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## Will the River Ever Get a Chance To Speak? Standing Up For the Legal Rights Of Nature

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2019]

WILL THE RIVER EVER GET A CHANCE TO SPEAK?  
STANDING UP FOR THE LEGAL RIGHTS  
OF NATURE

I. INTRODUCTION

As environmentalists and conservationists around the globe race against the clock to reverse the effects of climate change, many have turned to litigation as a method to prevent further environmental degradation.<sup>1</sup> Although a relatively recent addition to this fight, traditional litigation efforts have already hit roadblocks in holding governments accountable through the traditional litigation framework.<sup>2</sup> Some in the heart of the fight have found that the “legal system is not aimed at protecting the environment . . . [y]ou have to take on the legal system itself if you are going to have sustainability or environmental protection.”<sup>3</sup> As a result, new strategies emerged to tackle the legal system’s inclination to treat the environment as a commodity.<sup>4</sup> Inspired by the traditional belief system of Indigenous peoples, many environmental organizations began to advocate for courts to assign legal personhood status to nature.<sup>5</sup>

Support for this legal “rights of nature” movement gained an impressive foothold in foreign countries and continues to make small strides in the United States as well.<sup>6</sup> The movement seeks to confer legal rights, or “legal personhood,” onto nature in order to bring a claim against governments or individuals who harm the environment.<sup>7</sup> Around the world, ecosystem organizations most com-

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1. Jeffrey Williamson, *As Climate Lawsuits Grow Worldwide, Legal Strategies Evolve Too*, CLIMATE LIABILITY NEWS (Dec. 26, 2018), <https://www.climateliabilitynews.org/2018/12/26/legal-strategy-climate-lawsuits/> (stating increase in number of climate change related lawsuits filed).

2. *Id.* (discussing often overlooked local community efforts to hold governments accountable for greenhouse gas emissions).

3. *Id.* (quoting Associate Director of Community Environmental Legal Defense Fund).

4. *Id.* (discussing legal system’s treatment of environment as property and commodity as motivation for creation of new strategies).

5. *Id.* (explaining new legal strategy used by environmentalists to protect environment).

6. *Rights of Nature Overview*, CMTY. ENVTL. LEGAL DEF. FUND, <https://celdf.org/rights/rights-of-nature/> (Feb. 15, 2019) (discussing evolution of rights of nature movement in United States in addition to foreign nations).

7. Jens Benöhr & Patrick J. Lynch, *Should Rivers Have Rights? A Growing Movement Says It’s About Time*, YALE ENV’T 360 (Aug. 14, 2018), <https://e360.yale.edu/>

monly attempt to secure legal rights for rivers and other bodies of water.<sup>8</sup>

The highest-profile domestic attempt to secure legal rights for the environment was filed on behalf of the Colorado River in 2017.<sup>9</sup> Although this litigation was stopped in its tracks, the case is emblematic of more successful litigation and regulations that secured legal rights for nature around the country, albeit on a smaller scale.<sup>10</sup> State and town governments in Ohio, Pennsylvania, and New Hampshire have previously contemplated, or are currently contemplating, enacting laws that would grant legal rights to local ecosystems.<sup>11</sup>

While the movement in the United States has progressed slowly, it has enjoyed markedly more success internationally.<sup>12</sup> Almost fifteen years ago, Ecuador drafted a new national constitution explicitly providing legal rights for nature, or “Pachamama.”<sup>13</sup> Permitting “all persons, communities, peoples and nations [to] call upon public authorities to enforce the rights of nature,” Ecuador’s constitutional provision has been incorporated into the country’s criminal and environmental codes to protect the right of nature.<sup>14</sup>

In another noteworthy case, the New Zealand government granted legal rights to the Whanganui River in order to resolve a long-standing property dispute with the Maori Tribe.<sup>15</sup> New Zealand’s recognition of the river as a living entity explicitly articulated the rights it possessed.<sup>16</sup> Despite the progress in both Ecuador and

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features/should-rivers-have-rights-a-growing-movement-says-its-about-time (explaining central tenet behind rights of nature movement).

8. *Id.* (discussing worldwide movement to secure legal rights for rivers).

9. *Colorado River Ecosystem v. State of Colorado*, CLIMATE CASE CHART (2017), <http://climatecasechart.com/case/colorado-river-ecosystem-v-state-colorado/?cn-reloaded=1> (stating factual background of Colorado River litigation).

10. *See Rights of Nature Overview*, *supra* note 6 (noting instances of state legislative and legal actions conferring human rights on environment).

11. *See Press Releases and Blogs*, CMTY. ENVTL. LEGAL DEF. FUND <https://celdf.org/category/news/press-releases-and-blogs/> (Jan. 19, 2019) (noting recent state developments in rights of nature movement progress).

12. *See Rights of Nature Overview*, *supra* note 6 (discussing variety of countries that have enacted or found legal rights in nature).

13. Adam Wernick, *Environmental Lawyers Seek Legal Rights for the Natural World*, PUB. RADIO INT’L (Dec. 2, 2017) <https://www.pri.org/stories/2017-12-02/environmental-lawyers-seek-legal-rights-natural-world> (discussing Ecuador’s role in rights of nature movement).

14. *Id.* (noting permeation of constitutional provision into Ecuador’s legal system).

15. *See id.* (asserting movement’s success in New Zealand as most noteworthy and momentous to date).

16. *Id.* (explaining practical expectations as well as effects of law passed by New Zealand government to put into practice).

New Zealand functioning as a model for countries around the world who seek to accomplish the same goals, headway in the United States has failed to rise above the grassroots level and remains an open-ended question in the courts.<sup>17</sup>

## II. HISTORY IN THE UNITED STATES

The most significant attempt at establishing the right of nature legal doctrine was initiated on behalf of the Colorado River.<sup>18</sup> Reaching and serving seven states, the Colorado River watershed covers eight percent of the United States.<sup>19</sup> As the “lifeline of the region,” the river has breathed life into millions of people in the American West.<sup>20</sup> Unfortunately, its life-giving role has led to its own downfall, and the Colorado River “bears the burden of ‘over-allocation, over-use, and more than a century of manipulation.’”<sup>21</sup> The excessive use of the river’s water by towns and cities on the banks of the more populated regions earned it the first spot on America’s Most-Endangered River Report in 2017.<sup>22</sup> Considering the extensive reach of the river as a source for drinking water for one-in-ten Americans, it is of devastating concern that it is one of the few rivers in the world that often dries up before it reaches the ocean.<sup>23</sup>

The fears about the river are not recent, as environmentalists have deliberated over their concerns for almost one-hundred years.<sup>24</sup> These past one hundred years have seen significant litigation battles, including one of the longest United States Supreme Court cases in history, and yet the health of the River continues to

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17. See *Rights of Nature Overview*, CMTY. ENVTL. LEGAL DEF. FUND, <https://celdf.org/rights/rights-of-nature/> (Feb. 15, 2019) (noting example Ecuador and New Zealand set for other countries seeking to enact similar laws).

18. Nicholas Bilof, *The Right to Flourish, Regenerate, and Evolve: Towards Juridical Personhood for an Ecosystem*, 10 GOLDEN GATE U. ENVTL. L.J. 111, 126 (2018) (explaining significance and use of Colorado River in American West).

19. *Id.* at 123 (discussing expansive geographical reach in addition to “life-giving presence” of Colorado River in region).

20. *Id.* (asserting that Colorado River is most “divided and overused” in U.S.).

21. *Id.* (noting severe “strain” resulting from centuries of use).

22. *Id.* at 124 (discussing reliance on Colorado River drinking and agriculture in Arizona and southern Colorado as primary concern for vitality of river).

23. See Bilof, *supra* note 18, at 124 (noting river provides significant number of Americans with drinking water and grows ninety percent of winter vegetables in U.S.).

24. *Id.* at 125 (noting Colorado River Compact was signed in 1922 and provided for allocation of water resources between seven basin states).

decline.<sup>25</sup> With few options left, environmentalists have turned to the novel legal strategy of rights of nature to save the river.<sup>26</sup>

The groundbreaking lawsuit was filed against the State of Colorado on behalf of the Colorado River Ecosystem.<sup>27</sup> The suit asked the state to recognize the river as a legal person, as well as to grant it equal protection of its fundamental rights.<sup>28</sup> The complaint named the Colorado River Ecosystem as the plaintiff, but included “next friends,” environmental organizations, as the “guardians” of the Ecosystem.<sup>29</sup> Notably, unlike most other environmental cases supported by a wide array of environmental organizations, next friends functioned in a role akin to a *guardian ad litem*.<sup>30</sup> Traditionally, organizations in an environmental action assume the responsibility of establishing standing by proving environmental degradation has harmed them.<sup>31</sup> By contrast, this movement designated the river as the plaintiff itself, equipped with the same ability to be harmed as a person - the decades old challenge of finding “someone” who has injury-in-fact is avoided.<sup>32</sup>

The suit not only advocated for recognition of the Colorado River’s legal personhood, but also alleged that the State of Colorado enacted and enforced policies that devastated the river’s ecosystem.<sup>33</sup> The plaintiffs requested that the court find the river has fundamental rights, and that the State violated these rights.<sup>34</sup> The complaint stated the river possessed the inherent right “to exist . . . to flourish . . . to regenerate . . . to be restored . . . [and] to naturally evolve.”<sup>35</sup> Deriving authority from the Federal Declara-

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25. *Id.* at 126 (discussing traditional legal framework for environmental suits). The Colorado River, like other ecosystems in traditional litigation in the U.S. has existed as an object, or property, of the litigation itself; standing “outside the courtroom doors.” *Id.* (noting history of litigation surrounding Colorado River and its centrality to human livelihood).

26. *Id.* (explaining strategy here as direct result of perceived failure of traditional legal system’s ability to prevent degradation).

27. *Id.* (explaining early stages of litigation in Colorado River case).

28. *See* Bilof, *supra* note 18, at 126 (explaining plaintiffs’ attempt to sue in name of ecosystem).

29. *See id.* at 127 (detailing posture of Colorado River action).

30. *Id.* at 127-28 (distinguishing role named supporters play in Colorado River action in comparison with traditional litigation).

31. *Id.* at 128 (discussing traditional role of “friends” in environmental suits).

32. *Id.* (arguing traditional environmental lawsuits are “hampered by th[e] human-centered standing approach.”).

33. *See* Bilof, *supra* note 18, at 130-31 (stating plaintiff’s primary argument against state).

34. *Id.* at 131 (adding lawsuit asked court to prevent state from further violating ecosystem’s rights by halting destructive policies and actions).

35. *Id.* at 132 (citing complaint from Colorado River action).

tory Judgment Act, the complaint argued the court had the power to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”<sup>36</sup>

In the end, the plaintiffs withdrew the lawsuit from federal district court under threat of sanctions from the Colorado Attorney General.<sup>37</sup> The Colorado Attorney General was “seeking sanctions against [the plaintiff’s attorney] under Rule 11 of the Federal Rules of Civil Procedure, which allows U.S. District Courts to punish lawyers for pleadings with improper purpose or frivolous arguments.”<sup>38</sup> As a result, the plaintiff’s attorney withdrew the lawsuit to avoid distracting procedural hurdles.<sup>39</sup> Reaffirming their commitment to secure personhood rights for the river, the environmentalists who filed on the river’s behalf acknowledged the complex pathway to achieving this goal and desired to avoid getting caught in a fight over sanctions.<sup>40</sup> The Colorado River’s attorney, Jason Flores-Williams, made clear that withdrawal did not signify a lack of faith in the power of the courts to legitimize the movement, stating, “[t]here is movement on the ground now, and as long as that is there it will make its way into the courts.”<sup>41</sup>

#### A. Lake Erie, Ohio

As Flores-Williams predicted, though the efforts on behalf of the Colorado River did not ultimately succeed in federal court, the movement behind the lawsuit remains steadfast.<sup>42</sup> Born from a citizen-led ballot initiative in Ohio, “the Toledo City Council voted unanimously to place the proposed ‘Lake Erie Bill of Rights’ onto

36. *Id.* at 131 (citing 28 U.S.C. § 2201 (2007)) (explaining plaintiffs’ argument that court had power to grant relief under Federal Declaratory Judgment Act).

37. Reed Benson, *Is There a Right to Life for the Colorado River?*, THE DENVER POST (Dec. 15, 2017), <https://www.denverpost.com/2017/12/15/is-there-a-right-to-life-for-the-colorado-river/> (stating reason for Colorado River action withdrawal).

38. 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/> (summarizing communications between attorneys threatening sanctions).

39. *Id.* (paraphrasing Colorado River’s attorney Jason Flores-Williams’ justification for withdrawing lawsuit).

40. *Id.* (restating goals of those acting on behalf of Colorado River to continue fight to secure constitutional personhood status).

41. *Id.* (quoting Flores-Williams in remarks given after judge granted voluntary motion to dismiss).

42. See *Press Releases and Blogs*, *supra* note 11 (outlining multiple rights of nature efforts around United States).

the ballot for a vote in February” of this year.<sup>43</sup> Similar to the Colorado River effort, this proposed bill was drafted to remedy harm done to Lake Erie, including the “significant pollution, agricultural runoff, and other industrial activities, which have caused severe impacts on water quality and the health of the lake ecosystem.”<sup>44</sup> Unlike the Colorado River movement, the Toledo environmentalists have attempted to redefine the legal system through a different route, bringing the choice “to recognize rights of an ecosystem” straight to the representatives.<sup>45</sup>

In a similar example, a constitutional amendment (CACR 8) was introduced in January 2019 in New Hampshire to secure the rights of nature.<sup>46</sup> CACR 8 “guarantees the authority of people in towns throughout New Hampshire to enact local laws protecting individual rights, communities, and the natural environment, free from state and corporate interference that would diminish those rights.”<sup>47</sup>

#### B. Grant Township, Pennsylvania

A grassroots battle astir in Pennsylvania represents the fundamental question at the center of the rights of nature movement.<sup>48</sup> In 2014, Grant Township, a small community in rural Western Pennsylvania, enacted a “Community Bill of Rights” town ordinance in response to the Environmental Protection Agency’s (EPA) approval of a waste disposal site in their town.<sup>49</sup> Pennsylvania General Energy Company (PGE) received approval to convert a former gas producing well into an injection well for wastewater produced by

43. *Rights of Lake Erie: One Step Closer to the Ballot, One Step Closer to Recognition*, CMTY. ENVTL. LEGAL DEF. FUND (Dec. 6, 2018), <https://celdf.org/2018/12/press-release-rights-of-lake-erie-one-step-closer-to-the-ballot-one-step-closer-to-recognition/> (discussing progress made in Ohio to secure legal rights for Lake Erie).

44. *Id.* (explaining motivation behind Lake Erie Bill of Rights).

45. *Id.* (explaining proposed Lake Erie Bill of Rights will be first law in U.S. to recognize rights of nature if passed).

46. *See New Hampshire Legislators to Consider Community Rights State Constitutional Amendment*, CMTY. ENVTL. LEGAL DEF. FUND (Jan. 4, 2019), <https://celdf.org/2019/01/press-release-new-hampshire-legislators-to-consider-community-rights-state-constitutional-amendment/> (discussing rights of nature efforts in New Hampshire inspired by efforts in Ohio and Oregon).

47. *Id.* (explaining purpose of CACR 8 is to ensure protection of environment).

48. *See Rights of Nature Overview*, *supra* note 6 (outlining efforts in Pennsylvania to make rights of nature part of legal code).

49. Susan Phillips, *Indiana County Township Claims Ecosystem Has Legal Rights*, STATE IMPACT PA. (Dec. 1, 2014), <https://stateimpact.npr.org/pennsylvania/2014/12/01/indiana-county-township-claims-ecosystem-has-legal-rights/> (summarizing conflict between Grant Township and EPA).

fracking.<sup>50</sup> PGE's plan involved "inject[ing] [forty-two thousand] gallons of fracking wastewater a day into a layer of rock 7,500 feet beneath the ground, where it was to remain for eternity."<sup>51</sup> Fracking wastewater "is a toxic brew containing some of the carcinogenic and flammable chemicals left over from the fracking process, as well as heavy metals and radioactive elements like radon and radium that seep out of deep rock layers."<sup>52</sup> Township residents were concerned the fracking wastewater would leak fracking waste into the Little Mahoning watershed and contaminate the township's drinking water supply.<sup>53</sup>

Three months after the EPA approved the wastewater injection disposal project, Grant Township's elected supervisors unanimously approved the Community Bill of Rights ordinance, banning the proposed wastewater injection well based on the community's right to a healthy environment.<sup>54</sup> Opponents to the wastewater injection well turned to the Community Bill of Rights ordinance as a last resort, finding traditional methods of protest failed them.<sup>55</sup> This is a position residents opposed to local fracking often find themselves in, struggling to attract the attention and support of the EPA.<sup>56</sup> Employing legal assistance from the Community Environmental Legal Defense Fund (CELDF), the town residents put into motion an ordinance granting them the right to ban the injection well.<sup>57</sup> Notably, the ordinance provided not only the residents, but also the Little Mahoning Watershed, with the right to ban detrimental environmental activity.<sup>58</sup> The Community Bill of Rights also explicitly

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50. *Id.* (explaining PGE plan for fracking injection disposal site).

51. Justin Nobel, *How a Small Town is Standing Up to Fracking*, ROLLING STONE (May 22, 2017), <https://www.rollingstone.com/politics/politics-news/how-a-small-town-is-standing-up-to-fracking-117307/> (summarizing grassroots fight against wastewater disposal sites).

52. *Id.* (discussing hazards of fracking wastewater to humans).

53. Justin Dennis, *Township Takes Novel Approach to Ban Fracking*, THE MORNING CALL (Dec. 15, 2014), <https://www.mcall.com/news/nationworld/pennsylvania/mc-fracking-water-tributary-20141213-story.html> (noting concern of Grant Township residents prior to drafting Community Bill of Rights).

54. *See id.* (reporting on community reaction to EPA approval of PGE project).

55. *See Nobel, supra* note 51 (discussing Grant Township residents' efforts to oppose injection well by raising concerns in municipal public hearings).

56. *Id.* (quoting to EPA's view of injection wells as safe option for disposal of hazardous material).

57. *See Rights of Nature Overview, supra* note 6 (discussing purpose of Community Bill of Rights ordinance).

58. *See HOME RULE CHARTER OF THE TWP. OF GRANT, INDIANA COUNTY, PA. ART. I § 106* (2014) (<https://celdf.org/wp-content/uploads/2016/02/Grant-Township-Community-Rights-Home-Rule-Charter.pdf>) (asserting right of natural communities and ecosystems within Grant Township to thrive).



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prohibited any “corporation or government to engage in the depositing of waste from oil and gas extraction.”<sup>59</sup> In a pivotal provision epitomizing the crux of the natural rights doctrine, the Community Bill of Rights allowed for the “ecosystems and natural communities within Grant Township [to] enforce their rights . . . through an action brought by Grant Township or residents . . . in the name of the ecosystem or natural community as the real party in interest.”<sup>60</sup>

PGE provided the Grant Township citizens with the opportunity to test their new ordinance just two months after it was passed, when PGE filed suit against the township to “overturn the ban” against wastewater disposal.<sup>61</sup> CELDF quickly jumped into the fight, petitioning to intervene in the suit on behalf of the ecosystem and the residents’ interests.<sup>62</sup> Holding true to the pledge made in the Community Bill of Rights, the CELDF named the Little Mahoning Creek as the intervenor, officially designating the ecosystem as a legal party in the action.<sup>63</sup>

The environmental attorneys who filed on behalf of the *Little Mahoning Creek* were attempting to force the hand of the court, by making the court first answer if the *Little Mahoning Creek* could even intervene in a lawsuit.<sup>64</sup> Additionally, the attorneys petitioned the court to uphold the ordinance by concluding the ecosystem could defend its rights to exist free from harm, and could ban the wastewater well.<sup>65</sup>

PGE’s suit alleged the ban violated the corporation’s constitutional rights and “exceeds the limits of the governmental authority.”<sup>66</sup> The township residents found PGE’s lawsuit ironic because PGE’s “claims [were] based on corporate personhood.”<sup>67</sup>

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59. *Id.* § 301 (stating prohibition on gas extraction waste disposal).

60. *Id.* § 305 (asserting legal right of nature for ecosystems in Grant Township).

61. Dennis, *supra* note 54 (discussing PGE lawsuit suit and motion seeking preliminary injunction against Community Bill of Rights).

62. *Id.* (discussing purpose behind motion to intervene, to provide “a voice” for the ecosystem).

63. Hope Babcock, *A Brook with Legal Rights: The Rights of Nature in Court*, 43 *ECOLOGY L. Q.* 1, 3 (2016) (discussing tactic to prove harm inflicted on environment without harm done to humans).

64. Phillips, *supra* note 49 (noting petition to court to answer question of Little Mahoning Creek’s legal standing).

65. *See Rights of Nature Overview*, *supra* note 6 (noting Community Environmental Legal Defense Fund’s motion to intervene on behalf of Little Mahoning Watershed as first instance of ecosystem intervening in lawsuit).

66. Nobel, *supra* note 51 (explaining opposition to wastewater well).

67. Dennis, *supra* note 54 (quoting attorney representing interests of Little Mahoning Creek and Grant Township residents).

It appears the natural rights movement has progress to make, at least in Grant Township.<sup>68</sup> A judge in the U.S. District Court for the Western District of Pennsylvania denied Little Mahoning Creek's intervening motion, refusing to recognize legal personhood for the ecosystem.<sup>69</sup> Likewise, the court also overturned the ban on the injection wastewater well in the Community Bill of Rights.<sup>70</sup> The CELDF attorney challenged the District Court's decision, but the Third Circuit affirmed the lower court's decision that the Little Mahoning Creek could not be a party to litigation.<sup>71</sup> Even worse, in 2018, the magistrate judge in the district court sanctioned the CELDF attorney for filing motions against PGE that were merely an effort "to relitigate the denial of Grant Township's initial motion."<sup>72</sup> These decisions have not discouraged those fighting for the ecosystem's right and the CELDF attorney challenged the court's sanctions, arguing that "[i]f the law worked that way, the law would never change."<sup>73</sup> These efforts across the United States represent the often unsuccessful, yet consistent and widespread movements around the world to recognize the rights of nature.<sup>74</sup>

### III. VICTORIES ABROAD: THE SUCCESS AND ACCEPTANCE OF THE RIGHTS OF NATURE MOVEMENT INTERNATIONALLY

The movement has had much more success integrating the doctrine into the legal systems abroad, with the hope that the codified acceptance will have a domino effect around the world.<sup>75</sup> Ecuador was the first country to take a formal step by introducing

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68. Nobel, *supra* note 51 (discussing federal court judge's rejection of Little Mahoning Creek's intervening motion and ordinance altogether).

69. *Id.* (stating Judge Susan Baxter of U.S. District Court for Western District of Pennsylvania's rejection of legal personhood for Little Mahoning Creek).

70. *Id.* (explaining court's decision affirming PGE's right to conduct fracking waste disposal in township).

71. Pa. Gen. Energy Co. v. Grant Twp., C.A. No. 14-209 ERIE, 2018 WL 306679, at \*2 (discussing Third Circuit's affirmation of decision in favor of PGE).

72. *Id.* (expressing displeasure with Community Environmental Legal Defense Fund attorney's motion for reconsideration).

73. Reid Frazier, *Judge Fines Environmental Attorneys \$52,000 For 'Frivolous' Injection Well Suit*, STATE IMPACT PENNSYLVANIA (Jan. 12, 2018), <https://stateimpact.npr.org/pennsylvania/2018/01/12/judge-fines-environmental-attorneys-52000-for-frivolous-injection-well-suit/> (quoting attorney from Community Environmental Legal Defense Fund who was sanctioned).

74. *Id.* (discussing growing movement resulting from decades of actions to recognize rights of nature in United States).

75. See *Rights of Nature Overview*, *supra* note 6 (discussing global emergence of government acceptance of rights of nature doctrine).

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rights of nature into their constitution in 2008.<sup>76</sup> The provision, voted on by Ecuadorian citizens, included a “bill of rights for nature.”<sup>77</sup> By circumventing, as residents of Grant Township, Pennsylvania tried and failed to do, the new laws converted the legal status of nature “from being simply property to being a right-bearing entity.”<sup>78</sup> The provisions explicitly provide that “[n]atural communities and ecosystems possess the unalienable right to exist, flourish and evolve within Ecuador. Those rights shall be self-executing, and it shall be the duty and right of all Ecuadorian governments, communities, and individuals to enforce those rights.”<sup>79</sup> Aided by the CELDF attorney who filed to intervene on behalf of the Little Mahoning Creek in Pennsylvania, the provision marks the first shift away from “people-based” legal frameworks, due in large part to the difficulty humans have in proving evidence of injury from environmental destruction.<sup>80</sup>

#### A. Ecuador and “Pachamama”

Ecuador knows the hardships and pitfalls of traditional environmental regulatory litigation and legislation.<sup>81</sup> Uniquely positioned geographically and containing every South American ecosystem, Ecuador has experienced severe resource deprivation due to “disastrous collisions with multi-national companies.”<sup>82</sup> Ecuadorian citizens also have a vested interest in saving their country’s ecosystems.<sup>83</sup> Their interest lies not only in the health of the environment, but also in the revitalization of the country’s economy, torn apart by resource exploitation that has “left little but pollution

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76. *Id.* (noting Ecuador’s precedent setting move to incorporate rights of nature into constitution).

77. Clare Kendall, *A New Law of Nature*, THE GUARDIAN (Sept. 24, 2008), <https://www.theguardian.com/environment/2008/sep/24/ecuador.conservacion> (discussing process by which rights of nature provision was introduced into Ecuador’s constitution).

78. *Id.* (noting new official legal status of nature after constitution is approved).

79. *Id.* (quoting provision granting rights of nature in Ecuadorian constitution).

80. *Id.* (discussing difficulties in proving degraded environment causes physical injuries, using example of proving link between cancer and polluted drinking water).

81. *Id.* (discussing Ecuador polling ahead of vote on constitutional provision that demonstrated fifty-six percent of citizens were in favor of provision).

82. *See* Kendall, *supra* note 77 (discussing Ecuador’s tenuous relations with multinational corporations).

83. *See id.* (noting Ecuadorian citizens’ reliance on country’s ecosystems).

and poverty in their wake.”<sup>84</sup> Ecuador recently filed suit against Chevron, the oil giant, for “dumping billions of gallons of crude oil and toxic waste waters into the Amazonian jungle over two decades.”<sup>85</sup> Ecuadorians claimed Chevron broke international laws regulating toxic waste disposal by dumping oil into “unlined pits” in the Amazon jungle over a span of twenty years.<sup>86</sup> The citizens’ primary concern was contamination of the groundwater in the surrounding areas.<sup>87</sup>

Though Ecuador’s ecosystems have suffered from past multinational business relationships, the constitutional provision was in large part spurred by fear about the future of more non-industrialized land in the country.<sup>88</sup> The Yasuni National Park is home to two “uncontacted” Amazonian tribes and vast biodiversity.<sup>89</sup> In addition, the Yasuni National Park contains “a possible 1.2 . . . [billion] barrels of untapped crude oil” beneath its surface, which many multinational oil companies are interested in.<sup>90</sup> Many environmental activists see the rights of nature legal doctrine as the last safeguard for relatively untouched land.<sup>91</sup> As one environmental lawyer pleaded, “[T]he hope is that the new laws will give us unprecedented legal muscle to protect areas like this where there are competing interests.”<sup>92</sup>

The Ecuadorian constitutional provision specifies, “[n]ature, or Pachamama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structures, functions and evolutionary processes.”<sup>93</sup> Ecuadorian citizens have already used these broad and comprehensive protections to defend their ecosystems in litigation, “where the courts upheld and affirmed the constitutional

84. *See id.* (discussing how multinational corporations’ exploitation of resources in Ecuador has brought significant poverty to Ecuadorian citizens).

85. *Id.* (illustrating example of multinational corporation’s negative business activity in Ecuador).

86. *Id.* (specifying that Chevron’s oil disposal affected thirty thousand Ecuadorians’ groundwater).

87. *See Kendall, supra* note 77 (discussing significant concerns about contaminated groundwater).

88. *See id.* (summarizing purpose of legislation to protect national parks).

89. *Id.* (noting most environmental concerns relate to Yasuni National Park).

90. *Id.* (specifying Yasuni National Park potentially contains 1.2 billion barrels of crude oil as exact amount is unknown).

91. *See id.* (discussing potential importance of rights of nature provision to Yasuni National Park).

92. *Id.* (quoting attorney for Foundation of International Environmental Law and Development).

93. *Rights of Nature Overview, supra* note 6 (quoting language from Ecuadorian constitution).

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rights of ecosystems.”<sup>94</sup> The provisions have also been used to enjoin government projects that negatively interfere with the environment.<sup>95</sup> The Vilcabamba River, operating as the plaintiff, brought suit against the Ecuadorian government to stop a road construction project that was actively harming the river.<sup>96</sup> The court ruled in favor of the river, upholding and securing the right of nature in Ecuador.<sup>97</sup>

#### B. Maori Tribe’s Influence in New Zealand

Following Ecuador’s lead, New Zealand residents secured constitutional personhood for a former national park and the Whanganui River.<sup>98</sup> Unlike in Ecuador, the driving force behind the victories in New Zealand was primarily the work of the Maori tribe, New Zealand’s indigenous peoples.<sup>99</sup> The first swath of land protected was Te Urewera, an “821 square-mile national park on the North Island” of New Zealand, technically owned by the New Zealand government, though its ownership was challenged by the Maori people for years.<sup>100</sup> The Maori people successfully negotiated for the government to relinquish its ownership rights over the Te Urewera “and the land became a legal entity with ‘all the rights, powers, duties and liabilities of a legal person,’ as the statute puts it.”<sup>101</sup> New Zealand’s legislation, the Te Urewera Act, enumerates the benefits to all citizens and the nation itself of recognizing Te Urewera as its own entity, perhaps even moreso than the Ecuadorian constitution.<sup>102</sup> As the Act details, the purpose of the legisla-

94. *Id.* (noting cases brought under new Ecuadorian provisions protecting legal rights of nature are first lawsuits of their kind).

95. *See id.* (discussing lawsuit brought by Richard Wheeler and Eleanor Huddle on Vilcabamba River’s behalf in 2011).

96. *Id.* (explaining River’s argument that road-widening construction project was threatening health of river).

97. *Id.* (noting court’s ruling in favor of river was first time court upheld constitutional rights for environment).

98. *See* Wernick, *supra* note 13 (discussing rights of nature development in New Zealand as significantly noteworthy).

99. *Id.* (explaining conflict over land use and environmental control between Maori tribe and colonial government dates back 150 years).

100. Bryant Rousseau, *In New Zealand, Lands and Rivers Can Be People (Legally Speaking)*, N.Y. TIMES (July 13, 2016), <https://www.nytimes.com/2016/07/14/world/what-in-the-world/in-new-zealand-lands-and-rivers-can-be-people-legally-speaking.html> (noting Te Urewera was national park from 1954 to 2014 with public access still allowed despite change in legal status).

101. *Id.* (noting New Zealand government released formal ownership of Te Urewera under Te Urewera Act of 2014).

102. Te Urewera Act 2014 No. 51, § 4 (July 27, 2014), <http://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183610.html> (detailing purpose of legislation to benefit of all New Zealand citizens and land itself).

tion is to “establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth . . . [and to] preserve as far as possible the natural features and beauty . . . the integrity of its indigenous ecological systems and biodiversity, and its historical and cultural heritage.”<sup>103</sup>

The Maori tribe also convinced the New Zealand government to extend legal recognition to the Whanganui River, the nation’s third largest river.<sup>104</sup> The tribe’s mission of heightening the river’s legal status was focused on more than the protection of the ecosystem.<sup>105</sup> The Maori tribe’s reasoning was based on its ancestral ties to the Whanganui River, declaring the river was a relative to the tribe in the same way a human ancestor was.<sup>106</sup> Equating the harm done to the river to the harm done to the tribe itself, tribe members “wept with joy when their bid to have their kin awarded legal status as a living entity” was codified.<sup>107</sup> The spiritual belief that the Maori tribe is “at one with and equal to the mountains, the rivers and the seas” sets a novel precedent for tribes around the world seeking to enact similar legislation based on their ancestral ties to the land.<sup>108</sup>

Part of the failure to accept the rights of nature legal doctrine in the United States may be explained by the resistance to ancestral-based claims.<sup>109</sup> One legal scholar posits that “the Western world’s conception of personal property” could be the primary impediment to the progress of the right of nature doctrine.<sup>110</sup> The scholar states, “much of the world’s land is owned by governments, and ‘governments do not have the same personal attachment individuals do,’ and . . . indigenous cultures around the world have never

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103. *Id.* (citing Section 4(b) of Te Urewera Act).

104. *See* Wernick, *supra* note 13 (discussing Whanganui River’s legal recognition agreement between Maori tribe and New Zealand government).

105. *See* Eleanor Ainge Roy, *New Zealand River Granted Same Legal Rights as Human Being*, THE GUARDIAN (Mar. 16, 2017), <https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being> (discussing local Maori tribe’s advocacy on behalf of Whanganui river).

106. *Id.* (discussing viewpoint of Maori tribe, including lead negotiator for tribe in talks with New Zealand government who believes river is Maori’s true ancestor).

107. *Id.* (explaining tribal reaction negotiated outcome which granted Whanganui River legal status).

108. *Id.* (discussing impact and potential influence that Maori tribe case will have on other tribes with ancestral ties to land).

109. *See* Wernick, *supra* note 13 (citing to environmental lawyer David Boyd’s book).

110. *Id.* (citing Boyd’s argument for why rights of nature movement is unsuccessful in United States).

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viewed nature as property and so they often cherish and protect nature in ways ‘modern’ cultures do not.”<sup>111</sup>

### C. India Follows Suit

The victories of the Maori tribe in New Zealand made waves around the region, including a court in the northern Indian state of Uttarakhand granting legal recognition of rights to the Ganges and Yamuna Rivers.<sup>112</sup> The Ganges River and its tributaries, stretching 2,500 kilometers, are “considered sacred by more than one billion Indians.”<sup>113</sup> The river’s primary environmental concern is pollution in the form of sewage, pesticides, and industrial waste.<sup>114</sup> The Yamuna River, the principal tributary of the Ganges, experienced significant degradation from years of economic development.<sup>115</sup> Specifically, the river was “treated chemically before being supplied to Delhi’s nearly nineteen million residents as drinking water.”<sup>116</sup> The court grounded its decision to recognize rights for the river in claims that the state governments “were not cooperating with federal government efforts to set up a panel to protect the Ganges.”<sup>117</sup> Citing to the Whanganui River example in the decision, the judges deemed the Ganges River and its tributaries “legal and living entities having the status of a legal person with all corresponding rights, duties, and liabilities.”<sup>118</sup>

## IV. HISTORICAL LEGAL SUPPORT IN THE UNITED STATES: DO WE, OR THE RIVERS, STAND A CHANCE?

Environmental activists and attorneys often point to the famed “Should Trees Have Standing?” law review article from the 1970s as inspiration for their movement.<sup>119</sup> Professor Christopher Stone of

111. *Id.* (quoting Boyd’s analysis of difference in Western and indigenous conceptions of land and property).

112. Michael Safi, *Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings*, THE GUARDIAN (Mar. 21, 2017), <https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings> (discussing right of nature movement progress in India).

113. *Id.* (explaining cultural and spiritual significance of Ganges River to Indian citizens).

114. *Id.* (noting environmental concerns of Indian citizens regarding Ganges River).

115. *Id.* (discussing harm done to Ganges River and tributaries).

116. *Id.* (discussing importance of Ganges River tributaries to Indians).

117. See Safi, *supra* note 112 (explaining how court’s decision originated).

118. *Id.* (quoting Judges Rajeev Sharma and Alok Singh in their decision to confer legal personhood onto Ganges river and its tributaries).

119. See Babcock, *supra* note 63, at 2 (discussing progress made in nature movement rights forty-two years after Professor Stone’s article).

the University of Southern California Gould School of Law was one of the first in the legal field to speculate about the “unthinkable” idea that the environment could be granted legal rights.<sup>120</sup> In particular, Professor Stone ruminated on the progression of recognized rights throughout modern history, noting many classes of people who now have fundamental rights were not always so lucky.<sup>121</sup> Detailing the shift from recognizing fundamental rights as belonging only to white males, to conferring rights to women, children, African Americans, and fetuses, Professor Stone also notes that non-humans have been granted rights as well.<sup>122</sup> Professor Stone, writing that acceptance of non-human entities as having rights seemed foreign and improbable at the time of introduction, asserts that “the world of the lawyer is peopled with in-animate right-holders: trusts, corporations, joint ventures, . . . to mention just a few.”<sup>123</sup> The Professor challenged the notion that the environment does not possess legal rights as determined by a “decree of Nature,” but rather, that our “legal convention[s] acting in support of some status quo[,]” have convinced us the environment cannot possess legal rights.<sup>124</sup> As Professor Stone posits, “[t]hroughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable.”<sup>125</sup>

Professor Stone called for a limited set of rights to be given to the environment, disputing the worry that granting the environment legal rights would mean humans would lose all their rights to do what they please in the environment.<sup>126</sup> Instead of an unlimited set of rights that necessarily prioritizes nature’s rights over humans’ in cases of conflict, Professor Stone argues that granting nature le-

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120. *Id.* at 9 (discussing Professor Stone’s progressive arguments about why environment deserves rights).

121. Christopher Stone, *Should Trees Have Standing – Towards Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 450-51 (1972) (discussing progression from early stages of self-interested understanding of rights).

122. *See id.* at 451-52, 487 (using children as example to describe legal system’s slow acceptance of rights belonging to all persons).

123. *See id.* at 452 (discussing rights of in-animate objects throughout legal field). “We have become so accustomed to the idea of a corporation having ‘its’ own rights, and being a ‘person’ and ‘citizen’ for so many statutory and constitutional purposes, we forget how jarring the notion was to early jurists.” *Id.*

124. *Id.* at 453 (arguing belief that rights conferred on entities can hinder legal system’s willingness to question our moral choices).

125. *Id.* (quoting Stone’s argument that although prospect of granting rights to new entity might appear outrageous at first, it was common reaction whenever an entity that is now recognized as having rights, first attempted to secure those rights).

126. *See Stone, supra* note 121, at 457-58 (clarifying that granting rights to environment would not mean prevention of any human conduct in environment).



gal rights would shift our perception of nature.<sup>127</sup> Rather than viewing nature as an entity serving to benefit humans, accepting nature as a holder of legal rights would mean nature must be viewed “with a legally recognized worth and dignity.”<sup>128</sup> His primary recommendation for avoiding confusion and difficulties regarding how nature as a litigant would work in the court system was to designate a guardian for the natural entity.<sup>129</sup>

Professor Stone derived much of the legal support for his proposition from statutory environmental protections.<sup>130</sup> The National Environmental Policy Act, the National Park Service Organic Act, and the Wilderness Act all lent support to the argument that “the threat of irreparable injury to a natural object might create the equivalent of an absolute right” for the environment.<sup>131</sup> Though a creative reading of federal statutes may be helpful to secure rights for nature in the United States, one of the biggest obstacles is the question of standing.<sup>132</sup>

#### A. Longevity of *Sierra Club v. Morton*

Working off of Professor Stone’s article, United States Supreme Court Justice William O. Douglas made the case for rights of nature in his famous dissent in *Sierra Club v. Morton*.<sup>133</sup> In the lawsuit, the Sierra Club petitioned the Court to stop a developer from building a thirty-five million dollar complex comprised of “motels, restaurants, swimming pools, parking lots, and other structures designed to accommodate 14,000 visitors daily” in the Sierra Nevada Mountains.<sup>134</sup> The Court found that the Sierra Club had insufficient standing to challenge this kind of conduct because the members of the Sierra Club could not prove their individualized injuries

127. *Id.* at 458 (opining designating an entity as a “holder of legal rights” necessitates three specific criteria be met to qualify).

128. *Id.* (detailing criteria for granting nature legal rights). To qualify, the holder of legal rights must be able to “institute legal actions *at its behest* . . . take *injury to it* into account [and] . . . that relief must run to the *benefit of it*.” *Id.* (describing what makes entity count jurally).

129. See Babcock, *supra* note 63, at 9 (citing Stone’s argument for granting guardianship of natural entity in order to secure jural standing).

130. *Id.* at 10 (citing Stone’s legal support for granting environment rights).

131. *Id.* at 10-11 (explaining Stone’s creative solution for finding absolute rights for nature within existing statutes).

132. *Id.* (discussing Stone’s argument that lacking standing is most significant indication that nature does not have legal rights).

133. Bilof, *supra* note 18, at 129 (discussing Douglas’s dissent). The dissent “gave credence to the revolutionary notion that the resource itself should be granted standing.” *Id.*

134. *Sierra Club v. Morton*, 405 U.S. 727, 729 (1972) (summarizing conflict at core of lawsuit).

from the not-yet built complex.<sup>135</sup> The court resisted the argument that the Sierra Club's special interest in the land permitted them to prevent a company from building on it.<sup>136</sup> The court saw danger in the potential that allowing this would "authorize judicial review at the behest of organizations and individuals who seek to do no more than vindicate their own value preferences through the judicial process."<sup>137</sup>

Justice Douglas's dissent not only recognizes the difficulties individuals seeking environmental protections encounter, but also points out another obstacle to preservation.<sup>138</sup> Federal regulatory agencies, Justice Douglas opined, are "notoriously under the control of powerful interests who manipulate them through advisory committees, or friendly working relations."<sup>139</sup> The Forest Service, a federal agency involved in the construction project at issue in *Sierra Club*, enjoyed a close relationship with lumber companies, which had a quieting effect on the Sierra Club's arguments.<sup>140</sup> For this reason, Justice Douglas argued that "the voice of the inanimate object . . . should not be stilled."<sup>141</sup>

Justice Douglas's dissent provided legitimacy to the rights of nature movement, using near identical arguments to Christopher Stone and other environmental activists and attorneys.<sup>142</sup> The Justice advocated for a clear-cut federal rule that would grant federal agencies the ability to litigate environmental issues in the name of inanimate objects, namely ecosystems.<sup>143</sup> Justice Douglas also noted that inanimate objects, like corporations, are often parties to litigation and considered persons "for purposes of the adjudicatory

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135. *Id.* at 736 (distinguishing between "special interest" in preserving natural state of environment and suffering injury).

136. *Id.* (discussing issues that could arise if plaintiffs with only special interests could litigate on basis of special interest).

137. *Id.* at 740 (outlining concerns about allowing individuals to sue without any personalized injury).

138. *Id.* at 745 (discussing pressure on regulatory agencies to deliver favorable results for government in environmental suits).

139. *Sierra Club*, 405 U.S. at 745 (positing federal agencies are swayed to rule against environmental protections due to personal relationships with industries).

140. *Id.* at 748 (citing Justice Douglas's argument that Forest Service has been "notorious" in its relationship with lumber companies).

141. *Id.* at 749 (quoting Justice Douglas's argument for why environment needs representation in court).

142. *See Bilof*, *supra* note 18, at 129 (discussing influence of Justice Douglas and Christopher Stone on each other's arguments).

143. *See Sierra Club*, 405 U.S. at 741, 757 (opining in dissent that courts need simplified rule to deal with environmental litigation).

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processes.”<sup>144</sup> For this reason, the Justice argued that ecosystems that experience similar harm and “pressures of modern technology and modern life” should enjoy those same rights.<sup>145</sup> Justice Douglas believed the ecosystem acting as plaintiff “speaks for the ecological unit of life that is part of it.”<sup>146</sup>

To explain their position, natural rights movement supporters often draw on Stone’s reasoning.<sup>147</sup> In 2010, the Supreme Court handed down a groundbreaking decision holding that corporations had First Amendment rights, effectively recognizing legal personhood status for corporations.<sup>148</sup> The natural rights movement argues if a corporations can function as a legal person in litigation, then so should ecosystems.<sup>149</sup> Asserting the similarities between corporations and ecosystems, one resident argued, “[i]f a corporation has the same rights as a human being to assert their will why not an ecosystem? . . . [t]he ecosystem has a life, it has presence, it has being.”<sup>150</sup>

#### B. The Opposition to the Legal Rights of Nature Movement

Among the most sympathetic opponents of the legal rights of nature movement are individuals and small businesses who claim they will be susceptible to copious lawsuits threatening their livelihood.<sup>151</sup> In Toledo, Ohio, owners of farms surrounding Lake Erie argue lawsuits brought on behalf of the Lake to stop agricultural runoff could put the farms out of business.<sup>152</sup> These small busi-

144. *Id.* at 742 (quoting Justice Douglas’s opinion on corporations as parties in litigation).

145. *See id.* at 743 (explaining ecosystems sustain many forms of life).

146. *Id.* (quoting Justice Douglas’s argument for allowing ecosystems to act as plaintiffs).

147. *See Phillips, supra* note 49 (discussing parallels of natural rights movement to doctrine of corporate personhood).

148. *Citizens United v. Federal Election Com’n*, 558 U.S. 310, 343 (2010) (holding corporations have First Amendment rights).

149. Julie Turkewitz, *Corporations Have Rights. Why Shouldn’t Rivers?*, N.Y. TIMES (Sept. 26, 2017), [https://www.nytimes.com/2017/09/26/us/does-the-colorado-river-have-rights-a-lawsuit-seeks-to-declare-it-a-person.html?\\_r=0](https://www.nytimes.com/2017/09/26/us/does-the-colorado-river-have-rights-a-lawsuit-seeks-to-declare-it-a-person.html?_r=0) (explaining argument of natural rights supporters that ecosystems deserve as much legal personhood recognition as corporations do). The basis of this argument is that “[if] a corporation has rights . . . so, too, should an ancient waterway that has sustained human life for as long as it has existed in the Western United States. *Id.*

150. Phillips, *supra* note 49 (quoting Grant Township resident Stacy Long).

151. *See Timothy Williams, Legal Rights for Lake Erie? Voters in Ohio City Will Decide*, N.Y. TIMES (Feb. 17, 2019), <https://www.nytimes.com/2019/02/17/us/lake-erie-legal-rights.html> (explaining primary opposition to Lake Erie Bill of Rights).

152. *Id.* (describing small farms’ fear of business-ending lawsuits filed on behalf of Lake Erie).

nesses are backed by the Ohio Farm Bureau, who contend agricultural runoff problems must be solved scientifically and with the help of those experienced in best farming practices.<sup>153</sup> The Farm Bureau argues that this bill will have the power to change farming practices based on public votes and may subject businesses who abide by all current laws to expense-draining lawsuits.<sup>154</sup> Public officials have also found themselves in a difficult position, torn between the desire to support environmental change and the practical realities of a potentially massive increase in legislation.<sup>155</sup> Officials in Toledo worry that public opposition to the bill will make them “appear to support polluting the lake.”<sup>156</sup> These officials share the same concerns that the passage of this bill may cost the city thousands in legal fees and “would most likely drain city finances.”<sup>157</sup>

Other opponents of the movement attack the procedural structure of the legal rights movement.<sup>158</sup> Among the most basic objections is that the movement will return to “homocentric litigation” by necessity, because the environment still needs a human to speak on its behalf in a courtroom, regardless of what rights the environment is given.<sup>159</sup> Though not necessarily a novel structure in a courtroom setting, this structure will blur the line between client and attorney.<sup>160</sup>

Finally, critics resist the movement because the existing legal and statutory framework adequately safeguarded environmental concerns through the various federal environmental protection statutes, such as the Clean Water Act, and the Endangered Species

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153. See Daniel McGraw, *Fighting pollution: Toledo residents want personhood status for Lake Erie*, THE GUARDIAN (Feb. 19, 2019), <https://www.theguardian.com/us-news/2019/feb/19/lake-erie-pollution-personhood-status-toledo> (noting opposition of Ohio Farm Bureau to proposed bill).

154. See *id.* (summarizing Ohio Farm Bureau Vice President of Public Policy’s stance on bill).

155. See Williams, *supra* note 151 (explaining elected officials’ uncertainty about legal rights of nature legislation).

156. *Id.* (summarizing fears for Toledo officials related to Lake Erie Bill of Rights).

157. *Id.* (quoting Toledo City Council Member Nick Komives regarding opposition to Lake Erie Bill of Rights).

158. See Oliver A. Houck, *Noah’s Second Voyage: The Rights Of Nature As Law*, 31 TUL. ENV’T L. L.J. 1, 27 (2017) (arguing criticisms of standing for environment should be heard).

159. See *id.* (noting one objection to legal rights of nature movement is based on logistic challenges in recognizing legal rights for nature).

160. *Id.* (noting attorneys’ representation of inanimate objects such as estates and property in court are often uncontested).

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Act.<sup>161</sup> As one legal scholar posits, the difficulty with the current system is that it relies too heavily on “subjective judgments.”<sup>162</sup> This scholar contends that the indirect nature of determining an “injured party,” which requires an individual to establish harm by way of harm done to the environment, creates room to escape enforcement of environmental statutes.<sup>163</sup>

Article III of the United States Constitution requires plaintiffs to first establish “injury in fact,” qualified as a “concrete and particularized,” and “actual or imminent.”<sup>164</sup> Plaintiffs must also prove a “causal connection between the injury and claim conduct complained of” against the defendant, as well as a likelihood the court will redress their injury.<sup>165</sup> Judges who “reject environmentalist standing are almost invariably the ones who also reject their cases on the merits as well.”<sup>166</sup> Another legal scholar agrees with the failure of the current framework, arguing that “these cases increasingly fail . . . [because of] the attenuated, almost fictive connection between the interested or injured party and the threatened resource.”<sup>167</sup> The movement’s principal advocates postulate that the danger in failing to recognize legal rights of nature is that the current model “place[s] environmental interests in a conceptual hole.”<sup>168</sup>

## V. THE FUTURE OF THE LEGAL RIGHTS MOVEMENT

Given the pivotal role standing plays in the success of environmental lawsuits, the legal landscape will drastically change if courts begin to recognize rights of nature.<sup>169</sup> Granting standing directly to the injured party by recognizing the right of nature to bring suit itself will likely resolve the inherent difficulty of a third party prov-

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161. *See id.* at 28 (discussing interrelated arguments that environment does not need standing or recognition of rights).

162. *Id.* at 27 (quoting Houck’s position on weaknesses in current legal system in protecting environmental interests).

163. *See* Houck, *supra* note 158, at 27-28 (discussing difficulty in courts finding persons who are “adversely affected” by harm done to nature).

164. Babcock, *supra* note 63, at 11 (stating Article III requirement to establish first prong of standing).

165. *Id.* at 11-12 (explaining additional requirements to prove standing under Article III).

166. *See* Houck, *supra* note 158, at 28 (quoting Houck’s stance on judges who escape enforcement of environmental statutes).

167. *See* Babcock, *supra* note 63, at 3 (theorizing difficulties with question of standing in environmental suits).

168. *See* Houck, *supra* note 158, at 26 (discussing Professor Stone’s treatise).

169. *See* Babcock, *supra* note 63, at 3 (discussing significant role standing plays in environmental lawsuits).

ing injury in the current framework.<sup>170</sup> Theoretically, this legal shift will lead to significantly more successful environmental protection suits in the courts, but at this time, the courts lag behind the grassroots' progress.<sup>171</sup>

Voters in Toledo, Ohio voted to pass the Lake Erie Bill of Rights referendum in a special election on February 26, 2019.<sup>172</sup> A family-run farm in Custar, Ohio filed the first lawsuit challenging the new bill one day later.<sup>173</sup> The farm brought the action alleging the bill is “unconstitutional and unlawful” because it would subject the farm to unending litigation.<sup>174</sup> The Drewes family argued the bill would functionally restrain their ability to exist by preventing the farm from fertilizing their fields, as the farm claimed they “can never guarantee that all runoff will be prevented from entering the Lake Erie watershed.”<sup>175</sup> The grassroots organizers behind the efforts to pass the bill expect this lawsuit to be the first of many challenging the new legislation.<sup>176</sup>

The bill in Toledo and the subsequent reactions epitomize the practical difficulty of instituting real change in the legal system.<sup>177</sup> Efforts at the grassroots level are often more easily mobilized and able to generate more legislation, yet the costly and time-consuming litigation process forces the fight to remain at the grassroots level.<sup>178</sup> In order to effectuate change on a national and meaningful scale, the courts must begin to recognize the movement's legitimacy.<sup>179</sup> The courts are among the most reluctant to accept this

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170. *See id.* (arguing granting nature legal rights will result in removal of injury prong hurdle for environmental lawsuits).

171. *See id.* at 13-14 (discussing Supreme Court's narrowing of accepted standing theories from 1990 to present).

172. Tom Henry, *Lake Erie Bill Of Rights Gets Approval From Toledo Voters*, TOLEDO BLADE (Feb. 26, 2019), <https://www.toledoblade.com/local/politics/2019/02/26/Lake-Erie-Bill-of-Rights-gets-approval-from-Toledo-voters/stories/20190226159> (noting special election only drew nine percent of Toledo voters).

173. Tom Henry, *Lawsuit Filed Against Lake Erie Bill Of Rights*, TOLEDO BLADE (Feb. 27, 2019), <https://www.toledoblade.com/local/environment/2019/02/27/lawsuit-filed-against-lake-erie-bill-of-rights-district-court-lebor/stories/20190227090> (explaining suit filed by Drewes Farms Partnership in Federal court).

174. *Id.* (summarizing Drewes Farms Partnership's Complaint).

175. *Id.* (quoting Drewes Farms Partnership's Complaint alleging compliance with new legislation is impossible given their agricultural practices).

176. *Id.* (quoting organizer of group Toledans for Safe Water who anticipates many lawsuits filed against new legislation).

177. *See, e.g.*, Henry, *supra* note 172 (summarizing grassroots fight over legal rights of nature movement).

178. *See, e.g.*, *supra* note 48 (summarizing Grant Township's difficulty making progress in advancing efforts past preliminary stages).

179. For a discussion of the progress the legal rights of nature movement can make through court-led changes, see *supra* note 169 and accompanying text.

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novel legal doctrine, evinced by the threat of sanctions against the attorney who filed on behalf of the Colorado River lawsuit for using the rights of nature argument.<sup>180</sup> This leaves the movement and its advocates in a type of purgatory, unable to affect change on the national scale but stuck in grassroots litigation and legislative battles.<sup>181</sup> While grassroots efforts continue to light the path for small towns around the country who want to adopt similar measures to protect their environment, Justice Douglas' dissent and Christopher Stone's article remain a strong and enduring legal foundation when the time comes for courts to accept this doctrine.<sup>182</sup>

*Caroline McDonough\**

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180. For a discussion of the federal court's dismissal of right of nature argument with prejudice, see *supra* note 37 and accompanying text.

181. For a discussion of the difficulty the movement has in finding widespread acceptance, see *supra* note 160 and accompanying text.

182. See Bilof, *supra* note 18, at 129-30 (noting American legal system is beginning to accept the novel legal doctrine).

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