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Comment & Response

Comment on Davies *et al.*, 'Towards a Universal declaration of the Rights of Wetlands'

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Abstract. Promulgation of a Declaration of Rights for Wetlands to improve their conservation and management has superficial attraction. However, difficulties with defining what a wetland is and confusing human rights with ecosystem rights suggest there are more problems than opportunities inherent in such a Declaration. Involving Indigenous and local knowledge in the discussion without a clear vision for access to and use of that knowledge also has problems. A better solution to stemming the tide of wetland loss is to rethink the problem in terms of landscape stewardship and to use the existing governance and legislative systems, especially the Convention on Biological Diversity's Ecosystem Approach in tandem with the Ramsar Convention on Wetlands (Iran, 1971), more effectively.

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Introduction

The dire situation of the worlds wetlands has been well documented (Ramsar Convention Secretariat 2018; Intergovernmental Platform for Biodiversity and Ecosystem Services 2019) despite the 50 years that the Ramsar Convention on Wetlands (Iran, 1971) (see www.ramsar.org, accessed 15 February 2021) and close to 30 years that the Convention on Biological Diversity (CBD) (see www.cbd.int, accessed 15 February 2021) have been in force. Davies *et al.* (2021) suggest promulgation of a Declaration of Rights for Wetlands as way to redress this situation. Although I am sure the intent of Davies *et al.* (2021) was to try to initiate some new thinking, with a view to changing past thought, word and deed, they largely fail because of the conflation of contradictory ideas. There is also a danger of confusion over rights for Indigenous Peoples and Local Communities (IPLC). Such rights are associated with a range of social justice issues but are different from rights for ecosystems. This is clarified in a report issued by the Rights and Resources Initiative (2020) that notes, 'IPLC effectively conserve forests, ecosystems, and biodiversity … making [IPLC] rights recognition a just and effective alternative to exclusionary conservation practices.'

So, while trying to use the concept of 'rights' for species and ecosystems to modify approaches to wetland conservation and management is no bad thing, confusion arises from trying to understand just what ecosystems are to be ascribed rights, and how those rights are balanced by responsibilities, differentiated from human rights initiatives, and linked to different knowledges and worldviews. Further, a potentially highly contentious 'Declaration of Rights' only adds to the pile of existing (often underutilised) legal and governance arrangements. For example, the CBD already has its Ecosystem Approach (Convention on Biological Diversity 2004). This latter approach is also especially relevant because the CBD and Ramsar have a joint work plan (see https://www.cbd.int/doc/agreements/agmt-ramsar-5jwp-2011-2020-en.pdf, accessed 15 February 2021) that can be used as a vehicle for change through implementing that approach. A Declaration of Rights for wetlands also has the possibility of being counterproductive, taking energy and resources away from the activity needed for better conservation, management and wise use of wetlands and their interconnected ecosystems.

Rights of nature and natural systems

Davies *et al.* (2021) quote the World People's Conference on Climate Change and the Rights of Mother Earth (https://therightsofnature.org/universal-declaration/, Article 1, Mother Earth Point 2), which says, 'Mother Earth is a unique, indivisible, self-regulating community of inter-related beings that sustains, contains and reproduces all Beings.' Do we then need something beyond this Universal Declaration of the Rights of Mother Earth, where an endorsement of it by wetland advocates (and Ramsar signatories) might suffice? This broader argument, that nature should not be 'salami-sliced' into ecosystems or species favoured by particular groups, is particularly relevant here.

Although the rights of nature may well be discussed by non-governmental organisations (NGOs), courts and other diverse wise people, that does not mean the concept 'works' for the miscellany of ecosystems that form the world's wetlands, or indeed the biosphere (Mother Earth) and all its component ecosystems and species, including *Homo sapiens*.

A critical failing by Davies *et al.* (2021) is to recognise that wetlands are not a 'thing'. They reference Ripple *et al.* (2020), who state 'We must protect and restore Earth's ecosystems. Phytoplankton, coral reefs, forests, savannas, grasslands, wetlands, peatlands, soils, mangroves, and sea grasses contribute greatly to sequestration of atmospheric CO_2.' Here, wetlands are one item but listed alongside peatlands, mangroves, seagrasses, and coral reefs, also wetlands under the Ramsar Convention. It is an old saw in Ramsar Convention circles that wetlands under the convention are 'areas that either are wet, have been wet, or will be wet, with fresh or salt water', a tongue-in-cheek, common language rendition of the diverse range of ecosystems (including some with anthropogenic origins) listed in the official documentation of the Convention. Many of these ecosystems also sit in a landscape or seascape matrix of non-wetland ecosystems, so 'rights' for one set of ecosystems without rights for adjacent seems a curious approach. It is also critical to understand that rights can be granted only to a person or a clearly defined object, which wetlands are not (although perhaps, for example, coral reefs would be).

'Rights' is not a homogeneous concept either, especially viewed through the narrow lens of the legal apparatus of the global north. The burgeoning literature on the rights of nature, whether ecosystems, species, landscapes, rivers or whatever, often fails to get to grips with ecological realities. That does not make 'rights of nature' less relevant to the people who have this as their cosmological view, and I acknowledge and respect those worldviews and belief systems. However, all this is less relevant when brought into the world of environmental law, at international, national or local scale. Laws operate best in cases of clear distinction and, where rights are concerned, where they can be apportioned simply, clearly and fairly, and that takes time. The effort and time that was required by the CBD to negotiate what became the Nagoya Protocol (Smith *et al.* 2018) is a case in point.

Davies *et al.* (2021) acknowledge that with the inherent rights of all beings come responsibilities and that 'effective enforcement or defence of the rights of non-human entities may require that the non-human entity have legal personhood', but 'Legal personhood for nature or elements of nature', and how that may result in better conservation, use and management of the nature concerned, is a complex and difficult matter, because the legal system that confers personhood is that of one species: ours. New Zealand is often held up as a pacesetter in this regard (Rodgers 2017). In discussing the *Te Awa Tupua (Whanganui River Claims Settlement) Act* 2017 and *Te Urewera Act* of 2014, Rodgers (2017) recognises that the 'broad approach in both Acts is similar – the creation of legal personality for the ecosystem(s) that each represents and comprises.' Te Urewera is a large area of forest, lakes and rivers (wetlands), formerly managed as a National Park by the New Zealand Department of Conservation but now managed through appointed trustees overseeing strategic management of the area. So, although these New Zealand trail-blazing Acts confer ecosystem rights, they still rely on the human legal system and governance structures to discuss and adjudicate on those rights through the courts. Some of this may seem trivial, but introducing 'rights' creates a new and difficult metaphorical, philosophical and scientific slough to traverse. The whole 'ecosystem/species' rights movement, which, while sometimes embracing valid and important indigenous perspectives, can also be a cloak for non-Indigenous ideologies and actions, namely the 'exclusionary conservation practices' mentioned by Rights and Resources Initiative (2020). Some of the most successful conservation actions come from Indigenous and non-Indigenous organisations making common cause, and typically without the need to invoke 'rights' arguments.

Rights and worldviews

Whether elements of the environment have 'rights' or not, it is clear we are really talking about the broader duty of environmental stewardship (e.g. Bieling and Plieninger 2017). Land(and sea-)scape stewardship has as a critical focus the recognition of natural and cultural heritage, the improvement of land uses, such as agriculture and forestry, and biodiversity conservation, at the same time ensuring social justice and environmental health. Native Peoples Action (2020) notes 'Alaska's laws and state constitution do not recognize Tribal sovereignty or our customary and traditional life ways, forcing us to fight for our rights to steward our own lands, animals, and waters'. Thus, stewardship involves land- and seascape-scale policy, planning and management, delivered through intersectoral coordination at national and local levels. Because it attracts high levels of community interaction and local knowledge, stewardship is also a learning system, having the characteristics of being self-organised with adaptive, collaborative management.

Hill *et al.* (2020) discuss the promotion and protection of Indigenous and local knowledge (ILK) through free, prior and informed consent. However, Davies *et al.* (2021) suggest a different approach when they say, '…the following broad principles from Ens *et al.* (2012) have been adapted to illustrate key elements for supporting the management of natural and cultural resources of wetlands by *combining* Indigenous and other knowledge' (italics my emphasis). The issue here is the use of the word 'combine'. Tengö *et al.* (2017) have proposed the term 'weaving' as a more appropriate way to view ILK as one knowledge that is woven, but not combined, with other knowledges. That weaving approach has much to contribute to wetland conservation and management, as with all ecosystems. Finally, stewardship draws on many different knowledge systems without seeing these knowledges in a hierarchy, but rather as complementary; again, weaving in action.

In its short life, the IPBES has tried to tackle this issue, detailed in Hill *et al.* (2020). However, ILK, although not uncontroversial itself, deals with Indigenous matters and worldviews, not the issue of ecosystem (including the panoply that are wetlands) rights. The Natures Contributions of People framework elaborated under IPBES (Pascual *et al.* 2017) also has within it the concept of people's contributions to nature, allowing understanding of the feedback inherent in people's relationship with the rest of nature or biocultural diversity (Bridgewater and Rotherham 2019).

What are ecosystem approaches?

Davies *et al.* (2021) discuss the definition of the wise use of wetlands in the Ramsar Convention as 'the maintenance of their ecological character, achieved through the implementation of *ecosystem approaches*, within the context of sustainable development' (my emphasis). This is quoted from Finlayson *et al.* (2011), who talk of 'ecosystem-based approaches', different again from ecosystem approaches. In fact, 'ecosystem approaches' was mis-rendered in Ramsar Convention Decision IX.1 (Ramsar Convention 2005). The idea was that it should refer to the CBD ecosystem approach, adopted in 2004 as the key mechanism for the implementation of the CBD (Convention on Biological Diversity 2004). Although Davies *et al.* (2021) do not mention the ecosystem approach, its 12 principles contain all the points and more that the authors mention in their Declaration of Rights.

Although all 12 are relevant, principles that are particularly apposite include:

- Principle 1: the objectives of management of land, water and living resources are a matter of societal choices
- Principle 3: ecosystem managers should consider the effects (actual or potential) of their activities on adjacent and other ecosystems
- Principle 9: management must recognise the change is inevitable
- Principle 10: the approach should seek the appropriate balance between conservation and use of biological diversity
- Principle 11: the ecosystem approach should consider all forms of relevant information, including scientific and Indigenous and local knowledge, innovations and practices
- Principle 12: the ecosystem approach involves all relevant sectors of society and scientific disciplines.

Conclusion

There can be no doubt the world's wetlands are in very serious trouble. However, giving wetlands rights will not change the basic problem of human ignorance to the goods, benefits and services wetlands offer (the 'wetlands are wastelands' view that too frequently prevails); giving wetlands rights will not prevent changes already baked into the Earth system affecting wetlands currently and into the future. To change the negative trends for wetlands, nested actions are needed from global to local levels, but especially at the local community level. Here, the value of enabling and supporting stewardship approaches are more likely to ensure better conservation, management and wise use of wetlands, rather than the complex matter of conferring 'rights'. It can be argued that good stewardship is implicit in recognition of species and ecosystem rights, but assuming these rights would carry the day for better wetland conservation and management would seem unrealistic.

Davies *et al.* (2021) see their declaration as 'creating a paradigm shift in the human–Nature relationship towards greater understanding, reciprocity and respect leading to a more sustainable, harmonious and healthy global environment that supports the well-being of both human and non-human Nature'. They also present a second paradigm shift that 'following recognition of the rights and legal and living personhood of all wetlands will lead to increased capacity to manage wetlands in a manner that contributes to reversing the destabilisation of the global climate and biodiversity loss' (Davies *et al.* 2021). The reference to human and non-human nature also suggests a dichotomy that does not exist: people are part of, not apart from, nature. There is also no evidence that recognition of rights for wetlands will suddenly release capacity for the better management of wetlands, even less to reversing destabilisation of the global climate system. The main problem is that resources are likely to be diverted into definition and defence of wetland rights. As Kuhn (1972) observed, 'the transition between competing paradigms cannot be made a step at a time, forced by logic and neutral experience. Like the gestalt switch, it must occur all at once (though not necessarily in an instant) or not at all'. So, a key problem with these posited paradigm shifts is that they appear aspirational rather than based in fact or example.

Given that these paradigm shifts are not apparently really shifts in the Kuhnian sense, how do we make the present systems work more efficiently and effectively? Bringing ILK to the table with other knowledges (including 'Western' science) on wetlands and weaving those knowledges together will be an important (perhaps the most important) step in that direction, as noted in the IPBES global assessment (Intergovernmental Platform for Biodiversity and Ecosystem Services 2019). Using these knowledges creatively and promoting the pre-existing CBD ecosystem approach (in the context of the UN Sustainable Development Goals, see sdgs.un.org/goals, accessed 15 February 2021) to refine implementation of the Ramsar Convention in its 50th year would allow this declaration to be quietly dropped in favour of concerted action from governments, NGOs and broader civic society for the wise use of the world's wetlands.

Conflicts of interest

The author was Secretary General of the Ramsar Convention on Wetlands (Ramsar, 1971; 2003–07) and a member of the IPBES Task Force on Indigenous and Local Knowledge (2013–19).

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