



# Personhood for the Deh-cho (Mackenzie) River Report

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Indigenous peoples and grassroots environmental groups are leading a global movement to give legal personhood to rivers and waters to conserve and protect nature. The “Rights of Nature” movement is galvanized by widespread environmental degradation and rising Indigenous rights movements, Indigenous communities around the world are leading the way in upholding the rights of sacred and ancestral rivers (Staley, 2021). The Māori peoples of Aotearoa are reclaiming freshwater ethics and values through the Treaty of Waitangi and applying their rights through political and legal avenues (Stewart-Harawira, 2020). The "environmental personhood", or *legal personhood*, movement is a result of successive governments around the world failing to adequately protect the environment, as well as to the growing recognition of Indigenous Peoples' rights and Indigenous legal concepts (Lowrie, 2021; Westerman, 2019). The movement acknowledges that environmental personhood exceeds the value to humanity. It is not that the people have a right to clean air, but that the air has a right to be clean (Parish, 2021). Rivers have become a central focus in the Rights of Nature movement.

Globally, river systems are under extreme pressure with many of the world’s rivers suffering from damming, pollution, loss of water quantity, and changes to river ecosystems, habitats, and watersheds. Currently in Northern Alberta, the Alberta Government plans to make policy changes in 2023 to allow the Oil and Gas Industry to release toxic tailings ponds into the Athabasca River, a tributary of the Deh-cho (Mackenzie) River Basin. Many Indigenous communities live downstream from the oilsands and everything that goes into the Athabasca River flows into the Slave River and to the Deh-cho River, and ultimately into the Arctic Ocean. Pursuing *legal personhood* for the Deh-cho River Basin could be a key factor in protecting the people, the river, and a land base from over-exploitation by humans. Keepers of the Water is a guardian that protects rivers and waters. This paper explains personhood through case studies and provides recommendations to Keepers of the Water to understand and support the global movement.

The Deh-cho (Mackenzie) River Basin is fed by four major rivers in Canada. It is a massive and powerful water system that supports life in a vast territory. The Athabasca River originates in Jasper National Park and travels 1,230 km northeast draining into the Peace-Athabasca Delta near Lake Athabasca, south of Fort Chipewyan, Alberta. The Peace River with its headwaters in the Rocky Mountains of northern British Columbia is a 1,923 km long river that flows to the northeast. The Peace-

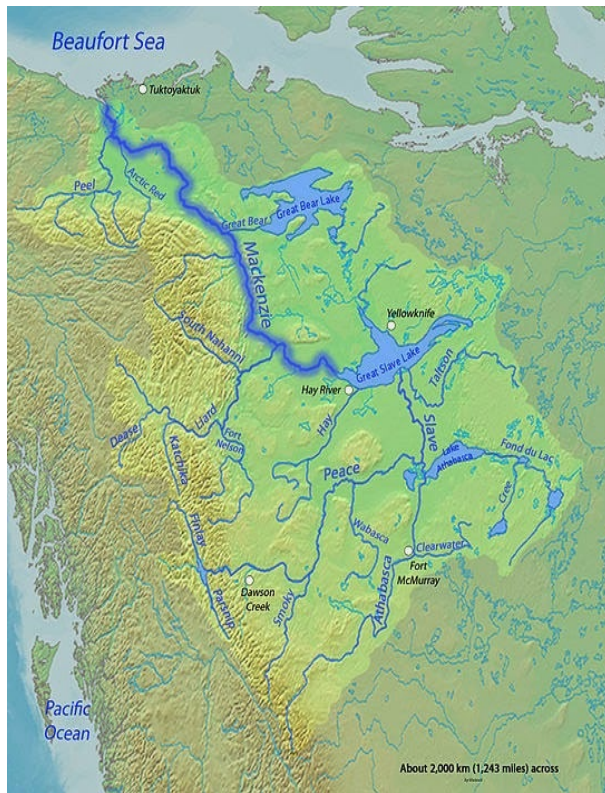


Figure 1: Map of the Mackenzie River that drains to the Arctic Ocean

Athabasca Delta flows into the Slave River, which empties into the Great Slave Lake and discharges through the Deh-Cho River system into the Arctic Ocean.

Indigenous peoples named the Deh-cho (Mackenzie) River; in the Slavey language, *Deh-cho* [tèh tʰò], *literally* means big river; and in Inuvialuktun, the word *Kuukpak* [ku: kpak] *literally* means great river. The big river flows through a vast, thinly populated region of forest and tundra entirely within the Northwest Territories in Canada, its many tributaries reach into five other Canadian provinces and territories. The river's main stem is 1,738 km long, flowing north-northwest from Great Slave Lake into the Arctic Ocean, where it forms a large delta at its mouth. The Mackenzie Delta is a vast fan of low-lying alluvial islands (i.e., islands composed of river sediment), covered with black spruce, thinning northward. The delta is 80 km across, bordered by the Richardson Mountains in the west and the Caribou Hills in the east. Its extensive watershed drains about 20 percent of Canada. It is the largest

river flowing into the Arctic from Turtle Island (Canada, United States, and Mexico). The river including its tributaries has a total length of 4,241 km. (Marsh & Piper, 2016)

All the Tributaries in the Arctic Drainage Basin are vital to the Indigenous Peoples who live within their watersheds. Water is sacred to Indigenous peoples because without it living beings would cease to live or become extinct. These sacred places require protection for Indigenous peoples to continue their livelihood. Since Indigenous peoples exercise their Indigenous rights to hunt, fish, trap, and gather food and medicines from within the water, muskeg, and surrounding lands.

The Indigenous people of Turtle Island have Indigenous laws that recognize water as a living entity and this law existed long before western settlement of this continent. For decades, Indigenous peoples have advocated to Canadian and American legal systems to recognize water as an animate being that is related to all life (Chiasson, 2019). The relationship of water to all living beings is reciprocal; without it we cannot survive. Sacred and natural laws uphold Indigenous peoples' responsibilities as the first stewards of the land and water. Indigenous knowledge of sustainable water and land management was passed from generation to generation. One teaching, that is shared by our Cree and Dene Elders, is to only take what you need from the waters and the land, not to over harvest, to ensure sustainability for future generations. Teachings are passed down through the oral tradition, sometimes in the form of stories. These stories and teachings express the law in Indigenous communities (Borrows, 2002). When these teachings are practiced, they supported abundant and thriving ecosystems since time immemorial (Wikler, 2020). Water is a sacred gift of life and fundamental for our health, well-being, and livelihood as individuals, families, communities, and nations.

For Indigenous People, in particular Indigenous Women, there is a sacred connection to the spirit of water. It is in the female human body that life is created, and in the human body the baby grows. When the waters break the baby is born. Water holds life and is our blood memory. When Treaties were made, based on sacred and natural laws, the spirit of water was used to infuse life and meaning into Indigenous sovereignty for future generations. We are reminded of this through the Seven Generations teachings of the sturgeon fish who embodies those teachings. Through the practice of reciprocity Indigenous people have responsibility to honor young women and to protect the water. The blood memory of our ancestors flows through the human bodies as does the water spirit flowing through Mother Earth. The health of the river is the health of humanity.

Understanding who you are and what you believe through your connection to Indigenous knowledge empowers guardianship. The values are passed orally from one generation to the next through teachings or stories via the oral tradition. The ancestral knowledge is blood memory. “Blood memory impacts powerfully in the lives of Indigenous peoples ... is a concept that is not present in multiple academic discourses relating to and impacting directly on Indigenous lives (Weber-Pillwax, 2021). Elder Bert Bull (Bull, 2021) was asked if there was a nehiyawewin (Cree) translation for blood memory and he stated: ekisk’som’kwayahk kimekom’no. The word is a feeling that reminds nehiyawak that the blood is like a river, it reminds nehiyawak of their hurt, and it is a word that helps nehiyawak understand who they are and to move forward. The narrative of ancestral knowledge is contained in blood memory and felt in the Earth and Waters. Humans must remember that the Earth does not revolve around them, but that they are connected as one whole entity, but the struggle continues to recognize the spiritual concepts.

Fundamentally, the “Right of Nature” movement, includes *procedural* rights such as *legal personhood* and *standing*; and *substantive* rights, such as the right to be left free of pollution (International Rivers, 2020). Having procedural rights entitles that a person has a right to a certain *process*. A procedural right could include the right to a fair hearing in a court; access to information; or a right to participate in a decision-making process (International Rivers, 2020). Having substantive rights gives nature the ability to bring a lawsuit to court. In other words, courts will only hear cases brought by ‘legal persons’ who the court recognizes as having ‘standing.’ “Under common law, which is practiced in the United States, the United Kingdom, India, New Zealand, Australia and Canada, personhood means that an entity has rights ascribed to it. Corporations and churches have personhood. Everything else – animals and ecosystems – are considered “things” that, like property, can be owned and exploited” (Staley, 2021).

Considering the differences between colonial views of landownership and private property with Indigenous peoples’ understanding of stewardship. Indigenous People did not believe in private ownership of land and did not view Mother Earth as a capitalist concept. Colonizers erected fields, fences, and brought forth British laws to define ownership of private property. Moved from vast Treaty territories to reserves under the Indian Act, Indigenous people now found their Treaty territories off-limits, and claimed by colonial settlers. They were forced onto reserves by the North-West Mounted Police and Indian Agents by oppressive colonial governments (Hildebrandt, 2008). After the slaughtering of buffalo, Indigenous people were promised that they would be given food as they lived on reserves and once confined there through a pass system, the federal government gave free land to settlers who immigrated to Indigenous traditional territories. By 1951 amendments to the Indian Act left First Nations and Inuit people with freedom to practice their sacred and natural laws via the Sundance and potlatches without being jailed (Monchalin, 2016). Currently, Indigenous people apply the inherent

concepts within Indigenous legal traditions to advocate for Indigenous rights to environmental heritage, land and water, language and culture, sustainable development, traditional practices, and relationships to the environments. The activism stems from centuries-long, ongoing, and unresolved colonial legacies (Datta & Marion, 2021).

Since colonization, humans have overused the land and decimated animal populations key to the survival of Indigenous Peoples. The main drivers in the loss of ecosystems are agriculture, forestry, and natural resource extraction. In Northern Alberta, water is readily diverted and withdrawn from the Athabasca River causing low-water levels and waste from tailings ponds leaching pollution into our waterways. Elders today have witnessed dramatic changes to the land and waters, telling stories of a time when you could drink the water directly from the waterways to now finding sores and mutations on fish. Community members notice that certain times of the year, water is low and has been low since water withdrawals began for industry. In the fall, which coincides with hunting and harvesting time, community members use the waterways for navigation to access traditional hunting grounds, traplines and fishing sites. Some areas are no longer accessible due to the low flows (Keepers of the Water, 2021).

In two hundred years the ecosystems have experienced an accelerated change. Indigenous peoples identified the cumulative effects across time and distance. Indigenous communities recognize the personhood of rivers requiring protection and respect. It is not a commodity (Townsend, Bunten, Iorns, & Borrows, 2021). Recognizing the rights of nature are modern expressions of long-practiced Indigenous laws. Indigenous legal systems are as diverse as Indigenous cultures, yet share an understanding that humans are an integral part of the natural world. Respect for all beings requires responsibility for all relations human and non-human beings. It is a relationship not to be exploited (Westerman, 2019). Recognizing natural entities with personhood legalizes their rights. Personhood is a promising legal concept that can be used to protect water for future generations.

What does the designation of legal personhood mean? Simply put, a river cannot walk into a court room to defend itself from the threat of pollution or sue a polluter for reclamation or remediation. Along with personhood comes the granting of legal guardians who uphold the rights of the river and can sue for damages on its behalf, should the need arise (Staley, 2021). The river needs “Guardians”, an alliance consisting of Indigenous peoples, environmentalists, local communities, and governments, to share the responsibility of protecting the river. The guardians will decide management of the watershed and monitor to protect it for future generations.

In February 2021, the Innu Council of Ekuanitshit and the Minganie Regional County Municipality recognized the Muteshekau-shipu (Magpie) River in Quebec, Canada as a living entity with fundamental rights granting the river, legal personhood. An internationally renowned whitewater rafting site, winding nearly 300 kilometres before emptying into the St. Lawrence. The river is culturally significant for the Innu, and it is popular with white water paddlers and rafters. (Townsend, Bunten, Iorns, & Borrows, 2021). The first river in Canada to be granted legal personhood joins the larger, global movement to recognize the rights of nature in law. The alliance sought “personhood” for the river, which was under threat by Hydro-Québec for a hydroelectric dam project (Staley, 2021). They accomplished this through twin resolutions adopted by First Nations, municipal governments and environmental groups including the Quebec section of the Canadian Parks and Wilderness Society (CPAWS), which has worked more than a decade to protect the Muteshekau-shipu from industrial development. (Jang, 2021). It is unclear what would happen if the designation were tested in a Canadian court. (Kestler-D-Amours, 2021). The

recognition of legal personhood for the Magpie, will likely be a tool to pressure the Quebec government to formally protect the river (Raymer, 2021).

Another example of the “Rights of Nature” movement is the Edézhíe Protected Area in the Northwest Territories, the first Indigenous Protected and Conserved Area (IPCA) in Canada. IPCAs are lands and waters where Indigenous Peoples have the primary role in protecting and conserving ecosystems. This is done through Indigenous laws, governance, and knowledge systems. Culture and language are the heart and soul of an IPCA (Government of Canada, Edezhie Protected Area, 2020). The language and culture hold symbolic knowledge of inherent rights based on sacred and natural laws. For the Dehcho First Nation, central to establishing Edézhíe was the expansion of Dehcho K’éhodi, a stewardship program where Dene guardians are responsible for many aspects of monitoring and management (Mason, 2018).

The “rights of nature” movement has gained traction internationally in recent years. Courts, various levels of government, and other decision-making bodies in countries around the world have recognized the personhood rights of ecosystems over the past few years, such as:

- 1) In 2008, Ecuador adopted a new constitution which included a similar concept of rights for nature protecting the Vilcabamba River.
- 2) In 2016, Colombia’s Constitutional Court declared that the Atrato River in the country’s northwest had a “subject of rights.”
- 3) In 2017, a court in India ruled that the Ganges and Yamuna rivers should be granted the same legal rights as people.
- 4) In New Zealand (2017), the Whanganui River was recognized as a “legal entity” as part of a negotiated settlement between the government and the Māori people (Kestler-D-Amours, 2021)

Learning from diverse Indigenous approaches to conservation is valuable, however, taking responsibility for repressive colonial policies is vital. (Mason, 2018) It is clear our lands and waters need protection from development. For nature to be considered equal to humans and corporations in the courts, rights must be embedded at the highest level, such as the Canadian Charter of Rights and Freedoms. (Staley, 2021) This will ensure the highest level of protection and a huge step towards reconciliation.

Looking to the Truth and Reconciliation Commission of Canada (TRC): Calls to Action #43 “calls upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.” Call to Action #92 “calls upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This includes but is not limited to the commitment to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.” (Truth and Reconciliation Commission of Canada, 2015) The TRC’s Calls to Action are specific to Canada and are focused on addressing the historical and ongoing harms caused by the residential school system. The TRC called on

all governments in Canada to fully adopt and implement the UN Declaration as a framework for reconciliation.

On June 21st, 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act (Government of Canada, Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act, 2021) received Royal Assent and came into force. This Act provides a roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration based on lasting reconciliation, healing, and cooperative relations. It affirms, among other minimum human rights standards, Indigenous peoples have the right “to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard” (Article 25); “the right to own, use, develop and control the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” (Article 26); “the right to the conservation and protection of the environment” (Article 29 (1)); and “to determine and develop priorities and strategies for the development or use of their lands or territories and other resources” (Article 32). A key provision that applies to the “State” affirms that they “shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent” (Article 29(2)). (Clogg, 2020) Together, with the TRC leading the way to reconciliation, there is a focus on improving the rights and well-being of Indigenous Peoples. UNDRIP covers the relationship with traditionally occupied and used lands, territories, and waters to uphold the responsibility to conserve and protect these for our future generations. These two documents give support to the pursuit of legal personhood as they are recognized and affirmed by the Government of Canada, Provincial Governments and Northwest Territories. This creates an opportunity for governments to collaborate with and uphold the rights of Indigenous Peoples now and into the future.

One project goal under the “Keepers of the Water Strategic Plan (5-year plan) January 2020 to 2024” is to work on getting the Deh-cho declared as personhood status. Board member Jean L’Hommecourt shared, “that a river is not a standalone being that the watershed is what we should be looking at rather than just the river.” This report was produced to support this goal, by providing background research on what is legal personhood, including how the “Rights to nature” has been implemented in Canada and globally. The examples of the Muteshekau-shipu (Magpie) River in Quebec and the Edézhíe Protected Area in the Northwest Territories, gives some optimism that if a strong alliance is formed to protect nature it is possible to obtain legal personhood status in Canada. Keepers of the Water (KOW) is an established environmental non-government organization in Alberta. KOW challenges the colonial narrative and brings networks of people together sharing information to empower communities to understand the sacredness of water. As an Indigenous-led organization based on a coalition of First Nations, Métis, Inuit, environmental groups, grassroots citizens, and communities concerned about protection of Water, Keepers is well aligned to start building the “Deh-cho River Watershed Alliance”. With their allies and settler supporters, Keepers of the Water’s mandate is to elevate decolonized traditional indigenous water governance. This is done by emphasizing Indigenous land-based knowledge, language and culture, Indigenous laws and governance in the development of any resolutions to recognize and affirm legal personhood for the Deh-Cho River. Keepers of the Water is committed to pursuit of legal personhood for the Deh-Cho River and will begin the pre-planning stages to establish The Deh-Cho River Watershed Alliance in early 2022.

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