The SandBar

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Legal Reporter for the National Sea Grant College Program

Federal Invasive Species Prevention Efforts Suffer Significant Litigation Defeat

Also,

NY District Court Halts Development Plans to Construct in Estuarine Sanctuary

No Easy Road to a Public Beach Easement in Rhode Island

Rivers as Legal Persons Emerge as a Solution: Acknowledge Cultural Interests and Solve Pollution

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Cover page photograph of a green anaconda courtesy of Emmanuel Keller.

Contents page photograph of the Hawaiian shore courtesy of Jens Karlsson.

The SandBar

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Federal Invasive Species Prevention Efforts Suffer Significant Litigation Defeat

Stephanie Otts[1]

Photo of a southern African python courtesy of Bernard Dupont.

On April 7, 2017, the D.C. Circuit Court of Appeals issued its opinion in *United States Association of Reptile Keepers v. Zinke*.[2] The court held that 18 U.S.C. § 42 (Title 18) of the Lacey Act prohibits only the importation of listed injurious species into the United States and shipments of injurious species between the continental United States and listed territories. This ruling struck down the longstanding interpretation of the U.S. Fish and Wildlife Service (FWS) that Title 18 also prohibited the shipment of injurious species across state lines.

Background

The Lacey Act is one of the oldest wildlife protection statutes in the United States. It was enacted in 1900 to help states protect their native wildlife by prohibiting the interstate transport of wildlife killed or taken in violation of state law. Title 18 of the Lacey Act, often referred to as the "injurious species provision," authorizes the FWS to prohibit the importation and shipment of species "deemed to be injurious or potentially injurious to the health and welfare of human beings, to the interest of forestry, agriculture, and

Photo of a Beni anaconda courtesy of Phil Whitehouse.

horticulture, and to the welfare and survival of the wildlife or wildlife resources of the United States."[3]

On March 6, 2015, the FWS issued a regulation under Title 18 declaring the reticulated python, DeSchauensee's anaconda, green anaconda, and Beni anaconda as "injurious." This listing was part of the FWS's ongoing efforts to prevent the introduction and spread of large constrictor snakes in the United States. The FWS first took action in 2012, listing four species as injurious: Burmese python, yellow anaconda, and northern and southern African pythons. The 2012 and 2015 rules prohibited both the importation and interstate shipment of listed species.

The United States Association of Reptile Keepers (USARK) filed a lawsuit challenging the authority of the FWS to restrict the interstate shipment of the listed species. While the language of Title 18 clearly prohibits the importation of injurious species into the United States, it does not directly refer to interstate transportation. In addition to importation, Title 18 prohibits "any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States." USARK argued that this provision bans only the shipment of injurious species between a state in the continental United States and either the District of Columbia, Puerto Rico, Hawaii, or other possessions, and not the shipment between two states within the continental United States. The district court issued a preliminary injunction against FWS enforcement of the rule in May 2015, after concluding that USARK demonstrated a likelihood of success on the merits.[4] The FWS appealed.

D.C. Circuit Court of Appeals

On appeal, the D.C. Circuit Court of Appeals upheld the ruling of the lower court. The court focused exclusively on the plain language of Title 18 and its grammatical structure. Citing the Chicago Manual of Style and Garner's Modern American Usage, the court noted that the use of the word "between" to introduce multiple items speaks to one-to-one relationships across the listed items. According to the court, between "ordinarily expresses nothing about relationships *within* any one of the listed items."[5]

Applying this rule to Title 18, the court concluded that the shipment clause "is best read – indeed can only be read – solely to prohibit shipments from one listed jurisdiction to another."[6] According to the court, Congress's use of "between" should be interpreted to refer to the relationship of individual listed jurisdictions – the continental United States (as a whole), the District of Columbia, Hawaii, Puerto Rico, and other U.S. possessions – to each other. Title 18 does not speak to relationships within the listed jurisdiction. As the court stated, "[i]t would make no sense to speak in terms of barring 'shipments between Puerto Rico.'"[7]

It addition to being grammatically correct, the court found that this interpretation was consistent with the legislative history and evolution of the Lacey Act. The original language of Title 18 only prohibited the importation of injurious species into the United States, which by statutory definition included its territories and possessions. In 1960, Congress amended the Lacey Act

and added the shipment clause primarily to protect the mainland (i.e., the continental United States) from shipments of injurious species, such as the mongoose, from Hawaii, Puerto Rico, and other U.S. island territories. If the shipment clause prohibited the shipment of injurious species between any state, Congress's separate reference to Hawaii in Title 18 would have been unnecessary as Hawaii became a state in 1959.

The FWS did not dispute this legislative history but argued for a broader interpretation due to the inclusion of the District of Columbia among the listed jurisdictions. If the purpose of the shipment clause was to protect the continental United States from the islands, why would Congress list the District of Columbia, which is legally part of the continental United States? The court suggested that the District of Columbia may have been included because, at the time, the District lacked legislative authority to protect itself. "Individual states, by contrast, could protect themselves by enacting their own law prohibiting the importation into their borders of invasive species."[8]

Conclusion

The D.C. Circuit Court of Appeals held "as a matter of law that the government lacks authority under the shipment clause to prohibit shipments of injurious species between the continental states."[9] The impact of this ruling is unknown at this time. Almost every state prohibits the importation, shipment, transport, and possession of invasive species. The species covered by those state laws, however, vary widely. There may be significant legal gaps in states that have not incorporated the federal injurious species list into state law.

Photo of a Burmese Python courtesy of Tim Donovan/FWC.

Endnotes

1 Director, National Sea Grant Law Center.

2 852 F.3d 1131 (D.C. Cir. 2017).

3 18 U.S.C. § 42.

4 For more information about the D.C. District Court's ruling, see Autumn Breeden and Stephanie Showalter Otts, *Court Questions FWS's Authority to Restrict Interstate Transport of Injurious Species*, The SandBar 14:3 (July 2015).

5 United States Association of Reptile Keepers v. Zinke, 852 F.3d. 1131, 1135 (D.C. Cir. 2017).

6 *Id.* at 1138.

7 *Id.*

8 *Id.* at 1140.

9 *Id.* at 1142.

NY District Court Halts Development Plans in Estuarine Sanctuary

Kaelyn Barbour[1]

The Hudson River Park in New York City courtesy of Alex Correa.

In 2015, the Hudson River Trust (Trust) obtained private funding to create and build a new pier in the Hudson River Park (Park) in New York. The pier would house a $200 million performing arts venue and replace the functions of the neighboring deteriorated pier by hosting movies and concerts for the park-goers. The plan proposes three performance areas that would accommodate several thousand people, as well as spaces for relaxation and cultural events. The project quickly drew controversy. Several opponents claimed that during the permitting process the U.S. Army Corps of Engineers (Corps) failed to consider that the proposed development was located in a special aquatic area. In March, the U.S. District Court for the Southern District of New York agreed and remanded the case for re-evaluation.

Background

Although only officially designated by law a little less than 20 years ago, the area within the Hudson River Park (Park) has a long and vibrant history dating back several centuries.[2] In the 1400s, Algonquin tribes established the area as an important village and trading post. In the 1700s, George Washington arrived in New York just south of today's Pier 34 on his way to command American troops. In the 1800s, the world's first viable commercial steamboat departed from Pier 45. In the early 1900s, "the *Carpathia* dock[ed] at Pier 54 with 709 survivors of the *Titanic* disaster."[3] In 1998, New York passed the Hudson River Park Act, which created the well-known five-mile park and designated the area of the river that lies within the park as an estuarine sanctuary. The Hudson River Park Trust oversees administration and

Photo of a reconstructed pier in the Tribeca section of the Hudson River Park courtesy of Teri Tynes.

development of the Park and, with private funding, sought to create a new pier for public use within the Park.

The Trust applied for a Clean Water Act (CWA) § 404 permit from the Corps. The Corps granted the permit in April 2016. The City Club of New York, Robert Buchanan, and real estate mogul Tom Fox (plaintiffs) challenged the permit in federal district court, claiming the location was on a "special aquatic site" as defined by the Environmental Protection Agency (EPA), and the issuance of the permit violated the CWA and the Administrative Procedure Act (APA).

Clean Water Act

The CWA considers dredged or fill materials to be pollutants and does not allow the discharge of these materials in the nation's navigable waters without a permit. The Corps has the authority to issue § 404 permits for the discharge of dredged or fill materials but must follow the guidelines set by the EPA. The EPA's § 404 guidelines establish criteria for activities regulated under § 404 of the CWA. The guidelines prohibit the Corps from issuing a permit "if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences."[4] An alternative is practicable if "it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."[5] The EPA guidelines further require the Corps to conduct an environmental assessment (EA). In the EA, the Corps produces a statement of findings that defines the project's basic purpose.

The Corps' guidelines identify the basic purpose of a project as "the fundamental, essential or irreducible purpose of the project, used to determine whether the permittee's project is water dependent."[6] The Corps defined the purpose of the Trust's project as "[providing] a vegetated pier platform within Hudson River State Park with an amphitheater and public restrooms; and to continue to provide safe public access pier structures within Hudson River Park."[7]

In their complaint, the plaintiffs argued that the Corps too narrowly defined the project's basic purpose to force a finding that the project was water dependent. Existing law requires that "the purposes for the project must not be so narrow that they foreclose the consideration of reasonable alternatives."[8] Additionally, the project's basic purpose cannot be so narrowly defined as to make its water dependency inherent.[9] The plaintiffs argued that the project was not water dependent, and a correctly defined purpose would support this conclusion. Finally, the plaintiffs argued the Corps did not follow the § 404 guidelines, because they should have considered practicable alternatives, as required by the guidelines for projects that are not deemed water dependent.

The court agreed that the agency defined the purpose too narrowly. The court noted that the fundamental, essential, or irreducible purpose of the project is to provide additional public park and performance space, as indicated by the record. A finding of water dependent status means that the project "requires access or proximity to, or a location on, water in order to fulfill its basic purpose."[10] Providing additional public park and performance space does not always require access or proximity to water, and therefore is not water dependent.

When a proposed project is not water dependent, EPA guidelines require the Corps to apply presumptions during its analysis. According to EPA guidelines, the Corps should have made two presumptions: 1) that practicable

alternatives are available in less sensitive areas; and 2) that these alternatives have less of an adverse impact on the aquatic ecosystem. The court held that the Corps' analysis was too restricted; therefore, the decision to grant the permit was inappropriate.

Conclusion

The court ruled that the Corps violated the CWA and APA when it incorrectly defined the basic purpose and found that the project was water dependent. The pier project is not water dependent because a performance venue does not *always* require a location on water; therefore, the Corps should have presumed that there were practicable alternatives available and that those alternatives had a less adverse impact. The Corps and the Trust have both appealed.

Endnotes

1 2019 J.D. Candidate, Vermont Law School.

2 *Waterfront Timeline*, Hudson River Park. (last visited May 31, 2017).

3 *Id.*

4 40 C.F.R. § 230.10(a).

5 *Id.*

6 *City Club of NY v. U.S. Army Corps of Eng'rs*, 16 Civ. 3934 LGS, 2017 WL 1102667, at *7 (D.N.Y. Mar. 23, 2017).

7 *Id.* at *8.

8 *Id.*

9 *Id.*

10 40 C.F.R. § 230.10(a).

Guilty Plea in Seafood Industry Price-Fixing Conspiracy

Kaelyn Barbour[1]

In early May 2017, charges were filed in federal district court in Northern California against Bumble Bee Foods LLC (Bumble Bee) for the role it played in a scheme to fix the prices of packaged tuna fish. The charge states that Bumble Bee agreed to "fix, raise, and maintain prices of packaged seafood."[2] This was the first charge to be filed against a corporate defendant as a result of a federal antitrust investigation into the packaged seafood industry.

Bumble Bee has agreed to plead guilty to the price fixing charge for actions beginning in the first quarter of 2011 until the fourth quarter of 2013. Bumble Bee has consented to pay a criminal fine of $25 million.[3] In addition to the corporation, the Senior Vice President of Sales and the Senior Vice President of Trade Marketing have also agreed to plead guilty to charges against them; both remain on paid leave.[4] Recently, Walmart has sued Bumble Bee and two additional seafood companies, Starkist and Chicken of the Sea, alleging a price-fixing conspiracy. Look for an in-depth article on these issues in the next edition of *The SandBar*.

Endnotes

1 2019 J.D. Candidate, Vermont Law School.

2 Julia Horowitz, *Bumble Bee agrees to plead guilty in tuna price fixing scheme*, CNNMoney (New York), May 8, 2017.

3 Press Release, Dep't of Justice Office of Pub. Affairs, Bumble Bee Agrees to Plead Guilty to Price Fixing (May 8, 2017). *See also* Akin Oyedele, *Bumble Bee will plead guilty for fixing canned-tuna prices*, Business Insider (May 9, 2017, 10:14 AM), (explaining increased fine).

4 Horowitz, *supra* note 2.

No Easy Road to a Public Beach Easement in Rhode Island

Denman Mims[1]

Sunrise over a beach in Misquamicut, Rhode Island courtesy of Julian Colton.

From Hawaii to Florida, people flock to beaches as a way to escape the burdens of life. Actually accessing the beach in some places, however, can be a burden in its own right. Recently, the Rhode Island Supreme Court ruled on whether there was a public right to access two miles of beach in the Misquamicut area of Westerly, Rhode Island.[2] The trial judge had previously held that there was no easement creating a public beach access, because not all the original landowners signed off on the plat and it was not demonstrably clear that the landowners intended to create an easement. The Rhode Island Supreme Court affirmed.

Background

In 1909, a group of Westerly, Rhode Island property owners subdivided a beachfront property with an indenture and plat map (Plat and Indenture).[3] As a result, nine specific right-of-ways were carved out for public use. Dashed lines on the map clearly listed the northern, eastern, and western boundaries of the property. However, the property line on the southern boundary used an undulating line labeled "line of foot of bank." The beach area below this line was not divided by the kind of dashed lines used for the other boundaries.

The current property owners took action to prevent public beach access with fences and signs. The Rhode Island Attorney General, on behalf of the state, filed suit. The Attorney General asserted the existence of a public easement allowing the public to access the beach area.

Under the public trust doctrine, the state holds title to submerged land under navigable waters in trust for the benefit of the public. Each state's law regarding the extent of the rights of the public to reach the ocean differs. Under Rhode Island's public trust doctrine, the public is granted access to the shore for activities such as swimming, fishing, and seaweed collection; however, the public only has these rights in tidal waters up to the mean high tide line (MHTL).[4] This means that the public cannot walk above the MHTL unless they have an easement created by dedication or prescription.

A valid dedication requires a "manifest intent" by the landowner to dedicate the land in question. The state argued that the 1909 Plat clearly and unambiguously demonstrates the Plattors' manifest intent to dedicate the disputed area to the public. Further, even if the 1909 Plat was ambiguous, the state claimed that the extrinsic evidence reveals the Plattors' intent to dedicate the beach.

Trial Court

The Rhode Island Attorney General asserted that the original owners had dedicated the disputed beach area to the public in the 1909 Plat. However, four of the original property owners did not sign the Plat and Indenture, so the Plattors did not have the power to dedicate *all* of the land at issue. Accordingly, the trial judge ruled that the Plattors did not have the power to dedicate the entire beach area to public use. Although the judge noted that this "should end the inquiry," he proceeded to answer the remaining legal questions, namely, whether the owners had the "manifest intent" required to dedicate the beach area to the public.

The judge ultimately concluded that the Plat and Indenture did not a show a manifest intent to dedicate the beach to the public. The judge noted that specific right-of-ways existed elsewhere in the Plat; therefore, the Plattors knew how to make specific easements. If the Plattors had intended to dedicate the beach to the public via an easement, then they would have specifically done so.

The court dismissed the state's attempt to apply a doctrine known as "incipient dedication to roadways." Under this doctrine, drawing roads as part of a plat is typically sufficient evidence of intent to dedicate land.[5] The state argued that since the beach was drawn as a road, it meant the Plattors intended to dedicate the land. The trial judge found that the odd lines by the beach were merely intended to indicate a geographical feature, and the beach was clearly not treated as a road.

Under Rhode Island case law, when instrumentalities of a land plat are unclear - like when the lines and legend of a plat are ambiguous - courts can consider extraneous evidence to augment the plat.[6] The state contended that the Plat and Indenture were ambiguous enough for extrinsic evidence to be introduced. However, the trial judge concluded that the Plat and Indenture were unambiguous; therefore, the judge precluded the extraneous evidence. The court noted that even if the Plat and Indenture were ambiguous, the state's extrinsic evidence did not show a manifest intent to dedicate a public beach easement.

RI Supreme Court

On appeal, the Rhode Island Supreme Court reiterated that a valid dedication requires "manifest intent" for the landowner to dedicate the land in question. The state challenged three points that led the trial court to conclude that there was a lack of manifest intent. The state also attempted to admit extrinsic evidence.

The state first argued that the trial judge ignored key parts of the Plat and Indenture, which led to a misreading of the lines on the Plat. The Rhode Island Supreme Court was unconvinced. The court found that the trial judge "carefully analyzed the Plat's lines and markings and the Indenture's language."[7] The court reasoned that the trial judge had "correctly noted" the difference between the clear lines bordering Atlantic Ave to the north and the irregular undulating lines to the south.[8]

The state also claimed that the trial judge improperly concluded that beach access rights were not granted by the right-of-ways. The Rhode Island Supreme Court, like the trial court, reasoned that right-of-ways on the map did not dedicate the beach area to the public. Rather, the right-of-ways demonstrated the Plattor's ability to specifically dedicate land to the public when they so chose. Therefore, if the Plattors had specifically intended to dedicate, then they would have specifically dedicated the beach as they had done with the right-of-ways.

Finally, the state asserted that the judge incorrectly limited the doctrine of incipient dedication to roadways. The court rejected this assertion. It explained that the trial judge did not limit the doctrine at all. Rather, because the doctrine is not easily assumed for non-road areas, the trial justice found that beach area dedication could not be presumed merely from the word "beach" on the Plat. The court explained that the trial judge did not render the doctrine inapplicable. Instead, the trial judge found that the intent element was simply not satisfied to dedicate the beach by incipient dedication.

The state also maintained that the trial judge should have considered extrinsic evidence despite the finding that the Plat and Indenture unambiguously showed no manifest intent.

The Misquamicut State Beach shore in Westerly, Rhode Island courtesy of Lisa Jacobs.

However, the Rhode Island Supreme Court reasoned that because there was no ambiguity regarding manifest intent, the trial court was right to preclude extrinsic evidence. Nevertheless, the court addressed the state's concerns and stated that "the extrinsic evidence does not reveal the Plattors' manifest intent to dedicate the beach area to the public."[9]

Conclusion

Article I, Section 17 of the Rhode Island Constitution gives the public the right to enjoy the privileges of the shore; however, the MHTL typically serves as the boundary between public and private property, and beach access isn't guaranteed.[10] In this case, the court ultimately found that the public did not have a right to use the disputed area. The Rhode Island Attorney General stated, "Among all the things we hold dear as Rhode Islanders, unfettered access to our shoreline is among the highest. ... Although we are disappointed in the opinion, it was the right decision to bring the matter before the court to determine the intent of the original landowners more than 100 years ago."[11]

The Rhode Island Chapter of Surfrider Foundation, Save the Bay, Rhode Island Saltwater Anglers Association, Clean Ocean Access and Friends of the Waterfront Inc. all supported the state in its case to provide public access to the upland beach access and were disappointed by the loss. A representative of Surfrider noted, "It's a shame because publicly accessible property along the coast is dwindling. So much of it has been privatized. Any time there's a chance of making more available to the public, it's a fight we're willing to take."[12]

Endnotes

1 2019 J.D. Candidate, Tulane University School of Law.

2 Kilmartin v. Barbuto, 158 A.3d 735 (R.I. 2017).

3 *Id.* at 2.

4 R.I. Const. Art. I, § 17.

5 Donnelly v. Coswill, 716 A.2d 742, 748 (R.I. 1998).

6 Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1034 (R.I. 2005).

7 *Barbuto*, 158 A.3d at 23.

8 *Id.* at 22.

9 *Id.* at 28.

10 R.I. Const. Art. I, § 17.

11 Katie Mulvaney, *R.I. high court upholds owners' right to restrict access to Misquamicut beach*, Providence Journal, May 2, 2017.

12 *Id.*

Rivers as Legal Persons Emerge as a Solution: Acknowledge Cultural Interests and Solve Pollution

Morgan Stringer[1]

Distant view of canoers on the Whanganui River courtesy of Antoine Hubert.

The longest litigation in New Zealand's history has come to a close with a landmark decision: a river now has legal personhood.[2] The Whanganui River, also known as the Te Awe Tupua, is New Zealand's third longest river and culturally significant to the indigenous Maori. The grant of personhood will help protect the river and could prove influential in protecting other natural resources across the globe.

Whanganui River Personhood

The controversy over the Whanganui River began in 1840. That year, the British Crown entered into the Treaty of Waitangi with the Maori. The Treaty granted full rights to the Maori to land, forests, fisheries, and other possessions; however, colonists settled the land near the river, diminishing those rights.[3] In response to the colonization, the Maori began seeking legal protection for the river in the 1870s.

Photo of the Whanganui River courtesy of Felix Engelhardt.

On March 15, 2017 the Whanganui River received personhood through the Te Awe Tupua (Whanganui River Settlement) Bill.[4] The Whanganui River is not the first natural resource granted legal personhood in New Zealand. In 2014, the New Zealand government granted legal personhood to the Te Urewera National Park, giving it the "rights, powers, duties, and liabilities of a legal person."[5] An appointed board acts as agents for Te Urewera, and they assert any claims of violated rights.[6] New Zealand granted Te Urewera National Park legal personhood as a solution to a dispute over the ownership interests of the Ngai Tuhow Iwi Tribe.

The Whanganui River Settlement Bill declares the Whanganui River is a legal person "and has all the rights, powers, duties, and liabilities of a legal person."[7] The bill also establishes a partnership between the Iwi Tribe and the Crown to represent the best interests of the river.[8]

Gerrard Albert, the lead negotiator for the Whanganui Iwi Tribe said, "The reason we have taken this approach is because we consider the river an ancestor, and always have[.]"[9] Some may say it is strange to give a river legal personhood, "but it's no stranger than family trusts, or companies or incorporated societies [having legal personhood]," according to Chris Finlayson, the minister in charge of negotiating the treaty.[10] The settlement also calls for financial redress of NZ $80 million and an additional NZ $1 million towards setting up the river's legal framework.[11]

This law will enable the Whanganui River to advocate on its own behalf. Like the Te Urewera Board, which charges two nominees with protecting the national park's interests, the Whanganui River Board's two nominees will represent the River.[12] The river's legal personhood now means that ownership or regulatory interests would not matter when bringing a claim, but rather, the river could instead protect its own interests and seek remedies for its harms.[13]

Future Implications

The Whanganui River solution has already proved influential as legal precedent. Days after the decision, citing to the

Whanganui River legislation, India gave the Ganges and its main tributary, the Yamuna, legal personhood.[14] Like Te Urewera and the Whanganui River, the Ganges River has great cultural significance. More than 1 billion Indians believe that the Ganges River is sacred.[15] However, the Ganges River is heavily polluted. One and a half billion liters of untreated sewage and 500 million liters of industrial waste enter the Ganges River daily.[16] Because of this pollution, litigation ensued, claiming that the state governments of Uttarkhand and Uttar Pradesh were not cooperating with the federal government to adequately protect the Ganges from pollution.

Citing the Whanganui River decision, the high court of Uttarkhand granted the Ganges and Yamuna legal personhood.[17] In addition to granting the rivers personhood, the court appointed three officials to act as custodians of the river and mandated the establishment of a management board within three months. In addition to the Whanganui River decision, the court cited to the river's religious and cultural significance and to the River's impact on many Indians' health and well-being.[18] Previous attempts to clean the Ganges have failed, so this decision may empower the courts to step in to protect the Ganges from pollution and become more involved in the river's management.[19] This may ensure a quicker cleanup of the Ganges and a wider scope of remedies for pollution to the river.

CITING THE WHANGANUI RIVER DECISION, THE HIGH COURT OF UTTARKHAND GRANTED THE GANGES AND YAMUNA LEGAL PERSONHOOD.

What This Could Mean

Granting rivers personhood is emerging as a solution for both incorporating indigenous views into law and for cleaning up water pollution. However, this strategy has not proven successful in the U.S. In *Sierra Club v. Morton*, the Sierra Club claimed that the Mineral King Valley, itself, had standing because it was subject to injury.[20] The U.S. Supreme Court rejected this argument, holding that the persons or organizations themselves must be injured for legal standing to apply. Justice Douglas's dissent proposed that natural resources could have legal standing if they were subject to environmental injury. He pointed out that inanimate objects often served as plaintiffs in lawsuits, such as ships in maritime cases.[21]

In another case, *Cetacean Community v. Bush*, the plaintiffs argued that the Navy's sonar use harmed endangered whales; therefore, the endangered whales suffered an injury and had standing to sue under the Endangered Species Act (ESA).[22] The Ninth Circuit rejected this argument. It held that the ESA allowed only allowed persons to sue, which the ESA defined as individuals, corporations, agents, government departments, and political subdivisions.[23] The court concluded that without explicit approval from Congress, the animals did not have standing to sue.[24] In order for water sources to have legal personhood, Congress must redefine "person" under environmental laws to include natural resources.

Endnotes

1 2019 J.D. Candidate, University of Mississippi School of Law.

2 Daniel Melfi, *New Zealand Grants Whanganui River Legal Personhood, Settles Case Dating Back to 1870s*, National Post (March 15, 2017).

3 Ministry for Culture and Heritage, *The Treaty in Brief*, (New Zealand History May 17, 2017). Ministry for Culture and Heritage, *Whanganui River-Roadside Stories*, (New Zealand History Apr. 10, 2014).

4 Eleanor Ange Roy, *New Zealand River Granted Same Rights as Human Being*, The Guardian (March 16, 2017).

5 Te Urewera Act 2014 (N.Z.).

6 *Id.*

7 Te Awe Tupua (Whanganui River Claims Settlement) Bill 2016 (N.Z.), subpt. 2, cl. 14.

8 *Id.* at §§ 19-20.

9 *Id.*

10 Melfi, *supra* note 2.

11 Whanganui River Claims Settlement Bill 2016 (N.Z.), subpt. 2, cl. 14.

12 Melfi, *supra* note 2.

13 Bryant Rousseau, *In New Zealand, Lands and Rivers Can Be People (Legally Speaking)*, New York Times (July 13, 2016).

14 Michael Safi, *Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings*, The Guardian (March 21, 2017).

15 Safi, *supra* note 14.

16 Safi, *supra* note 14.

17 *See* Safi, *supra* note 14.

18 BBC, *India Court Gives Sacred Ganges and Yamuna Rivers Human Status* (March 21, 2017).

19 Safi, *supra* note 14.

20 Sierra Club v. Morton, 405 U.S. 727 (1972).

21 *Id.*

22 Cetacean Cmty. v. Bush, 386 F.3d 1169, 1173 (9th Cir. 2004).

23 *Id.* at 1177; See also 16 U.S.C. § 1532(13).

24 *Cetacean Cmty.*, 386 F.3d at 1179.

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32nd Annual WateReuse Symposium

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For more information, visit: https://watereuse.org/news-events/conferences/annual-watereuse-symposium