



Should rivers have rights?

KEY POLICY MESSAGES

- Legal rights reinforce a human obligation to protect nature.
- Legal rights can give rivers a stronger 'voice', depending on local context.
- Rivers with legal rights require well-resourced guardians.
- Indigenous perspectives should inform legal frameworks.

■ Plitvice Jezera, Croatia
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The personification of nature is not new. Humans have long considered natural elements as living entities. The earth, ocean, rain, rivers and lakes were, however, outside the law.

Modern societies protect natural resources through laws and regulation, with varying results. Conferring legal personhood, granting rights to rivers or giving rivers explicitly a voice in decision making may be the next evolutionary step. Legal rights are one way to draw attention to better protecting rivers, and can work well depending on the local context.

WHY DO RIVERS NEED RIGHTS?

Despite protective laws, rivers are deteriorating. Granting legal personhood may check this trend in a number of ways:

- By giving effect to First Nations' laws, values and relationship to country.
- By giving rivers equal legal status with humans (eco-centrism).
- By allowing rivers to participate in water and ecosystem services markets (market environmentalism).
- By giving rivers their own voice in policy debates.

Recent decisions to grant rights to rivers may in principle fill gaps in environmental regulations, and represent a more progressive approach to (re)bonding humans with nature.

WHAT DO LEGAL RIGHTS ENTAIL?

Legal persons bear rights and duties in law, akin to corporations, public agencies and civil associations. Legal personhood typically confers:

- the right to enter into and enforce contracts;
- the right to own and deal with property; and,
- legal standing to sue (and be sued) in court.

Legal standing means the river can take legal action to protect itself without demonstrating harm to human users. Giving rivers a legal 'voice' in noisy policy and regulatory debates means:

- A river's voice must be powerful enough to be heard, with its guardians enjoying adequate funding, identity, and independence from government and societal and economic parties.
- A river must promote its own interests ahead of those who rely on it. This may entrench an adversarial relationship between people and the environment.



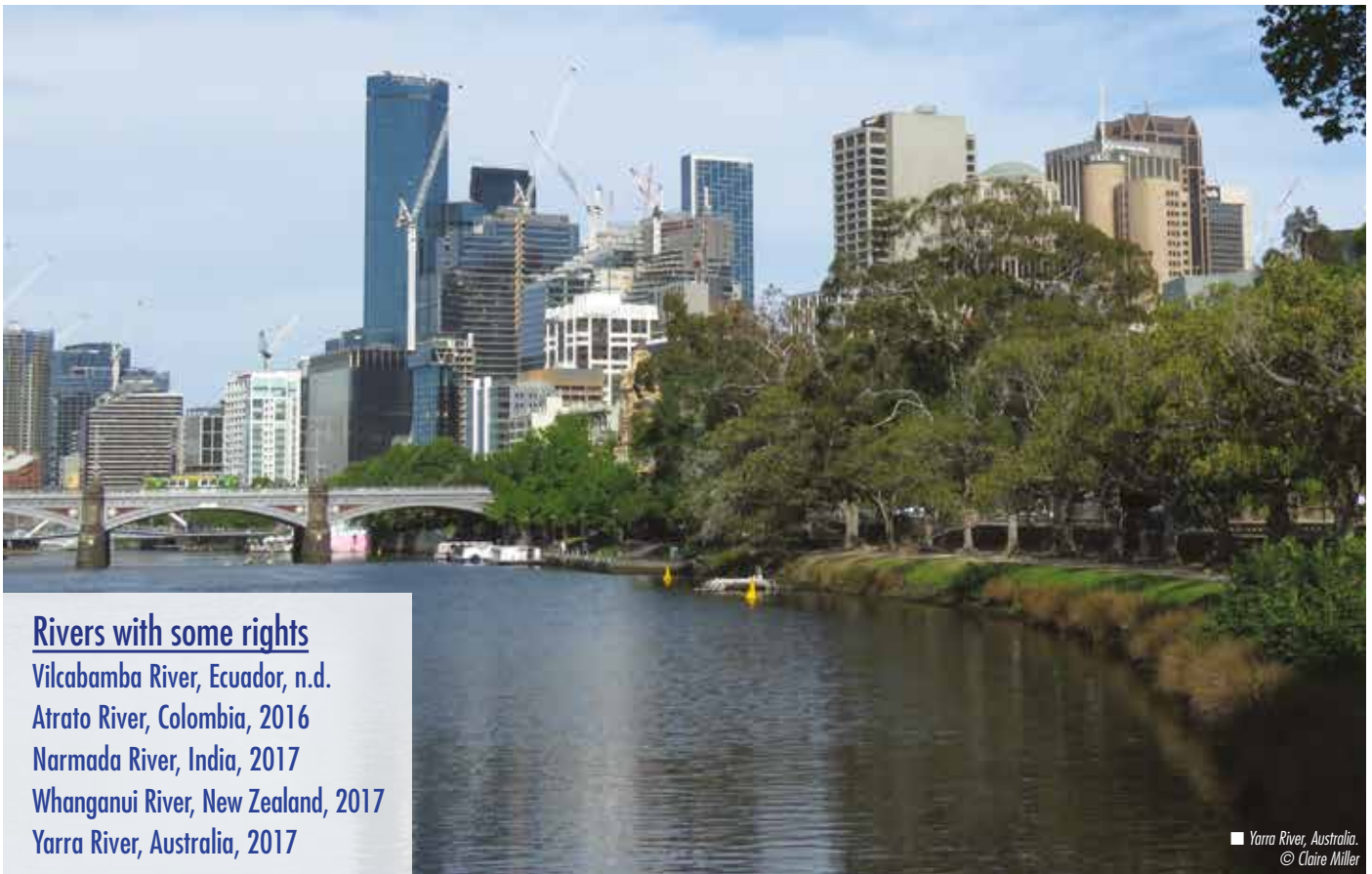
NEW ZEALAND EMBRACES MĀORI RIVER WORLDVIEW

In 2017, New Zealand granted legal personality to Te Urewera, comprising Lake Waikaremoana and surrounding land and forests, and Te Awa Tupua, encompassing the Whanganui River from mountains to the sea.

The Te Urewera Board and two guardians known as Te Pou Tupua, respectively represent the new legal entities. The legislation implements the deeds of settlement for historical Māori claims.

The institutional framework, developed over eight years, incorporates the Māori worldview into legislation consistent with existing laws and social norms. The Iwi people and the Crown were economically and socially invested in reaching a successful resolution.

The framework, Te Pā Auroa nā Te Awa Tupua, includes rules and processes to manage conflict over competing uses. Implementation is in two stages to allow adaptation.



Rivers with some rights

Vilcabamba River, Ecuador, n.d.

Atrato River, Colombia, 2016

Narmada River, India, 2017

Whanganui River, New Zealand, 2017

Yarra River, Australia, 2017

■ Yarra River, Australia.
© Claire Miller

RIVER RIGHTS NEED SUPPORTIVE STAKEHOLDERS

On 26 February 2019, citizens of Toledo, Ohio, voted to give Lake Erie legal rights after pollution cut off the city's drinking water for three days in 2014.

The vote polarized the community. Farmers acknowledged agricultural runoff caused most of the pollution, but feared environmental NGOs could sue them on the lake's behalf. Rather than building consensus on clean water, the lake's legal rights may make addressing polluting activities harder.

Conflict is not a foregone conclusion. Renewed collaboration between stakeholders led to river legal rights in Colombia and New Zealand. Australian environmental water managers are working with communities to enhance their legitimacy, even as conflict over water scarcity in the Murray-Darling Basin intensifies.

SO WHY WOULD A RIVER NOT WANT TO CLAIM ITS RIGHTS?

Paradoxically, people may be less willing to protect rivers if they see a legal threat to their own interests. And with rights come responsibilities: if a river can sue to protect

RIVER RIGHTS SHOULD MELD RIVERS, LAND AND PEOPLE

The 'rights of nature' paradigm assumes all 'beings' seek to 'exploit, destroy and abuse' the earth. This goes against Australian Aboriginal peoples' inherent role to manage and protect their country. From their perspective, water is sacred and inseparable from the land. It underpins Aboriginal kinship connection in birth, life and death.

In *Mabo v. Queensland* (1992), the High Court determined that the British settlement doctrine of terra nullius (in simple terms, land belonging to no one) was not true; the Aboriginal peoples had settled laws, were sovereign, and had exercised continuing ancient customs.

This principle was ignored in 2004 when the Australian Government legally separated water from land, creating a market-based water regime, without consulting Aboriginal peoples. Conferring legal personhood on rivers may entrench 'aqua nullius', setting back the Aboriginal struggle to exercise their norms, laws and practices to care for country.



■ Varanasi, India
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GOOD INTENTIONS CAN HAVE SECOND THOUGHTS

In 2017, in surprise rulings, the High Court of Uttarakhand State in India declared the Ganga and Yamuna rivers and tributaries, and the Glaciers including the Gangotri and Yamunotri rivers and their catchments, to be legal persons and appointed legal representatives in loco parentis.

The intent was to shift how the rivers were managed and protected, but with little apparent thought to how the change would work in practice. The Ganges and Yamuna rivers stretch across several States into Bangladesh, and guardians did not have an integrated institutional framework to guide their decisions. The Supreme Court later stayed the first order, finding one State could not be responsible for rivers flowing beyond its borders.

its interests, it may also be liable for causing damages such as flooding and paying its way. Granting a river legal personhood makes its appointed guardians, rather than elected officials, responsible for looking after its specific river-related interests. Without adequate institutional and financial support, rivers cannot challenge decisions or enter costly litigation to sue or defend themselves. Legal personhood may lessen, even expunge, a human obligation to protect nature.

Independent river rights may not adhere to Indigenous law. Governments may argue First Nations' interest in development applications is diminished because the river has its own representation. First Nations' influence could be limited to direct impacts on Indigenous people and not the river's environmental health as an ancestor, spiritual entity or condition of life.

Government representatives appointed as guardians risk a conflict of interest should economic imperatives or human rights clash with the river's rights. Considering the recent Cape Town water crisis in South Africa and ongoing severe droughts in other nations, granting individual river rights may not be appropriate in all situations.

Granting rivers legal rights will not, à priori, overcome the limitations of existing instruments, but could add value with the right frameworks.

WHAT CAN MAKE RIVER RIGHTS WORK? KEY ELEMENTS INCLUDE:

- An explicit voice to protect rivers.
- Community support for why rivers need protecting.
- First Nations' perspectives and values.
- Adequate funding and organizational support for river guardians.
- Enforced decisions and regulations.
- Supporting legislation in all riparian countries for international rivers.

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