



Creating a Blue Dialogue Webinar Summary

Giving Nature a Voice: Legal Rights of Waterways

Webinar Date: June 24th, 2013

Attendance: Approximately 100—local, First Nations, provincial, and federal government staff; students and researchers; private sector professionals; environmental NGOs

Introduction

The weaknesses of our environmental laws stem in large part from the fact that the overarching legal system treats the natural world as property that can be exploited and degraded, rather than as an integral ecological partner with its own rights to exist and thrive. While our laws focus on the rights and needs of people to flourish, they pay relatively little attention to the same rights on the part of the natural world. They assume that the environment will be protected if humans take from it a little less, and a little less quickly. But this simply slows, never stops, the downward slide. Presenting a case for the development of legal structures that recognize the rights of nature, and of water more specifically, this webinar draws on a range of cases—from Bolivia, Ecuador, and New Zealand, to Canada and the U.S.—in which governance structures are moving towards a more holistic legal approach to environmental governance. It features a detailed discussion about how developments in the New Zealand legal fabric, such as in the case of the Whanganui River, have resulted in advances towards a progressive approach to environmental law and protection within the country.

Guest Speakers

Linda Sheehan, Executive Director, Earth Law Center

Vernon Tava, Barrister & Solicitor, High Court of New Zealand

Key Points from Webinar Presentations

General Themes

- The fundamental flaw of traditional environmental laws comes from the assumption that natural 'resources' exist as human 'property' to fuel economic systems and respond to consumption needs.
 - This "nature as servant" view was popularized by U.S. Forest Service Chief, Gifford Pinchot, in the early 20th century and further catalyzed by watershed contamination catastrophes of the 1970s.
 - This limited perspective in U.S. environmental law has promoted environmental protection, provided that it does not hinder economic productivity in natural resource-based industry.
- There is a growing consensus that current environmental laws are not sufficient to respond to the chronic environmental challenges that stand before us. This position emphasizes the historic limitations to conservation-based environmental law, and highlights the inherent interconnectivity between humans and nature. This argument calls for:
 - the endowment of legal rights to natural systems in and of themselves;
 - the sanction environmental guardians to represent the rights of nature in the court of law; and
 - redress to be calculated for the natural entity's own damages and paid to the benefit of that entity, rather than to the representing party.

International Case Studies

- Constitutional amendments in **Ecuador** (2008) and **Bolivia** (2010, 2011) have endowed Nature, or Pachamama, with explicit rights in and of itself, human stewardship rights to defend these rights on Nature's behalf, and guidelines for practical implementation.
 - These new rights have since been successfully implemented in case studies in Ecuador and have further been reflected through the *Universal Declaration of the Rights of Mother Earth (Pachamama)*, led by Bolivian visionaries and presented to the United Nations during the April 2011 General Assembly.
- In **New Zealand**, legal developments have supported the recognition of a more interconnected nature and establish Māori people as stewards for the rights of their natural environments. A claim made by the Māori Trust Board in 1990 over harmful activity in the Whanganui River has led to recent settlements that formally recognize key tenets within Māori tradition:
 1. The idea of the river as an "indivisible and living whole, from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements," with a distinct personality and legal entity;

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About the Series

Hosted by the POLIS Water Sustainability Project at the University of Victoria, *Creating a Blue Dialogue* brings together expert water practitioners and thinkers, as well as emerging water leaders, to engage with innovative ideas on water policy and governance in Canada.

By creating an online community of interest, the webinar series serves to strengthen the national capacity to engage with and solve problems, and raises awareness about emerging Canadian water issues, best practices, and policies.

2. And that the health and well-being of the Whanganui River is intrinsically interconnected with the health and well-being of its people. These 2012 settlements included the statutory recognition of Te Awa Tupua people as a legal entity and the sole Guardians of the River, setting a national and international precedence for indigenous and environmental rights.
- Governments in the **United States** have begun adopting community ordinances that litigate the rights of citizens over corporations and the rights of the ecosystem to exist, thrive, and evolve. See **Pittsburgh's Anti-Gas Drilling ordinance** (2010) and **Santa Monica's Sustainability Rights ordinance** (2013). In **California**, opportunities exist to create legal allocations for waterways through a State ban on the "waste and unreasonable use" of water.
 - There are similar opportunities in **British Columbia** by way of the B.C. Community Charter, which enables communities to pass bylaws on environment and public health protection.
 - B.C. Reg. 144/2004 for environment and wildlife allows municipalities to pass bylaws to "regulate, prohibit and impose requirements in relation to polluting or obstructing, or impeding the flow of" water systems.
 - Future bylaws could protect waterway rights, prohibit polluting activities, assert positive green infrastructure strategies, or impose preemptive regulations on resource use. **Vancouver's Greenest City Plan** offers an important opportunity for the enactment of bylaws to accompany Greenest City targets.

Key Concepts & Questions from Discussion Period

- There is limited, but growing, awareness about the existing B.C. regulations that have critical potential to enable the rights of nature on municipal scales. Limited awareness is also an issue in New Zealand's Whanganui River case, even among students and professionals in related fields.
- In many cases, while the rights of nature are being increasingly recognized, further legislation, especially at the local government scale, is required to guide the implementation of these rights within communities. In California, Pachamama-related bylaws are being implemented to support existing legal governance structures and applied in very specific contexts.
- Slight adjustments to language of B.C. Reg. 144/2004 could support its application for forestry-related legal issues.
- While the *Public Trust Doctrine* offers an important legal tool for protecting watersheds and other environmental realms, it is limited as an anthropocentric approach and thus falls short of establishing distinct rights for nature.

Additional Resources

General

- [Centre for Global Studies Visiting Fellow Linda Sheehan Presents "Reclaiming Prosperity Through Nature's Rights"](#) [video file]. (May 3, 2013)
- Earth Law Center. [What is "Rights of Nature"?](#) (2013)
- ["It's time to recognize the rights of nature."](#) *Times Colonist*. (April 19, 2013)
- ["Rights of the Waterway"](#). *Waterkeeper Magazine*. (Summer, 2011)
- [Should Trees Have Standing?](#) (December 1, 1972)

International Case Studies

- ["A River in New Zealand Gets a Legal Voice."](#) *National Geographic News Watch*. (September 4, 2012)
- [An Ordinance of the City Council of the City of Santa Monica Establishing Sustainability Rights](#). (April 9, 2013)
- [City of Pittsburgh: CHAPTER 618: MARCELLUS SHALE NATURAL GAS DRILLING](#) (December 1, 2010)
- [Constitución de la República del Ecuador: Title II, Ch. 7 \("Rights of Nature"\)](#) (September, 2008)
- World People's Conference on Climate Change and the Rights of Mother Earth [Universal Declaration of the Rights of Mother Earth](#). (April, 2011)

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To view past *Creating a Blue Dialogue* webinars visit www.youtube.com/POLISWaterProject. Previous topics include "Water Policy in Western Canada," "Global Networks and Governance Innovation: Tools for Resilient Watersheds," and "Recognizing Aboriginal Rights: Towards a New Water Ethic in Canada."

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