*, (2021), https://www.archives.gov/milestone-documents/homestead-act.
[7] *Winters v. United States*, 207 U.S. 564 (1908)
[8] *Id.* At 577

The Colorado River Compact of 1922 focused on the equitable division and apportionment of the river's waters among the seven basin states, emphasizing human use and development[9]. Then-Secretary of Commerce, Herbert Hoover joined representatives of Arizona, California, Colorado, Nevada, New Mexico, Utah, Wyoming in determining specific water quantities for the Upper and Lower Basins including the tributaries. This monumental "Law of the River" addressed neither the ecological needs or rights of the river itself were considered in this [10] The Compact's provisions prioritize agricultural, industrial, and domestic uses over ecological considerations. Furthermore, due to a miscalculation, the river was over allocated from the very beginning.[11]

The river's right to exist and its own entity has yet to be approached. Human and animal water use via bathing, elaborate fountains in Las Vegas, and crop irrigation are the only concerns. The Boulder Canyon Project Act was passed in 1928. It ratified the 1922 Compact and created the framework for Lower Basin water allocations. Once again, the emphasis was focused on the needs of humans with the creation of the Boulder (now Hoover) Dam for hydroelectric power[12].

The *Arizona v. California* saga began soon after the Colorado River Compact was signed. Arizona argued the compact was not constitutional[13]. The Court denied Arizona's motion to file the bill, stating that the evidence sought was insufficient to prove Arizona's claims regarding the interpretation of the Compact. The U.S., as the supreme rights holder, was eligible to be a party on either side as it was a signee in the listed interstate compacts because it managed federal lands that were fed by the river. This created a feedback loop in water rights disputes as the river is a shared resource between the states, yet the federal government could not be compelled to

[9] Colorado River Compact, Art. I, 43 U.S.C. § 617, effective December 1, 1949
[10] Id.
[11] Shemin Ge et al., *Fixing the Flawed Colorado River Compact*, EOS, Jun. 2023, https://eos.org/features/fixing-the-flawed-colorado-river-compact.
[12] Boulder Canyon Project Act (1928)
[13] *Arizona v. California*, 292 U.S. 341 (1934)

participate in the proceedings due to sovereign immunity. The decision emphasized that the negotiations and agreements made in 1922 were not binding since the Arizona legislature did not ratify the Compact. Thus, the testimony from those negotiations could not be used to influence future litigation[14]. Arizona turned around and quickly refiled. He summed it up in "[w]e leave undecided the question whether an equitable division of the unappropriated water of the river can be decreed in a suit in which the United States and the interested states are parties."[15] In 1949, the U.S. Congress made the Colorado River Compact a law as 43 U.S.C. § 617G. The issue of sovereign immunity that kept the United States from being joined in any suits such as in *Arizona v. California*, was remedied in 1952 with the passage of The McCarran Amendment. It waived sovereign immunity in cases concerning ownership or management of water rights[16]. This ended the cascade of denial of certiorari due to U.S. sovereignty.

1976 brought the last of the major cases, *Colorado River Water Conservation District v. United States*[17]. It addresses the jurisdiction of federal courts in adjudicating water rights, particularly in the context of the McCarran Amendment. The case highlights the critical issue of water scarcity in the Southwest, where conflicting claims to water resources have increased due to population growth[18]. Colorado's 1969 Water Rights Determination and Administration Act established a structured process for adjudicating water claims, dividing the state into Water Divisions for continuous adjudication. The United States, as a trustee for certain Indian tribes, sought to assert its reserved water rights in a federal suit, which was initially dismissed by the District Court on the grounds of the federal right of abstention. The court's opinion, penned by

[14] *Id.* at 360
[15] *Arizona v. California*, 298 US 558 at 570 (1936)
[16] 43 U.S.C. § 666
[17] Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976)
[18] *Id.* at 805-806

Justice William J. Brennan, found that the dismissal was inappropriate, as the McCarran Amendment's intent was to avoid piecemeal adjudication of water rights, which are interdependent[19]. The Court noted that the existing state proceedings did not preclude the federal court from exercising its jurisdiction, especially given the extensive involvement of state water rights and the nature of the claims being made[20]. Brennan emphasized that the McCarran Amendment does not diminish federal district court jurisdiction under 28 U.S.C. § 1345, thus affirming that the District Court had the authority to hear the case[21].

JURISPRUDENCE & CASE LAW

INTERNATIONAL RIGHTS OF NATURE

According to *Eco Jurisprudence Monitor*, there are 275 approved Rights of Nature law initiatives, cases, policies and other forms of governance around the world. 54 of these are freshwater ecosystems.[22] The recognition of rivers and other freshwater bodies as legal persons with rights represents a significant development in environmental law across the globe. This trend marks a paradigm shift in environmental governance, integrating ecological values into legal systems.

- **Whanganui River**

The Whanganui River case in Aotearoa New Zealand is a landmark example of river rights recognition and legal personhood for nature. The Whanganui River was granted its own legal identity through a settlement reached in 2014 between the Crown and the indigenous Maori tribes, which had disputed the river's status for over 140 years based on the Treaty of Waitangi.[23] This

[19] *Id.* at 819
[20] *Id.* at 820
[21] *Id.* at 808-809
[22] TRACKER, https://ecojurisprudence.org/dashboard/ (last visited May 31, 2025).
[23] Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court*, 7 RESOURCES 13, 560 (2018).

settlement culminated in the Te Awa Tupua Act of 2017, which formally declared the Whanganui River a legal person, giving it the rights, powers, duties, and liabilities of an entity that can be represented in court.[24]

The Act established two legal guardians for the river: one appointed by the Crown and another from the Whanganui iwi (tribe), responsible for protecting and preserving the river's interests. This arrangement reflects a unique legal and cultural recognition of the river as an ancestor and living entity with intrinsic rights, deeply rooted in Maori worldview.[25] The river's legal personhood allows it to participate in court proceedings and ensures that its wellbeing is defended through these guardians. The river is recognized as a living ancestor and indivisible whole, incorporating physical and metaphysical elements.[26] This case is considered the clearest legal reference for how the rights of nature should be delineated and exercised, explicitly granting legal personality to a natural entity and naming custodians for its representation.[27]

- **Atrato River**

In 2016, Indigenous and Afro-descendant communities living along the Atrato basin set out to rectify severe environmental damage and protect the rights of their lifeline.[28] The Colombian Constitutional Court declared the Atrato River a legal subject with its own rights.[29] This was a pioneering decision in Latin America and the third such recognition worldwide.[30] By granting legal personhood, the river can hold rights and is afforded protection under the law.[31]

[24] Pamela L. Martin & Craig M. Kauffman, *How Courts Are Developing River Rights Jurisprudence: Comparing Guardianship in New Zealand, Colombia, and India*, 20 VT. J. ENVTL. L. 260, 271 (2019).
[25] *Id.*
[26] *Id.* at 12.
[27] Pecharroman, *supra* note 24 at 7.
[28] Helena Alviar Garcia, *Granting Rights to Rivers in the Shadow of Extractivism*, 18 FIU L. REV. 687, 694 (2023).
[29] Liliana Mosquera-Guerrero & Tobias Krueger, *Struggling for the Recognition of River Rights: A Case of Hydrosocial Territorialization of the Atrato River in Colombia*, 151 GEOFORUM 104000, 1 (2024).
[30] Garcia, *supra* note 29 at 701.
[31] María Ximena González-Serrano, *The Atrato River as a Bearer and Co-Creator of Rights: Unveiling Black People's Legal Mobilization Processes in Colombia*, 49 LAW SOC. INQ. 2493, 2494 (2024).

The Court found grave violations of fundamental rights such as life, health, water, food security, a healthy environment, culture, and territory of the ethnic communities inhabiting the river basin, which were attributable to state agencies operating in the area. The pollution was primarily from extractive activities including industrial and informal mining (such as alluvial gold mining), logging, monocrop plantations, and infrastructure mega-projects.[32] These activities have led to contamination and deforestation in the region over the last thirty years. The Colombian Pacific lowlands have experienced impacts from banana and oil palm plantations, cattle ranching, coca cultivation, and other extractive sectors historically linked to the exploitation of raw materials and minerals.[33] These extractive practices, often supported by companies and informal entrepreneurs, have contributed significantly to environmental degradation and the pollution of the river.

There are 92 reserved territories for Indigenous groups (Resguardos Indígenas) in the region with ancestral claims to the land.[34] Also, Black communities constitute approximately 82 percent of the population in the Atrato River Basin, where they established settlements in Spanish colonial times along the riverbanks and developed collective social, cultural, and political practices linked to the river.[35] The river has suffered heavy pollution and deforestation, which significantly impacted these Black and Indigenous communities.[36] In response, the Court mandated a series of public policy actions, including recognizing the Atrato River as a legal entity and establishing a Commission of Guardians to oversee its protection.[37] The ruling also required the creation of plans for water contamination remediation, eradication of illegal mining activities, and the restoration of

[32] *Id.* at 2509.
[33] *Id.* at 2497.
[34] Mosquera-Guerrero and Krueger, *supra* note 30 at 4.
[35] González-Serrano, *supra* note 32 at 2497–2500.
[36] *Id.* at 2509.
[37] Martin and Kauffman, *supra* note 25 at 277.

traditional livelihoods. Regular oversight by national authorities to ensure compliance with the orders as well as regular toxicological and epidemiological studies.

The governance model established by the ruling is structural and participatory, involving both government representatives and affected communities in the Commission of Guardians. This bipartite arrangement was inspired by the Whanganui River case.[38] It aims to foster dialogue and community participation in decision-making about river protection. It also helps bridge Colombia's historical divide by incorporating local Indigenous and Afro-descendant voices in the policymaking process. The Atrato River case remains a transformative example of how recognizing the Rights of Nature can be linked to concrete environmental and social measures.[39] It highlights both the potential for legal personhood to protect natural entities and the limitations imposed by existing institutional weaknesses in Colombia.

DOMESTIC RIGHTS OF NATURE

- ***Sierra Club v. Morton***

This case is seen as the first U.S. Supreme Court case addressing the issue of legal standing in environmental litigation.[40] The dispute arose when Walt Disney Productions received approval from the U.S. Forest Service to develop a ski resort in the Mineral King Valley. The case was unique because the plaintiff alleged injury to the environment of Mineral King Valley, rather than to itself or its members.[41] The Supreme Court ruling significantly limited legal protection for the environment by requiring plaintiffs to demonstrate a direct human injury for standing, thereby excluding natural entities and ecosystems from independent legal consideration.[42] This

[38] Garcia, *supra* note 29 at 689.
[39] Philipp Wesche, *Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision*, 33 J. ENV'T L. 531, 554 (2021).
[40] *Sierra Club v. Morton*, 405 U.S. 727 (1972),
[41] M. Margaret McKeown, *The Trees Are Still Standing: The Backstory of Sierra Club v. Morton*, 44 J. SUP. CT. HIST. 189, 194 (2019).
[42] *Id.* at 204.

requirement reflects an anthropocentric bias inherent in the legal system, which traditionally prioritizes human-centered interests and fails to recognize nature's autonomous rights.[43] However, the growing recognition of the Rights of Nature movement has begun to challenge this paradigm by granting legal standing to ecosystems and natural entities, allowing them to be represented in court even in the absence of direct human injury.[44] This expansion of rights marks a critical shift towards protecting nature's inherent interests beyond traditional anthropocentric frameworks and integrates Indigenous and alternative worldviews that emphasize living in harmony with the environment.[45] Institutionalizing procedural and substantive Rights of Nature not only provides a legal basis for environmental protection as well as embedding respect for nature as a core community value, fostering a more inclusive and effective environmental jurisprudence.[46]

The dissents in *Sierra Club v. Morton* are as important as its majority opinion. They reflect a critical challenge to the Supreme Court's restrictive doctrine on standing, especially in the context of environmental law. Justice Douglas delivered a pioneering dissent arguing that natural objects like Mineral King Valley should have standing to sue in federal courts. [47] He proposed that environmental litigation should be permitted "in the name of the inanimate object about to be despoiled, defaced, or invaded,"[48] effectively granting legal rights to nature itself. This perspective sought to circumvent the need for plaintiffs to show personal injury and emphasized the intrinsic value of protecting the environment from harm, marking a profound departure from anthropocentric legal principles. Douglas's approach aimed at simplifying standing issues by

[43] Elizabeth MacPherson, *The (Human) Rights of Nature: A Comparative Study of Emerging Legal Rights for Rivers and Lakes in the United States of America and Mexico*, 31 DUKE ENVTL. L. & POL 327, 333 (2021).
[44] Scott W. Stern, *Standing for Everyone: Sierra Club v. Morton, Justice Blackmun*, 49 ENVTL. L. REP. 10063, 10072 (2019).
[45] McKeown, *supra* note 42 at 200.
[46] Stern, *supra* note 45 at 10063.
[47] *Sierra Club*, *supra* note 41 at 741 (Douglas, J., dissenting).
[48] *Id.* at 742 (Douglas, J., dissenting).

enabling direct representation of environmental interests, providing a basis for more robust environmental advocacy through the courts.

Justice Blackmun's dissent complemented and differed from Douglas's vision by focusing on pragmatic legal and procedural considerations combined with a concern for environmental protection. Blackmun acknowledged the ecological threats posed by development projects and the inadequacy of rigid standing requirements to address such challenges. He suggested two alternatives: requiring the Sierra Club to amend its complaint to allege injury to its members or adopting "an imaginative expansion"[49] of standing rules to allow environmental organizations to litigate without strict injury requirements, reflecting the Club's bona fide environmental mission. Blackmun's dissent reflected apprehension that denying standing would effectively allow harmful development to proceed unchallenged, harming areas of great natural beauty. Notably, he admitted the influence of his emotional investment in environmental protection, underscoring the tension between legal formalism and environmental necessity.[50] Together, these dissents constitute formative statements in the development of environmental standing doctrine and the broader Rights of Nature discourse.[51]

- **Lake Erie Bill of Rights**

The Lake Erie Bill of Rights (LEBOR) case[52] offers several important lessons for the more-than-human rights movement. Voters in Toledo, Ohio, adopted the Lake Erie Bill of Rights (LEBOR) due to industrial farm runoff polluting the lake.[53] It established basic rights for the people

[49] *Id.* at 758 (Blackmun, J., dissenting).
[50] McKeown, *supra* note 42 at 206.
[51] Stern, *supra* note 45 at 10063.
[52] *Drewes Farms Partnership v. City of Toledo*, 441 F. Supp. 3d 551 (2020).
[53] Marsha Jones Moutrie, *The Rights of Nature Movement in the United States: Community Organizing, Local Legislation, Court Challenges, Possible Lessons and Pathways*, 10 EARTH JURISPRUDENCE & ENVTL. JUST. J. 5, 20 (2020).

of Toledo and Lake Erie, prohibiting violations by corporations or the government.[54] LEBOR granted Lake Erie the right to "exist, flourish, and naturally evolve."[55] It is the first U.S. law to grant legal personhood to an ecosystem.[56]

LEBOR highlights the critical jurisdictional limitations that can arise when natural resource rights are asserted at the municipal level. It sought to allow residents to bring action against polluters on behalf of Lake Erie.[57] Municipalities typically lack the authority to establish new state court causes of action or invalidate permits granted under higher jurisdictions, which led to LEBOR's legal invalidation.[58] The case underscores the challenges posed by preemption, as LEBOR attempted to prohibit corporations from invoking state or federal preemption defenses and aimed to invalidate permits conflicting with its provisions.[59] The court ruled that LEBOR was unconstitutionally vague and violated Drewes Farm's right to due process.[60]

LEBOR faced immediate political and legislative resistance. The Ohio legislature moved to ban Rights of Nature laws and strip ecosystems of legal standing in state courts shortly after the District Court ruled.[61] This political backlash demonstrates the importance of securing broad public and political support when pursuing reforms at higher levels of government. LEBOR succeeded in galvanizing community activism and attracting national and international attention, empowering citizens frustrated with traditional avenues of environmental protection.[62] This

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[54] *Id.* at 22.
[55] *Lake Erie Bill of Rights*, TOLEDO CHARTER, CH XVII, § 254(a).
[56] Kathleen M Mannard, *Lake Erie Bill of Rights Struck Down: Why the Rights of Nature Movement Is a Nonviable Legislative Strategy for Municipalities Plagued by Pollution*, 28 BUFF ENVTL LJ, 40.
[57] *Id.*
[58] Kenneth Kilbert, *Lake Erie Bill of Rights: Stifled by All Three Branches Yet Still Significant*, 81 OHIO ST. L.J. ONLINE 227, 234 (2020).
[59] Alison M. Collins, *The Lake Erie Bill of Rights: Legal Challenges to Granting Rights to Nature*, 37 MICH ENV LAW J (2019).
[60] Dana Zartner, *Watching Whanganui & the Lessons of Lake Erie: Effective Realization of Rights of Nature Laws*, 22 VT. J. ENV'T L. 1, 30 (2021).
[61] *Section 2305.011*, OHIO REVISED CODE.
[62] Kilbert, *supra* note 59 at 236.

reveals the strategic value of symbolic rights-based laws as tools for raising awareness and mobilizing public engagement. Finally, LEBOR's lack of precise definitions and legal frameworks created enforcement uncertainties and vulnerabilities[63], highlighting the need for future legislation to provide clear, detailed provisions to withstand legal scrutiny.

- **Hawai'i**

The Hawai'ian volcano Mauna Kea exemplifies the critical role the Rights of Nature (RoN) framework can play in recognizing and protecting Indigenous cultural and spiritual connections to natural sites. For the Kanaka Maoli (Indigenous people of the Hawai'ian islands), Mauna Kea is not merely a physical location but a sacred elder and an integral part of their cosmology and identity.[64] Legal recognition of natural entities such as Mauna Kea and taro plants through personhood status would elevate their protection within environmental law, allowing these entities to have standing in court and shifting the focus from procedural formalities to honoring Indigenous stewardship and relationships with the land.[65] The RoN framework offers a substantive pathway to environmental justice, strengthening Indigenous sovereignty by protecting lands and resources essential to cultural survival.[66]

Mauna Kea's legal conflicts highlight the necessity of due process rights. Communities should be sought out and be considered before project approvals, underscoring the limitations of current environmental law in addressing Indigenous concerns.[67] Moreover, the Mauna Kea protests reveal the ongoing tensions between development interests and the imperative to safeguard sacred

[63] Collins, *supra* note 60.
[64] Karli Uwaine', *Rights of Nature in Hawai'i: Preserving The Relationship Between Natural Resources and Cultural Significance*, 53 ENV'T L. 239, 270 (2023).
[65] William N. K. Crowell, *Chipping Away at the Public Trust Doctrine: Mauna Kea and the Degradation Principle*, 21 APLPJ 1, 5 (2019).
[66] Oishi, Nina, *Love, Memory, and Reparations: Looking to the Bottom to Understand Hawai'i's Mauna Kea Movement*, 29 ASIAN AM. L.J. 126, 132 (2022).
[67] *Id.* at 129.

natural places, demonstrating the value of Rights of Nature laws in mediating such conflicts. The Mauna Kea case is a high-profile model for how Rights of Nature principles can offer meaningful legal protections for Indigenous peoples worldwide, helping to resolve environmental disputes while honoring Indigenous values and cultural heritage.[68]

A year ago, Representative Kirstin Kahaloa presented her bill House Bill 2077 (HB2077) to the legislature of Hawaii. She boldly proclaims the legal personhood for all watershed ecosystems. The bill states "[r]ights for nature offer a novel policy approach that can simultaneously and effectively enhance environmental policy outcomes while addressing related indigenous issues..." The provisions give natural resources associated with watersheds inalienable connection to the watershed's health, and no activities compromising this connection shall be approved. By following this legislative model, one could argue that nature's legal rights are not just an environmental necessity but also a means of respecting and preserving Indigenous sovereignty and spirituality.

- **Happy the elephant**

One of the most famous cases for nonhuman personhood, the Happy the elephant case, was brought by the Nonhuman Rights Project (NhRP).[69] It sought to establish legal personhood and bodily liberty rights for Happy, an Asian elephant in New York's Bronx Zoo for over 40 years. NhRP petitioned for a writ of habeas corpus, arguing that Happy's complex cognition, autonomy, and self-awareness entitled her to legal rights protecting her liberty and requiring her release to a sanctuary.[70] Expert testimony highlighted Happy's advanced cognitive capacities, and the psychological harm caused by her confinement and social isolation. NhRP pointed to the historical

[68] *Id.* at 144.
[69] *Nonhuman Right Project v. Breheny, __ N.Y.3d __, 2022 N.Y. Slip Op. 03859, at *1 (June 14, 2022), https://law.justia.com/cases/new-york/other-courts/2020/2020-ny-slip-op-35291-u.html.*
[70] Taimie L. Bryant, *What If Animals Are Moral Agents?*, 109 CORNELL L. REV. 1735, 1738 (2023).

use of habeas corpus to extend rights to marginalized human groups, urging the court to recognize similarly evolving moral obligations toward cognitively complex animals[71]. The Bronx Zoo and Wildlife Conservation Society (WCS) countered that Happy was well cared for under federal and professional standards and that relocation posed risks to her welfare.[72]

The New York courts rejected NhRP's request for a writ opn the g rounds thath habeas corpus protections apply only to humans, emphasizing that animals cannot bear legal duties and thus cannot possess legal rights like liberty. The courts expressed concern over potential broad societal impacts if nonhuman animals were granted fundamental rights, underscoring the judiciary's adherence to an anthropocentric legal framework.[73] Despite dismissal, the case signifies a shift in legal and social attitudes toward animal rights. The lawsuit coincides with broader societal changes, such as the Bronx Zoo ending elephant acquisitions and the circus industry's cessation of elephant acts, reflecting increased concern for animal welfare. In conclusion, while Happy's petition was unsuccessful, the case acts as a landmark in animal law, challenging traditional legal boundaries and promoting dialogue about extending fundamental rights to autonomous nonhuman animals.[74]

PROPOSALS

In order to move away from dominant anthropocentric legal approaches, we should be recognizing nature as having inherent rights. Rights of Nature is making inroads as global movement that seeks to move away from dominant anthropocentric legal approaches by

[71] Jessica Mansbacher Kibbe, *Happy to Be Included: Rethinking Our Rejection of Habeas Corpus Rights for Nonhuman Animals through the Framework of Nonhuman Rights Project, Inc. v. Breheny*, 20 ANIMAL & NAT. RESOURCE L. REV. 105, 110 (2024).
[72] Macarena Montes Franceschini, *Animal Personhood: The Quest for Recognition*, 17 ANIMAL & NAT. RESOURCE L. REV. 93, 130 (2021).
[73] Kibbe, *supra* note 72 at 110.
[74] Bryant, *supra* note 71 at 1738–1739.

recognizing nature as having inherent rights. RoN views nature—or specific ecosystems like rivers and forests—as rights-holders with intrinsic value and legal personality, rather than merely resources for human use. Gilbert highlights that RoN is based on acknowledging the interconnectedness and indivisibility of natural systems and their rights, which often align with principles found in human rights law, such as interdependence and indivisibility of rights.[75] He explains that RoN challenges traditional property rights by asserting that nature cannot be owned, which can lead to potential clashes between human rights (e.g., property rights, development rights) and nature's rights.[76] Despite the anthropocentric origins of human rights, Gilbert sees fertile ground for legal synergies between human rights law and RoN, with RoN offering a transformative shift in environmental governance by recognizing nature's legal standing independently of humans.[77]

Within this framework, Rights of Nature (RoN) offers an argument for protecting and restoring the Colorado river that recognizes the river as a legal subject with inherent rights to exist, flourish, and maintain its vital ecological functions. This approach would shift the legal framework from an anthropocentric focus—primarily on water rights and property interests—to a more holistic, ecological perspective that prioritizes the health and integrity of the river ecosystem itself. These are my proposals for challenging the US federal courts for personhood of the Colorado River:

LEGAL PERSONHOOD

Arguing for the personhood of a river involves recognizing it as a legal person with inherent rights to protect its ecological integrity. International precedents like New Zealand's Whanganui River,

[75] Gilbert, *supra* note 6 at 470.
[76] *Id.* at 471.
[77] *Id.* at 454.

Colombia's Atrato River, and India's Ganga and Yamuna Rivers, where courts recognized rivers' legal rights and appointed guardians to represent them.[78] While US courts don't generally regard foreign cases as authoritative. However, in this case, these precedents are relevant because

Legal personhood does not require consciousness but the capacity to hold rights and bear duties, allowing natural entities to be juristic persons under the law.[79] Strategic constitutional interpretations, such as environmental protection mandates in India's constitution, have enabled courts to grant personhood even where Rights of Nature aren't explicitly recognized.[80] Cultural and spiritual significance strengthens the argument, as many communities view rivers as sacred, paralleling legal personhood granted to religious idols. Moreover, ongoing environmental degradation due to governmental inaction creates a practical necessity for new legal frameworks that prioritize the river's health. The guardianship model appoints representatives who act on behalf of the river, ensuring its legal rights are enforced and its wellbeing maintained. Together, these elements reframe the river from a resource to a rights-bearing entity deserving legal protection and stewardship.[81]

INHERENT RIGHTS BEYOND HUMAN USE

The river would have the right to exist, persist, maintain and regenerate its natural cycles, structure, and functions. This recognizes that the health of the river is not solely a resource for human use but has intrinsic value and rights independent of economic or property interests.[82] Just like human rights are grounded in the inherent worth of individuals, the rights of nature arise from its own existence and the vital ecological functions it performs. For example, the Universal

[78] Martin and Kauffman, *supra* note 25 at 287.
[79] Roma Beke, *To What Extent Should Non-Human Animals Have Legal Rights?*, 5 YORK L. REV. 179, 186 (2024).
[80] Martin and Kauffman, *supra* note 25 at 287.
[81] MIHNEA TĂNĂSESCU, ENVIRONMENT, POLITICAL REPRESENTATION, AND THE CHALLENGE OF RIGHTS: SPEAKING FOR NATURE 115 (2016.
[82] Gilbert, *supra* note 6 at 454.

Declaration of the Rights of Mother Earth proclaims these rights as "inherent and inalienable," underscoring that they are not granted by humans but stem from the natural entity's very being.

This perspective is visible in how courts have recognized rivers as legal persons with rights to exist, flourish, regenerate, and maintain their natural cycles, beyond any instrumental value to human society.[83] Aoteroa New Zealand's Te Awa Tupua Act grants the Whanganui River a legal personality to protect its health irrespective of human use interests. This personhood is underpinned by human caretaking responsibilities rather than ownership.[84] Inherent rights beyond human use thus broaden the moral and legal consideration of nature, insisting on its protection as a rights-holder, which reflects a fundamental shift from anthropocentrism to an ecocentric legal paradigm.[85]

RESTORATION AND PROTECTION MANDATES

Under Rights of Nature (RoN), rivers are not only granted legal personhood but also endowed with specific mandates to restore and protect their natural health. The Whanganui River is legally recognized as a living whole with procedural rights to participate in governance systems that aim to protect and restore its health and wellbeing.[86] The Te Awa Tupua Act's guardianship system establishes a legal institution responsible for making decisions consistent with RoN principles, directed at not just protection but the active restoration of the river's ecological integrity.[87] Such mandates implicitly place obligations on governments, guardians, and society to take proactive steps—both restorative and preventive—to halt environmental degradation caused

[83] Martin and Kauffman, *supra* note 25 at 271.
[84] *Id.* at 273.
[85] Gilbert, *supra* note 6 at 454.
[86] Beke, *supra* note 80 at 185.
[87] Martin and Kauffman, *supra* note 25 at 273.

by human activities and to rehabilitate damaged ecosystems.[88] This framework moves beyond mere protection towards therapeutic intervention, recognizing the dynamic and evolving nature of ecosystems and their rights to regeneration. Restoration and protection mandates institutionalize a holistic, ongoing responsibility to safeguard nature's intrinsic rights, ensuring ecosystems like rivers are maintained not only for their instrumental value but as entities with their own rights to health, vitality, and continuity.

INTEGRATING INDIGENOUS PERSPECTIVES

Indigenous communities with historical ties to the Colorado River could act as guardians or legal representatives of the river, emphasizing reciprocal relationships and interdependencies between human and non-human life, echoing practices in other RoN applications. Indigenous peoples have actively pushed the boundaries of human rights law to integrate these cultural and spiritual dimensions, influencing international and regional legal systems. They have challenged the exploitative and state-centric approaches to environmental governance by emphasizing relational ontologies grounded in kinship and stewardship.[89] This has led to the "indigenization" of environmental law, where Indigenous rights and knowledge are embedded alongside emerging RoN doctrines, thus shaping governance regimes that better reflect holistic and sustainable relationships with nature.[90]

In practice, Indigenous legal principles inform river protection laws that recognize natural entities as living beings with rights, integrate guardianship roles for Indigenous peoples, and ensure that management decisions respect and promote Indigenous knowledge and values. These

[88] Erin Ryan, Holly Curry & Henry Rule, *Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement*, 42 CARDOZO L. REV. 2447, 2499 (2020).
[89] Gilbert, *supra* note 6 at 466.
[90] Jérémie Gilbert, *Creating Synergies between International Law and Rights of Nature.*, 12 TRANSNATIONAL ENVIRONMENTAL LAW 671, 690 (2023).

integrations enhance the legitimacy, effectiveness, and cultural resonance of RoN legislation, providing a decolonizing framework for environmental law and policy.[91]

BUILDING ON TRANSNATIONAL NETWORKS AND LEGAL PRECEDENTS

In Colorado and other Western states, water law has historically been governed by the prior appropriation doctrine, prioritizing water rights based on "first in time, first in right." The public trust doctrine, which in some jurisdictions recognizes the state's duty to protect certain natural resources for public use, has been disempowered in Colorado concerning protections for recreational and environmental values associated with waterways.[92] Despite this, Colorado has implemented programs aimed at environmental protections, such as dedicating natural streams for public use and establishing funds for wildlife, parks, rivers, and open spaces.[93]

Transnational RoN networks like the Global Alliance for the Rights of Nature (GARN) and other movements have facilitated the diffusion of innovative legal frameworks recognizing natural entities as rights-holders, drawing inspiration from pioneering laws like the Te Awa Tupua Act recognizing the Whanganui River as a legal person.[94] These networks provide legal tools, strategies, and normative frameworks that activists and communities in the US and elsewhere employ to challenge existing regulatory paradigms focused on commodification and exploitation of natural resources.[95]

In particular, Indigenous communities and environmental advocates in the US have advanced rights-based claims around water and ecosystems, emphasizing interdependence and reciprocal relationships between humans and nature, conceptually akin to the legal personhood

[91] Martin and Kauffman, *supra* note 25 at 271.
[92] Ryan, Curry, and Rule, *supra* note 89 at 2470.
[93] *Id.*
[94] Martin and Kauffman, *supra* note 25 at 273.
[95] *Id.* at 268.

and guardianship models emerging internationally.[96] These efforts, while not fully institutionalized at the federal or state legal level in Colorado or broader US law, demonstrate the influence of global RoN discourse on local movements seeking to enhance environmental protections beyond traditional water rights doctrines.

While the Colorado River and US water law remain largely governed by established doctrines limiting recognition of environmental values under formal legal frameworks, transnational networks and precedents from jurisdictions embracing Rights of Nature provide impetus and emerging pathways for rearticulating water governance. They encourage integration of ecological restoration, community stewardship, and recognition of waterways as rights-bearing entities, creating potential for transformative legal and policy reforms informed by Indigenous perspectives and international normative shifts.[97]

CONCLUSION

Recognizing the Colorado River as a legal person endowed with inherent Rights of Nature constitutes a transformative and overdue paradigm shift in environmental governance in the United States. For over a century, water law in the Western U.S., including Colorado, has been overwhelmingly shaped by anthropocentric doctrines such as prior appropriation, which prioritize human uses, economic interests, and property rights over ecological health. This traditional framework fails to adequately protect the river's ecosystems, leading to severe environmental degradation, diminished water quality, and compromised ecosystem services essential to millions of people and countless nonhumans alike. This paper has examined the emerging global movement and legal innovations aimed at recognizing rivers and other natural entities as rights-bearing

[96] *Id.*
[97] Ryan, Curry, and Rule, *supra* note 88 at 2471.

subjects, drawing heavily on landmark international examples such as New Zealand's Whanganui River, India's Ganga and Yamuna, and Colombia's Atrato River. These cases show that legal personhood, combined with guardianship models, can effectively integrate Indigenous perspectives, cultural values, and ecological restoration imperatives into formal management and legal protection.

The Colorado River, with its unique cultural, spiritual, and ecological significance, is well positioned to serve as the next watershed in advancing this legal and normative evolution. Indigenous communities and environmental advocates in the region have begun to articulate rights-based claims that emphasize relationality, reciprocity, and stewardship—core principles that can underpin transformative legal frameworks. However, fully institutionalizing such a rights-based approach in U.S. federal and state law requires overcoming significant challenges, including entrenched doctrinal barriers, political-economic conflicts, judicial skepticism, and enforcement gaps.

To succeed, legal strategies must be coupled with broad public engagement, advocacy for clear and enforceable guardianship structures, and robust ecological and scientific evidence documenting the river's condition and restoration needs. Furthermore, aligning these efforts with Indigenous sovereignty and cultural stewardship can enhance legitimacy and effectiveness. Ultimately, adopting Rights of Nature for the Colorado River is not merely a legal innovation but a moral imperative that redefines humanity's relationship with the natural world. It offers a critical pathway to ensuring the river's health, resilience, and vitality for generations to come, reshaping environmental law towards a more just, inclusive, and sustainable future. The proposals outlined in this paper chart a roadmap for activists, litigators, policymakers, and communities dedicated to reclaiming and protecting the right to exist of one of the West's most vital natural lifelines.

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