

FINAL REPORT  
October, 2023

# *Legal Personhood for the DehCho River?*

Research to inform a community-led  
campaign



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# Executive Summary

Destruction to ecosystems and communities is happening at an alarming rate. But inspiring community-led strategies to protect lands and waters are building a powerful force against this destruction.

One such strategy, the Rights of Nature, has been building worldwide. Led by local Indigenous communities, this strategy has had success in acknowledging and protecting the sacredness of Earth's life support systems, which we all depend on. From Aotearoa/New Zealand to Ecuador, rivers and mountains are being protected, colonial legal systems are coming into dialogue with Indigenous laws, and constitutions are being rewritten. Recently, a river in Québec was granted legal personhood after two parallel resolutions were adopted by a First Nation and neighbouring municipality. From all these wins, there is much that can be learned to help us protect sacred places and beings that are under threat by ongoing colonial capitalism.

***Environmental personhood can be understood as a means to ground Indigenous value systems, rights, and legal traditions in Western law.***

The following report shares the findings of a collaborative research project guided by [Keepers of the Water](#) (KOW) and supported by [Research for the Front Lines](#) and Concordia Masters student Emily Hoppe. Through this project we have gathered as much relevant information as we could to inform a potential community-led campaign to affirm the rights of the DehCho River (also known as the Mackenzie River).

Through online research and interviews with people involved with Rights of Nature (RoN) movements elsewhere, we have gathered the following key learnings. We hope they can help lead to the successful protection of the DehCho River and the strengthening of Indigenous legal systems and self-determination.

## **Key Lessons to inform the protection of the DehCho River:**

### ***Navigating conflicting worldviews and legal systems***

**Indigenous and western worldviews consider “personhood” differently.** Where an Indigenous perspective views humans and nature as interdependent, personhood is a moving target in western law. This ambiguity can be leveraged toward achieving legal protections for non-human beings in a colonial legal context. However, western



laws are founded upon views that fundamentally contradict Indigenous worldviews. This conflict presents a challenge for the legal personhood movement and the DehCho case.

**Any initiative to support the DehCho likely means engaging with the Canadian colonial legal system and their laws.** While this can present challenges, current Canadian federal environmental laws could be applied to grant protections to the DehCho. However, for such a project to be truly transformative, it must be grounded in Indigenous legal systems. Therefore, any movement to protect the river means upending the colonial legal system.

**Successful global and local environmental personhood initiatives demonstrate that it is possible to achieve important wins, even through colonial legal systems.** By doing so, we can effectively defend our lands and waters and reclaim ancestral knowledges. The campaign to protect the DehCho can be **an important step towards an Indigenous, multi-juridical legal system.**

### ***Suggestions for engaging with the colonial legal system***

**Legal principles like *in dubio pro aqua* are a promising option, rather than written laws.** The reason for this is that principles can be broadly applied. Legal principles also do not rely on human-created definitions of nature, etc.

**Of the three main routes to legal personhood (constitutional, legislative, or judicial), the legislative option seems to offer the most clear protection for the rights of nature.** Legislation affords national protection, and is more difficult to overturn than court decisions. This is true even though legislation is a lengthy process and requires a lot of people power.

### ***Grounding this work in Indigenous Rights, Title, and Laws***

Protecting the river means moving toward traditional forms of governance; **towards an Indigenous legal order, an Indigenous, multi-juridical legal system.**

Indigenous Peoples in Canada hold inherent and treaty rights to engage in traditional water-related customs and practices. **These rights are affirmed in Section 35 of the Canadian Constitution.** As such, protection for the DehCho could come about via a constitutional challenge because Canadian governments are not supposed to interfere with these rights. Whether federally, provincially, or both, constitutional rights mean that **Indigenous peoples' needs and rights must be considered.** This consideration extends to water quality, protection, and conservation. In affirming Indigenous Peoples' rights to protect their lands and waters, the Rights of Nature/legal personhood

approach for the DehCho provides an opportunity to move toward meaningful reconciliation in so called Canada.

**The Rights of Nature and Indigenous Rights can reinforce each other in important ways.** Canada's participation in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides an international legal foundation to support Indigenous people's right to protect their lands and waters, including through Rights of Nature claims. claim for nature's personhood.

### ***The importance of building strong alliances***

**Building strong alliances is key to successful RoN movements.** The alliances that are emphasized include

- ◆ All Indigenous communities in the area,
- ◆ Allied settler communities, experts and stakeholders in the region
- ◆ Environmental and Indigenous rights movements across the country.

The **consent, collaboration, and guidance of all Indigenous groups** living along the river must be a priority. Regional consensus has been found to be crucial. The DehCho First Nations Leadership could consider creating a committee to report on the possibility of attaining legal personhood for the DehCho River.

### ***Being prepared for the challenges***

**Some challenges are material**, e.g., limited time, energy, and resources. **Some are more abstract**, such as issues around jurisdiction, i.e., how legal personhood is achieved legally.

**Determining the boundaries of what is meant by a "river" can be tricky.** Similarly, communities must think critically about who gets to speak for the river, and how river guardians' priorities or responsibilities may shift over time.

### ***Learning from successful movements worldwide***

The Mutehekau Shipu/Magpie River study identified 11 key factors supporting a successful campaign. Of these factors, the top two are **regional consensus** and **Indigenous and youth leadership**.

**A successful campaign for legal personhood has positive social and cultural impacts that extend beyond the local community.** Examples include centering Indigenous political economies, and creating a precedent that may impact industry and

development stakeholders. Therefore, even if the colonial state does not recognize legal personhood, the implications of legal personhood are far-reaching.

## Introduction to this Project

Destruction to ecosystems and communities is rampant. But inspiring, heartfelt and powerful community-led strategies to protect their lands, waters and peoples are too. One such strategy, the Rights of Nature, has been building worldwide. Led by local Indigenous communities, this strategy has found exciting success in acknowledging and protecting the sacredness of Earth's life support systems, which we all depend on. From Aotearoa/New Zealand to Ecuador, rivers and mountains are being protected, colonial legal systems are coming into dialogue with Indigenous laws, and constitutions are being rewritten. Recently, a river in Québec was granted legal personhood after two parallel resolutions were adopted by a First Nation and neighbouring municipality. This strategy has inspired hope in the fight for environmental justice and Indigenous rights in so-called Canada too.

The following report shares the findings of a collaborative research project. In it, we have gathered as much relevant information as possible to inform a community-led campaign to seek legal recognition of personhood for the DehCho River (also known as the Mackenzie River). This report answers two key questions:

- *What can be learned from the struggles and successes of other Rights of Nature initiatives around the world?*
- *What legal context do we need about the DehCho to launch a successful community-led campaign?*

This research project was guided by [Keepers of the Water](#) (KOW) is an Indigenous-led environmental non-profit organisation protecting and preserving the Arctic Drainage Basin, a vast internationally-vital watershed holding 60% of Canada's freshwater – 12% of the world's total, and is essential to Indigenous People's inherent rights and relationships with these lands and waters. Keepers of the Water comprises First Nations, Métis, Inuit, environmental groups, concerned citizens, and communities working together for the protection of water, air, land, and all beings living within the Arctic Ocean Drainage Basin. Keepers of the Water understands that clean, fresh water is invaluable to all life in the service of a sustainable, balanced, and just future on this incredible planet.

This research project is supported by [Research for the Front Lines](#) (R4FL). R4FL is a network of researchers who offer time and labour on research projects led by communities and movements on the frontlines of the fight for environmental and climate justice in so-called Canada.

[www.researchforthefrontlines.ca](http://www.researchforthefrontlines.ca)

**A note on methods:** Different people worked on different aspects of the research and we employed different methods. Crystal and Emily interviewed 10 members of the Mutehekau-shipu Alliance. The whole team sat down and learned from Dr. Josie Auger to learn from her about the limits and challenges of the Rights of Nature. Ceclia, Crystal and Jen met with Cristina Melo, of the Fundacion Pachamama to learn from her too. All the people quoted in this report gave their consent to have their words, perspectives and ideas included.

## Acknowledgements

We'd like to acknowledge the contributions to this research by Dr. Josie Auger and Susanna Deranger. Your insight has powerfully shaped this work.

We'd also like to thank Emily Hoppe, masters student at Concordia University, for your fantastic work researching the Magpie River case in such depth and with such care, in service to Keepers of the Water. Emily and Crystal wish to say tshinashkumitin, merci, and thank you to Chief Jean-Charles Piétacho, the Guardians of the Mutehekau Shipu/Magpie River, and everyone they interviewed whose work made this research possible.

We send gratitude to Research for the Front Lines' research volunteers: Siobhan O'Connell, Carla Arbelaez, Cecilia Pérez Plancarte, Kay Pettigrew, Kenzie Harris, and R4FL Coordinators Jen Gobby and Marcia MacDonald. Thanks goes to Cristina Melo of the Fundacion Pachamama, for meeting with the research team and sharing her learnings.

## Overview of Report Sections

The report is presented in five sections:

**[Section 1: Personhood and the Rights of Nature](#)**

Explains the concept of Rights of Nature and Legal Personhood for rivers, mountains, and other ecosystems.

**[Section 2: The Legal Context for the DehCho](#)**

Presents the legal context surrounding the DehCho River, including both colonial and Indigenous legal systems, and provides an overview of relevant legislation.

**[Section 3: Personhood Wins: Lessons from Around the World](#)**

Provides inspiration and information gleaned from a review of Rights of Nature cases from around the world, from India to Ecuador to New Zealand.

#### [Section 4: Personhood Wins: Lessons from Home](#)

Zooms in on so-called Canada to see what can be learned from local cases. Provides a deep dive into the case study of the Magpie River in Quebec, where the first case of legal personhood was granted.

#### [Section 5: Toward a Community-Led Campaign for the DehCho: Key Takeaways](#)

Concludes with a list of key takeaways and lessons from this research that could be used to inform a community-led campaign to protect the DehCho and ensure that it flourishes.

We have also included a [List of Abbreviations](#) and a [Glossary of Key Terms](#) below to help you best understand this report.

**Thank you for reading! If you feel inspired to get involved in protecting the DehCho through a campaign for legal personhood, please contact Crystal Stamp-Cardinal at [projects@keepersofthewater.ca](mailto:projects@keepersofthewater.ca)**

## Keepers of the Waters' Vision

Water is life. We embody Water. It is a sacred gift. Love, honour, and respect for Water are essential to human existence. We honour the life-giving Waters and the Lands we are genetically connected to.

We share a vision of unity based on Elders' guidance; ceremonies; Traditional Ecological Knowledge exchange; and the natural laws that govern all life.

No matter who you are, each of us is born from te Water before we ever breathe our first breath of air. It is up to each of us to keep the Water for those yet to come. We must all be Keepers of the Water.



<https://www.keepersofthewater.ca/>

## List of Abbreviations

BAPE	Bureau d'audiences publiques sur l'environnement
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
CPAWS	Canadian Parks and Wilderness Society
IPCA	Indigenous Protected and Conserved Area
OIDN	Observatoire International des Droits de la Nature
RCM	Regional County Municipality
RoN	Rights of Nature
SNAP	Société pour la nature et les parcs du Canada
DFN	Dehcho First Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples



# Glossary of Key Terms

Anthropocentric	The belief that human beings are the central or most important entity in the universe.
Bureau d'audiences publiques sur l'environnement (BAPE)	A public, neutral, and independent organization. The BAPE reports to Quebec's Minister of Sustainable Development, Environment, Wildlife and Parks. Individuals can learn about and express their views on projects that impact the environment and their quality of life through the BAPE.
Carte blanche	An arrangement where each person has the freedom to act without constraints.
Co-draft	To write a law or regulation in close and continuous collaboration with more than one person or group.
Collaborative governance (co-governance)	A cooperative and collaborative governing arrangement. This approach involves more than one group or person agreeing to use collective decision-making processes.
Co-management	An agreement made between entities that defines the sharing of roles and responsibilities in managing resources.
Common property	Shared property owned or used by more than one entity.
Confer	To grant or give (e.g. confer rights).
Convention on Biological Diversity	An international legal tool that supports: <ul style="list-style-type: none"> <li>● the conservation of biological diversity</li> <li>● the sustainable use of its parts, and</li> <li>● the fair sharing of the benefits from using the resources.</li> </ul>
Dichotomy	A division into two opposite parts. These parts are often viewed as mutually exclusive (e.g., human vs. nature, subject vs. object). This perspective is often criticized for being overly simplistic.
Environmental assessment	A regulatory process to study the potential environmental impacts of proposed development activities.
Epistemology	The study of knowledge. Epistemology relates to truth, belief, and justification.
Holistic	The belief that the parts of something are interconnected and can only be explained with an understanding of how they relate to the whole.
Impact Benefit Agreement	An agreement negotiated for resource development. This type of agreement often provides commitments and benefits to affected Indigenous communities.



<i>In dubio pro aqua</i> principle	An international legal principle that states that a water-related legal uncertainty should be resolved in the way that best protects the water body or water bodies in question.
<i>In dubio pro natura</i> principle	An international legal principle that states that a legal uncertainty should be resolved in the way that best protects the natural environment.
Indigenous Protected and Conserved Area (IPCA)	A protected area established by an Indigenous and Crown governance arrangement.
Nitassinan	The ancestral territory of the Innu.
Ontology/ontological	The study of existence. Ontology seeks to understand the nature of being, or the kinds of things that have existence.
Parallel resolutions	When two or more legal resolutions are passed in more than one forum or jurisdiction to address a common issue.
Private property	Property that an individual private entity owns and exclusively controls.
Relationality	Refers to connectedness. Relationality is a view of the world where no person or thing exists in isolation, because existence means being in relationships with other beings.
Reparation	The act of making amends for a wrong or injury, such as through monetary compensation.
Sociocultural	Refers to societal and cultural factors, which means common traditions, habits, patterns, and beliefs present in a population.
Standing (i.e. legal standing)	Refers to the capacity of a person or group to start a lawsuit in court.

# Personhood and the Rights of Nature

*There is a new and cry for human rights, they said, for all people, and the Indigenous people said: What of the rights of the natural world? Where is the seat for the buffalo or the eagle? Who is representing them at this forum? Who is speaking for the water of the earth? Who is speaking for the trees and the forests? Who is speaking for the fish—for the whales, for the beavers, for our children?*  
– Chief Oren Lyons Jr.<sup>1</sup>



In western legal systems, some beings are considered persons, and others are not. This can be explained by a basic [dichotomy](#) inherent to western legal understandings of the world. In this dichotomy, subjects (humans) and objects (nature) are viewed as separate from one another.<sup>2</sup> This dichotomy connects to the idea of having legal rights.

<sup>1</sup> Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World*, 2017, xxi.

<sup>2</sup> Kurki, *A Theory of Legal Personhood*.

In western law, human beings are considered subjects. Plants, animals, and other aspects of the environment are considered objects. Subjects have consciousness, agency, and the ability to exercise legal rights and responsibilities. Objects are property to be owned, controlled, and exploited by humans for our benefit. In this view, objects like plants, animals, bodies of water, etc., are separate from subjects, i.e., human beings.

The history of [private property](#) is rooted in ecological exploitation.<sup>3</sup> Colonial state-making processes preferred private property systems in the 18th century because these systems were considered to be more productive. These systems were also considered simpler to assign, control, and manage financially.

Under these understandings of the world, even when attempts to protect nature are “successful”, environmental destruction often still occurs. This is because ecosystems are interconnected. They don’t follow socially constructed rules, ideas of property ownership, or political governance—many of which are decided by colonial governments.

**Ecosystems are interconnected. They don’t follow socially constructed rules, ideas of property ownership, or political governance.**

Modern western legal systems view all human beings as subjects. Subjects are persons, with certain basic rights. But personhood has not always been extended to everyone. Many human beings have not been treated as legal persons throughout history. For example, Indigenous peoples, enslaved people, and women have had to fight for their legal recognition as persons.<sup>4</sup> Also, some individuals, such as children or disabled people, cannot represent themselves in court. The rights of these individuals are represented by a guardian.

**Western legal systems have recognized some non-human entities as legal persons.** For example, corporations, nation-states and municipalities, religious, educational and charitable institutions have all been recognized as persons.<sup>5</sup> The significance of this is captured well in the words of David Boyd, a United Nations Special Rapporteur and associate professor of law, policy, and sustainability:

*Rights are symbolically and politically powerful, as the history of the civil rights, women’s rights, Indigenous rights, and gay rights movements demonstrates ... they are a proven means of securing progress in the way society embraces previously mistreated communities.*<sup>6</sup>

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<sup>3</sup> Scott, *Seeing Like a State*.

<sup>4</sup> Kurki, *A Theory of Legal Personhood*; Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World*, 2017.

<sup>5</sup> Kurki, *A Theory of Legal Personhood*.

<sup>6</sup> *The Rights of Nature: A Legal Revolution That Could Save the World*, 2017, xxxiii.

Environmental personhood has emerged as part of a broader global movement recognizing the Rights of Nature (RoN). Environmental personhood gives natural beings legal personhood. This strategy has emerged in response to failures of current environmental law.<sup>7</sup> RoN challenges dominant systems by shifting conceptions of ownership and rights. This model allows us to view environmental “objects” as subjects. This shift in perspective has important cultural and regulatory impacts, as subjects bear their own rights.

## **Environmental personhood has emerged as part of a broader global movement recognizing the Rights of Nature in response to failures of current environmental law.**

Legally, the environmental personhood movement emerged in the mid-1990s when the Community Environmental Legal Defense Fund was formed.<sup>8</sup> Since then, the movement has included approaches at various levels of government, from local to international. These approaches have focused on various types of ecosystems and used many different legal mechanisms.<sup>9</sup> Internationally, Ecuador, Bolivia, Colombia, the US, New Zealand, India, and now Canada have taken measures to recognize the personhood of natural entities.<sup>10</sup> So far, efforts have largely focused on river protection.

The theory of environmental personhood emerged from Christopher Stone’s 1972 book, *Should Trees have Standing?*<sup>11</sup> This book is cited by the US Supreme Court in *Sierra Club v. Morton*.<sup>12</sup> This ruling recognizes the right of environmental entities to sue for their own preservation.

In 1989, Roderick Nash published a book called *The Rights of Nature: A History of Environmental Ethics*.<sup>13</sup> In 1999, Thomas Berry published *The Great Work: Our Way Into the Future*.<sup>14</sup> This book provided a legal foundation to recognize that everything has a right to be and evolve. In 2003, Berry and Cormac Cullinan published *Wild Law: A Manifesto for Earth Justice*.<sup>15</sup> This added a spiritual and moral element to the legal discussion.

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<sup>7</sup> Maloney, “Building an Alternative Jurisprudence for the Earth: The International Rights of Nature Tribunal”; Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World*, 2017; Garver, “Are Rights of Nature Radical Enough for Ecological Law?”; Macpherson et al., “Where Ordinary Laws Fall Short: ‘Riverine Rights’ and Constitutionalism.”

<sup>8</sup> Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World*, 2017; Garver, “Are Rights of Nature Radical Enough for Ecological Law?”

<sup>9</sup> Macpherson et al., “Where Ordinary Laws Fall Short: ‘Riverine Rights’ and Constitutionalism.”

<sup>10</sup> Maloney, “Building an Alternative Jurisprudence for the Earth: The International Rights of Nature Tribunal”; Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World*, 2017; Turp and Cárdenas, *A Legal Personhood for the St. Lawrence River and Other Rivers of the World*.

<sup>11</sup> Stone, “Should Trees Have Legal Standing? Toward Legal Rights for Natural Objects.”

<sup>12</sup> *Sierra Club v. Morton*.

<sup>13</sup> Nash, *The Rights of Nature: A History of Environmental Ethics*.

<sup>14</sup> Berry, *The Great Work: Our Way Into the Future*.

<sup>15</sup> Cullinan and Berry, *Wild Law: A Manifesto for Earth Justice*.

Deep historical and ontological roots in Indigenous cultures and legal traditions far pre-date this literature. Accordingly, **Indigenous peoples have led the RoN movement.**<sup>16</sup> Stone's *Should Trees Have Standing?* did not introduce a new concept. The [anthropocentric](#) view of nature as property is a Western perspective. It overlooks [holistic](#) ontological understandings of the world that view more-than-human (natural) beings as subjects and bearers of their own intrinsic rights.<sup>17</sup> These understandings of the world have long been recognized in Indigenous laws and cultures.

Environmental personhood can be understood as a means to ground Indigenous value systems, rights, and legal traditions in Western law. But, as noted by Anishinaabe legal scholar Aaron Mills, "What we call law exists as such only within its own lifeworld."<sup>18</sup> These models can fall short of enacting Indigenous laws since they often remain embedded in legal systems rooted in anthropocentric worldviews. This complexity represents a challenge for the legal personhood movement to figure out.

Environmental personhood can be understood as a means to ground Indigenous value systems, rights, and legal traditions in Western law.

## The Legal Context for the DehCho

When we began this research, we knew that any initiative to fight for the legal personhood of a river will need to engage with this country's colonial legal system. So, we set out to learn about the colonial legal context of the DehCho.

For this fight for the RoN to be truly transformative and effective, we also knew it needed to be grounded in Indigenous legal systems. It needs to be rooted in Indigenous ways of relating to the water and the DehCho itself. To learn how to situate legal personhood for the DehCho in Indigenous legal systems, we sat down with Dr. Josie Auger, Associate Professor at Athabasca University. Dr. Auger is also a Board Member of Keepers of the Water. She shared this with us:

*"We want you to help in a good way for the Earth and the Waters.*

*Earth is a sentient being. And we acknowledge the Earth as a Mother and the Mother that gives life to us all, and supports and sustains us. And even when we*

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<sup>16</sup> Kimmerer, *Braiding Sweetgrass*; Borrows, *Canada's Indigenous Constitution*.

<sup>17</sup> Kimmerer, *Braiding Sweetgrass*; Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today"; Simpson, *A Short History of the Blockade: Giant Beavers, Diplomacy, and Regeneration in Nishnaabewin*.

<sup>18</sup> Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today," 854.

*go into our lodges, it's like going into our Mother. So even if our birth mothers have passed, we're always connected to the Mother. And even when we die, all the blood and bones are in the Earth and become part of the Earth. And that gives life to everything else. Water is also a part of the Earth as well.*

*We talk about the treaties: some of the treaties existed before the Constitution, the British North America Act of 1867. And the 1763 Royal Proclamation is the Magna Carta that acknowledges Aboriginal Title and Nationhood. When we talk about the 1982 Constitution that acknowledges the existing rights, as ambiguous as that was—seemed hopeful at the time—but was nothing important, really, for us, as far as I'm concerned, because the rights had to be defined within the Canadian courts of law thereafter, and oftentimes, that they were considered static, that the culture and everything had to be proven, you know, to the time when you were using bows and arrows.*

*Things have changed a lot over time, in different court cases and such. But the existing rights are, they say, are hereby entrenched and affirmed. And the 1982 Constitution also acknowledges the collective rights. Individual and collective rights are also included in that.*

*However, the Charter of Rights and Freedoms emphasizes individual rights. And because of that, a lot of times the individual supersedes the collective in society. And, and collective rights are kind of considered or not.*

*Like the United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP], is really about human rights, it doesn't say the Earth is a sentient being.*

*So this is all really new to me, too. And the scholarship of Indigenous legal experts holds a special place for me as well. Because when the Keepers of the Water [invited me to join a conversation with youth and lawyers] about the Rights of Nature, they sent tobacco. And they sent tobacco a month ahead of time, so I could sit with it. For me as a Cree person tobacco is a sacred part of the protocol.*

*All I can say is that we all have gifts, and the animals have gifts. The animals also have a relationship with the Earth. And that's what came to me, that came through song, songs that had been passed down. And suddenly I was realizing, Oh, wow. How do you prove that? How do you prove that in the current legal system? How do you prove that really? And do we have to prove it? These animals have relationships with the Earth as well.*

*And what gives corporations the right to impact every living thing?*

*Our existing, inherent rights have existed since time immemorial. And we need an Indigenous legal order. We need an Indigenous, multi-juridical legal system like other Indigenous legal scholars write about.*

*And this is the lifeline work. Because this isn't easy when you only have common law and civil law.... British and French legal orders in this country, ignoring and bypassing treaty federalism and taking away our rights to administer—not even taken away, they just kind of implemented their own.*

*But we still have ours.*

*And so within Canadian law, it seems we cannot advance our own belief system that the earth is a sentient being because there isn't understanding and acceptance of that.*

*Because there's ideology that even exists today, the Doctrine of Discovery that says that we are savages and pagans, and we didn't use the land the way Europeans did. And so our land was free for the taking. These things have to be repealed. The Doctrine of Discovery has to be repealed just as was stated in the Calls to Action by the TRC.*

*And how are we going to get a multi-juridical legal system implemented? How do we do that?*

*I'm not trying to be discouraging, but that's the longer term, bigger picture of everything. That's what's needed. And there needs to be an understanding that the Earth is a Mother.*

*Our existing inherent rights are based on our treaties—correction, they're not really based on our treaties, it's how we went into treaties. They're based on our Indigenous knowledge, based on our ceremonies. They are based on our natural laws, our sacred laws, our customs.*

*So when I think about the DehCho, I think about the conflict, like within UNDRIP, that looks at what the rights of the people are, and the responsibilities or duties of the state.*

*And here we are in our ceremony. And we have the Great Fire. We have the Great Water.*

*... What is our environment telling us?  
What is right in front of our eyes<sup>19</sup>.*

-Dr. Josie Auger, May 16, 2023

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<sup>19</sup> Auger, *Meeting Between Keepers of the Water, Research for the Frontlines, and Dr. Josie Auger*.



**Our existing, inherent rights have existed since time immemorial. And we need an Indigenous legal order. We need an Indigenous, multi-juridical legal system.**

Learning from Dr. Auger's teachings, we understand that the necessary work is to move away from the colonial legal system. We must move toward governance based on inherent Indigenous rights, title, and legal systems, and through relations with the lands and waters that are rooted in these systems. With a focus on the big picture and the deeper change that is needed, we present what we found in the research about the legal context of the DehCho. We see the campaign to protect the DehCho as an important step towards the *Indigenous, multi-juridical legal system* that Dr. Auger spoke to us about.

## The Colonial Legal System

To give a sense of where we are right now, no legal claim based on the rights of the Mutehekau Shipu/Magpie River has been brought to a Canadian court. Canadian courts have yet to recognize and define the legal personhood of natural bodies.

Bryce Lansdell is a McGill law student. He points out that settler laws limit the recognition of nature's personhood. Lansdell notes that for natural bodies to be recognized as legal persons under Canadian law, a key condition must be satisfied: nature would need to accept the Canadian state as its governing power. To do so would open nature up to legal liability. Nature would also therefore commit itself to legal obligations and rights limits.<sup>20</sup> It is difficult to imagine how and why nature would make these commitments!

**For natural bodies to be recognized as legal persons under Canadian (settler) law, nature would need to accept the Canadian state as its governing power.**

Canadian lawmakers are trying to frame the rights of nature in the language of settler law. [Bill C-271](#) and [Bill 990](#) are proposed laws that aim to give the Saint Lawrence River in Quebec legal personhood. Bill 990 was presented during the 42nd Legislature, 2nd Session in the National Assembly of Quebec as a private members' bill.

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<sup>20</sup> Lansdell, "Foundations: Final Paper", 4-5.



Bill C-271 declares that the River will have “...the rights, powers and privileges of a natural person, including the right to institute legal proceedings.”<sup>21</sup> The bill also declares that no legal claims can be made against the River or its representatives if either act in good faith.<sup>22</sup> We should question whether nature would want help from humans using court proceedings. We should also consider how courts will determine whether Nature has acted in “good faith.”

Bill 990 attempts to address this uncertainty using international law. The Bill recites a legal principle called the *in dubio pro aqua* principle. This principle states that uncertainty should be resolved “...in a way most likely to protect and conserve watercourses and related ecosystems.”<sup>23</sup> *In dubio pro aqua* exists within a broader legal principle known as *in dubio pro natura*, or “when in doubt, in favour of nature”. In settler law, broad legal principles such as *in dubio pro aqua* and *in dubio pro natura* may be the best option for defining nature’s personhood.

These principles are better than rigid laws that define nature using human-created concepts such as legal liability.

**The case of  
The St. Lawrence River**

- Connecting the Great Lakes to the Atlantic Ocean, this River is bordered by the traditional territories of many Indigenous communities.
- Newly proposed laws seek to grant the River legal personhood and ensure its rights to maintain its natural cycles, and be free from contaminants, among others.
- These laws are founded on international obligations to address climate change and commitments to Indigenous rights under Canadian law.
- In these laws, guardian committees must have members selected by Indigenous communities, environmentalist organizations, and provincial governments.

**In settler law, broad legal principles—rather than rigid laws that define nature using human-created concepts—may be the best option for defining nature’s personhood.**

<sup>21</sup> Boulgerice, An Act to give legal capacity to the St. Lawrence River and to provide for measures respecting its protection, 5(1).

<sup>22</sup> Boulgerice, An Act to give legal capacity to the St. Lawrence River and to provide for measures respecting its protection, 5(2).

<sup>23</sup> Lessard-Therrien, An Act to confer rights on the St. Lawrence River, 6.

In Canada, legal personhood for nature would have to exist alongside many other existing fields of settler law. These fields include environmental law, constitutional law, human rights law, and administrative law. In these fields, many Canadian laws regulate how humans interact with the Dehcho River.

## **Under the 1867 *Constitution Act*, the federal government must ensure the quality of fish-bearing waters.**

Under the *Constitution Act* of 1867, the federal government must ensure the quality of fish-bearing waters.<sup>24</sup> The federal government fulfills this responsibility using environmental laws. Canada's main environmental statute is the *Canadian Environmental Protection Act*, 1999 (CEPA). This law aims to prevent pollution, protect the environment, and improve sustainable development. CEPA empowers the federal government to force the development of pollution prevention plans. Pollution prevention plans may apply to any legally recognized toxic substance.<sup>25</sup> CEPA also empowers the federal government to "...issue environmental objectives, release guidelines and codes of practice to prevent and reduce marine pollution from land-based sources".<sup>26</sup> These powers could be used to prevent and reduce water pollution from tar sands mining projects in Alberta.

A more recent development in CEPA may also be useful for protecting the Dehcho River. On June 13, 2023, Canada included a provision in CEPA to enshrine the human right to a healthy environment.<sup>27</sup> This right may empower people living near the Dehcho River to prevent environmental destruction that threatens their health.

## **On June 13, 2023, Canada included a statute in the Environmental Protection Act to enshrine the human right to a healthy environment.**

Other federal laws grant protections to the Dehcho River. These include the *Canada Water Act*, 1985, and the *Fisheries Act*, 1985. The *Fisheries Act* aims to conserve and protect the quality of fish habitats.<sup>28</sup> This law prohibits anyone from disposing of pollutive substances in or nearby "water frequented by fish."<sup>29</sup> This law protects the fish habitats that exist in the Dehcho River from pollution.

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<sup>24</sup> Constitution Act, 91(12).

<sup>25</sup> Canadian Environmental Protection Act, 56(1).

<sup>26</sup> Canadian Environmental Protection Act, 121(1).

<sup>27</sup> Gold, An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act, s 2(1).

<sup>28</sup> Fisheries Act, 2.1(b).

<sup>29</sup> Fisheries Act, 2.1(b).

Section 35 of the *Constitution Act*, 1982, also recognizes and protects “Aboriginal rights”. The term “Aboriginal rights” is used in the text of this law. We use this term to refer to Indigenous peoples’ constitutional rights. Aboriginal rights are part of Canada’s settler laws. These rights are defined and recognized according to standards determined by the Supreme Court of Canada (SCC). Aboriginal water rights are Indigenous peoples’ rights to engage in any of their traditional water-related customs and practices. **No Canadian government body is allowed to interfere with these rights.**

To establish an Aboriginal right, Indigenous peoples have to meet the following three requirements set by the SCC<sup>30</sup>:

1. Proof of the ancestral practice, custom or tradition.
2. Proof that the practice was distinct and integral to the Indigenous community before Europeans arrived on their lands.
3. Proof that the practice has generally continued since pre-European contact until the time of the claim.

Even if all of these expectations are met and the SCC finds that the aboriginal right is violated, the SCC may still find that the violation is justified under Canadian law.<sup>31</sup> According to the SCC, the violation of Aboriginal rights is justified when the act has a valid objective, respects the historic relationship between the Canadian government and Indigenous peoples, and passes a test of ‘reasonableness’.<sup>32</sup> For example, the SCC recognizes economic and regional fairness, and the historical participation of a non-Indigenous group in a fishery, as valid objectives.<sup>33</sup>

The *Canada Water Act* empowers the federal government to enter agreements with provincial and territorial governments. These agreements manage the quality of certain water bodies.<sup>34</sup> One example is the 1977 *Mackenzie River Basin Transboundary Waters Master Agreement* (Master Agreement). This agreement is between the governments of Canada, British Columbia, Alberta, Saskatchewan, Northwest Territories (NWT), and the Yukon. In this agreement, these governments commit themselves to several principles, including the preservation of the Dehcho River’s ecological integrity. The principles also include the sustainable management of the River “for present and future generations.”<sup>35</sup>

This agreement creates the Mackenzie River Basin Board. The Board is responsible for acting under these principles. The Board must consider Indigenous peoples’ needs, “recommend...uniform objectives or guidelines for the quality and quantity of the Water Resources,” and “encourag[e] consistent monitoring programs.”<sup>36</sup> The *Canada Water Act* also

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<sup>30</sup> R. v. Van der Peet.

<sup>31</sup> R. v. Gladstone; R. v. Marshall.

<sup>32</sup> R. v. Gladstone.

<sup>33</sup> R. v. Gladstone; R. v. Marshall.

<sup>34</sup> Canada Water Act, 11.

<sup>35</sup> Mackenzie River Basin Transboundary Waters Master Agreement, Part C, 1-2.

<sup>36</sup> Mackenzie River Basin Transboundary Waters Master Agreement, Part D, 2(c,d,g).

protects the Dehcho River from waste disposal in its waters. This is because the river was deemed a water quality management area under the Master Agreement.<sup>37</sup>

The *Mackenzie Valley Resource Management Act*, 1988, is another federal law that recognizes Aboriginal rights. This law recognizes the Aboriginal water rights of the Gwich'in, Sahtu, Tlicho and Déline Got'ine First Nations. This law states that "...the Gwich'in and Sahtu First Nations have the right to use waters...without a license for purposes of trapping and non-commercial wildlife harvesting...for purposes of transportation related to those activities[,] and for traditional heritage, cultural and spiritual purposes".<sup>38</sup>

The Gwich'in and Sahtu First Nations also have "the right to have the quality, quantity and rate of flow [of their First Nations waters] remain substantially unaltered by any person."<sup>39</sup> This law protects the Dehcho River in Gwich'in and Sahtu territories from human-caused environmental destruction.

Provincial, territorial, and regional laws also protect the Dehcho River. In the *Alberta Water Act*, 2000, "a person who owns or occupies land that adjoins a...natural water body...has the right to commence and continue the diversion of the water that adjoins that land for household purposes."<sup>40</sup> This law protects the rights of all Indigenous nations living along the Dehcho River. These nations can use the water for personal purposes based on their traditions and beliefs.

## Certain provincial laws allow nations to use the Dehcho waters for personal purposes based on their traditions and beliefs.

The *Alberta-NWT Transboundary Water Agreement*, 2015, was created by Alberta and the Northwest Territories (NWT) to establish the Master Agreement's goals. The *Alberta-NWT Transboundary Water Agreement* applies to "...all transboundary waters shared between Alberta and NWT in the Mackenzie River Basin."<sup>41</sup> In this agreement, Alberta and the NWT commit to enacting learning plans and monitoring programs. These projects are intended to "...understand conditions and needs related to the ecological integrity of the aquatic ecosystem."<sup>42</sup> The provinces also commit to consulting Indigenous peoples about the water quality management of the Dehcho River.<sup>43</sup>

In 2021, Canada recognized international Indigenous rights when the federal government passed the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIPA).

<sup>37</sup> Canada Water Act, 9.

<sup>38</sup> Mackenzie Valley Resource Management Act, 73(1).

<sup>39</sup> Mackenzie Valley Resource Management Act, 75.

<sup>40</sup> Alberta Water Act, 21(1).

<sup>41</sup> Alberta-NWT Transboundary Water Agreement, 1.5.

<sup>42</sup> Alberta-NWT Transboundary Water Agreement, 4.3(c).

<sup>43</sup> Alberta-NWT Transboundary Water Agreement, 15.6.

Articles 24(1), 24(2), 25, 29(1) and 29(2) of this declaration state that Indigenous peoples have the right to health, and the right to spiritual connection with their lands and waters. Indigenous peoples also have rights to the protection and conservation of their natural environments.

Article 29(2) requires that states act to maintain and restore Indigenous peoples' health from environmental pollution. Articles 4, 18, and 26 recognize that Indigenous peoples are autonomous, self-governing communities. As such, Indigenous peoples have the right to be involved in decision-making and governance matters that involve their rights and traditional lands.

Articles 19 and 29(2) require that states consult with Indigenous peoples to get their "...free, prior and informed consent."<sup>44</sup> Consent must be received *before* engaging in acts that would threaten the health or the well-being of their environments. Article 32(2) stresses that free, prior and informed consent is particularly important where there is a potential for "development, utilization or exploitation of mineral, water or other resources".<sup>45</sup>

## Canada adopted the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP) in 2021.

### UNDRIP includes the rights to:

→ health and spiritual connection with lands and waters

→ decision-making powers

→ free, prior, and informed consent"

**Canada has adopted these principles on a domestic level. Thus, the state and its representatives are legally bound to fulfill these obligations. These articles provide a strong legal basis for the recognition of nature's personhood.**

It is important to highlight Canada's commitments expressed in its plan to implement UNDRIPA. The UNDRIPA 2023-2028 Action Plan lists the many ways that Canada plans to respect Indigenous rights. For example, to respect Indigenous harvesting rights, Canada commits to developing policy initiatives like "stewardship agreements that align with Indigenous laws ... and enhance roles of Indigenous Guardians."<sup>46</sup> To better protect Indigenous water rights, Canada also commits to creating a 'Canada Water Agency' and improving the *Canada Water Act*.<sup>47</sup> Overall, many of the action items related to lands, territories, and resources, and the environment, involves Canada-Indigenous collaboration to advance Indigenous guardianship of lands and waters.<sup>48</sup>

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<sup>44</sup> United Nations Declaration on the Rights of Indigenous Peoples Act, 19 & 29(2).

<sup>45</sup> United Nations Declaration on the Rights of Indigenous Peoples Act, 32(2).

<sup>46</sup> United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan, 35.

<sup>47</sup> United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan, 49.

<sup>48</sup> United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan, 35–50.

Indigenous peoples are recognized as autonomously governed, meaning they can engage in agreements with the Canadian state. Thus, Indigenous people's consent is a priority when their health and the health of their environments are threatened.

**It is important to note that UNDRIP only grants rights to Indigenous *peoples*. The declaration excludes recognition of the Earth as a living being.<sup>49</sup>**

Many Canadian federal, provincial and regional laws currently aim to protect the DehCho River's waters. If these laws are violated, then it could result in license revocations, fines, compensation payments, and court orders. Canadian law does not currently provide grounds for the recognition of nature's personhood as a legal remedy. As mentioned, the recognition of nature's personhood would require adopting Indigenous legal traditions and value systems.

**Canadian law does not currently recognize nature's personhood as a legal remedy.**

## Indigenous Law and Inherent Rights

Indigenous legal traditions are better suited to recognize nature's personhood. This is evidenced by the [Mutehekau Shipu/Magpie River](#) case. There are dozens of Indigenous communities that live along the Dehcho River. Each of these communities have distinct legal traditions, practices, and ways of life. This section will provide an overview of two prominent Indigenous communities' legal systems. This section will conclude with an overview of inherent Indigenous rights.

### The DehCho First Nations

In the case of the DehCho River, the legal traditions of the DehCho First Nations (DFN) should be respected. The DehCho First Nations is made up of the following communities<sup>50</sup>:

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<sup>49</sup> Auger, *Meeting Between Keepers of the Water, Research for the Frontlines, and Dr. Josie Auger*.

<sup>50</sup> Dehcho First Nations Association: By-Laws, 5.





Currently, the DFN is drafting a constitution. The DFN also operates under a set of bylaws. Under these bylaws, the DFN's Assembly must include representatives from each community. The Assembly is the highest decision-making body in the DFN. Every community must follow its decisions.<sup>51</sup>

The DFN's Leadership is made up of different representatives who make land and governance decisions on behalf of the Assembly.<sup>52</sup> The Leadership can also appoint committees to draft reports on a given topic twice annually.<sup>53</sup> Therefore, the DFN Leadership could create a committee to report on the possibility of attaining legal personhood for the DehCho River.

**If the DFN drafts a contract, document, or instrument that recognizes the DehCho River's personhood, it will only be binding once signed by two elected members of its Executive Committee.**<sup>54</sup> If the process is to truly respect Indigenous governance, the DFN's bylaws must be respected to properly recognize the DehCho's legal personhood.

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<sup>51</sup> Dehcho First Nations Association: By-Laws, 13.

<sup>52</sup> Dehcho First Nations Association: By-Laws, 23.

<sup>53</sup> Dehcho First Nations Association: By-Laws, 57.

<sup>54</sup> Dehcho First Nations Association: By-Laws, 62.

## The Inuvialuit

The Inuvialuit is another significant Indigenous assembly of communities along the DehCho River. The Inuvialuit Regional Corporation (IRC) represents the collective interests of their six main communities. The six communities are the town of Inuvik, the Hamlet of Tuktoyaktu, the Hamlet of Aklavik, Ulukhaktok, Hamlet of Paulatuk, and Sachs Harbour. The agreement that created the IRC was a step towards the Inuvialuit's self-governance. The Inuvialuit Final Agreement, 1984, recognized that the Inuvialuit could independently manage their land's economy and environment.<sup>55</sup>

The Inuvialuit have created several bodies for the management of their natural environment. The *Inuvialuit Settlement Region Water Act*, 2014, outlines the powers of the Inuvialuit Water Board. The purpose of this board is to optimize the conservation of DehCho waters to the benefit of all Canadians and Indigenous peoples.<sup>56</sup> The board must approve licenses for individuals who wish to use the DehCho River water in their region.<sup>57</sup> The board can add conditions to water licenses, such as limits to how the water is used, and the amount of waste permitted in the water.<sup>58</sup>

## Other communities

Several other Indigenous peoples live along the DehCho River. They too should be participants in discussions about the DehCho River's personhood. Consultations with the Tlicho, the Deline, the Gwich'in, the Sahtu, and the South Slave communities are essential.

## Inherent Rights

In addition to written laws are inherent Indigenous rights. Dr. Josie Auger reminds us what's at the core of all Indigenous belief systems: the Earth is a sentient being and a Mother that grants and sustains all life.<sup>59</sup> Rarámuri (Tarahumara) scholar Enrique Salmón describes another core Indigenous belief. He says that Indigenous peoples acknowledge "the complex flow of life with which they and their ancestors have lived interdependently for centuries."<sup>60</sup>

Inherent Indigenous rights have existed since time immemorial. These rights are based on Indigenous knowledges, ceremonies, natural laws, sacred laws and customs.<sup>61</sup> Canadian philosopher Dr. James Tully describes these sources of law as "place-based." This means that

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<sup>55</sup> Whitehouse, "Self-Government Primer: Guide to Indigenous Agreements in the NWT."

<sup>56</sup> Inuvialuit Settlement Region Water Act, 24.

<sup>57</sup> Inuvialuit Settlement Region Water Act, 26(5).

<sup>58</sup> Inuvialuit Settlement Region Water Act, 26(5).

<sup>59</sup> Auger, *Meeting Between Keepers of the Water, Research for the Frontlines, and Dr. Josie Auger*.

<sup>60</sup> Salmón, "KINCENTRIC ECOLOGY: INDIGENOUS PERCEPTIONS OF THE HUMAN-NATURE RELATIONSHIP", 1331.

<sup>61</sup> Auger, *Meeting Between Keepers of the Water, Research for the Frontlines, and Dr. Josie Auger*.



Indigenous rights and laws are informed by knowledge of lands and waters. Dr. Tully states that the recognition of these legal traditions can guide humans to sustainable relationships with the Earth.<sup>62</sup>

**Inherent Indigenous rights have existed since time immemorial. These rights are based on Indigenous knowledges, ceremonies, natural laws, sacred laws, and customs.**

The legal recognition of nature's personhood is a potential meeting place for Canadian and Indigenous legal traditions. Canadian and Indigenous collaborators, if informed by Indigenous belief systems, can act as "part of an extended ecological family that shares ancestry and origins."<sup>63</sup> When people recognize that they are members of an ecological family, they are able to advocate for the interests of the Earth as their kin.

RoN agreements between Canadian and Indigenous governments include nature as a part of this relationship-building project. These agreements come from the understanding that humans affect nature, and nature affects humans.<sup>64</sup> Humans must be aware of this relationship. Anishinabe legal scholar, Dr. John Borrows, believes it is important to "...pay attention[,] live-with the land, with the food, the water 'as a friend'."<sup>65</sup> Only when we treat the Earth as an active being can we maintain a sustainable relationship with her.

Dr. Tully argues that humans must strengthen their relationship with the Earth so that they can reconcile with one another. If humans continue to treat Earth poorly, they will "...undermine ... even the most well-meaning ... efforts to reconcile the unsustainable relationship between Indigenous and non-Indigenous peoples through modern treaties."<sup>66</sup> Dr. Michael Asch describes the goal of reconciliation for Indigenous and non-Indigenous peoples. He says that Canadians and Indigenous peoples can work toward a world where they collaborate to "sustain the land and [their] relations upon it."<sup>67</sup>

The legal recognition of nature's personhood is an important step to reconcile Indigenous-Canadian relations. For proper reconciliation, **RoN agreements must recognize and incorporate Indigenous legal traditions.**<sup>68</sup> Indigenous peoples must be integral to the legal personhood process from the start. **The consent, collaboration, and guidance of Indigenous groups living along the DehCho River is essential to recognizing the River's personhood.**

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<sup>62</sup> Tully, "Chapter 3: Reconciliation Here on Earth", 85.

<sup>63</sup> Townsend et al., "Why the First River in Canada to Become a Legal Person Signals a Boon for Indigenous Rights."

<sup>64</sup> Salmón, "KINCENTRIC ECOLOGY: INDIGENOUS PERCEPTIONS OF THE HUMAN-NATURE RELATIONSHIP", 1332; Tully, "Chapter 3: Reconciliation Here on Earth", 83.

<sup>65</sup> Noble, "Chapter 11: Treaty Ecologies with Persons, Peoples, Animals, and the Land", 326.

<sup>66</sup> Tully, "Chapter 3: Reconciliation Here on Earth", 83.

<sup>67</sup> Noble, "Chapter 11: Treaty Ecologies with Persons, Peoples, Animals, and the Land", 328.

<sup>68</sup> Turner and Spalding, "Chapter 9: Learning from the Earth, Learning from Each Other", 284-285.

**For real reconciliation, RoN agreements must recognize and incorporate Indigenous legal traditions. The consent, collaboration, and guidance of all Indigenous groups living along the DehCho River is essential.**

## Personhood Wins: Lessons from Around the World

Many rivers and natural spaces around the world have been granted legal personhood.<sup>69</sup> We looked for examples of cases worldwide where communities executed successful personhood campaigns. These cases are useful in teaching us how to build a successful campaign to protect the rights of the DehCho River.

### International Examples

#### Ecuador

In 2008, Ecuador became the first country to recognize the rights of Nature in its constitution. The rights included are:

- **The right to integral respect for her existence and to have defendants**
- **The right to be restored**
- **The right to precaution and to apply restrictions**
- **The right to not be commercialized and to allow human and community activities that are in harmony with the environment.**<sup>70</sup>

The conception of rights of Nature in this constitution is based on the principle of Sumak Kawsay (or “Buen Vivir”). Sumak Kawsay is a Kichwa term that means “good” or “ideal” life in harmony with the universe. In the words of Murcia Riaño, *Sumak Kawsay*

*...reinforces the principles of integrality, interdependence, and indivisibility and reconstructs them from the multicultural vision of the Ecuadorian indigenous nationalities that oppose the current development model against an ancestral way of life based in harmony with the environment.*<sup>71</sup>

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<sup>69</sup> “Rights of Nature Timeline.”

<sup>70</sup> Daly, “The Ecuadorian Exemplar.”

<sup>71</sup> *La naturaleza con derechos: un recorrido por el derecho internacional de los derechos humanos, del ambiente y del desarrollo*, 16.

## Colombia

In 2016, Colombia's Constitutional Court ruled that the Rio Atrato has rights to "...protection, conservation, maintenance, and restoration."<sup>72</sup> Indigenous peoples and the national government established joint guardianship for the river. The Constitutional Court also recognized the Atrato River as "...an entity with legal personhood and the right to be protected, conserved, maintained and restored."<sup>73</sup>

## Mexico

In Colima, the state constitution recognized the RoN in 2019. Three articles were established in regards of Nature's rights:

- **Nature is a collective entity subject to rights and it must be respected in its existence, its restoration, and the regeneration of its natural cycles**
- **Biodiversity, natural ecosystems, genetic heritage and native species shall be protected by the public, private, and social sectors collectively**
- **The State shall promote the sustainable use of natural resources to minimize the environmental impact while satisfying human needs<sup>74</sup>**

## Aotearoa/New Zealand

Aotearoa/New Zealand's Whanganui River—now known as Te Awa Tupua—was the first river in the world to be granted legal personhood through the *Te Awa Tupua Act*, 2017.<sup>75</sup> Te Awa Tupua is the third longest river in New Zealand, stretching 290 kilometres.<sup>76</sup>

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<sup>72</sup> "Rights of Nature Timeline."

<sup>73</sup> Álvarez-Marín et al., "Legal Personhood of Latin American Rivers," 152.

<sup>74</sup> Periódico Oficial del Gobierno Constitucional del Estado No. 20. 2021. "Decreto 413 de 2021.- POR EL QUE SE REFORMA EL ARTÍCULO 106, FRACCIONES II, III, VII Y VIII, ASÍ COMO, EL ARTÍCULO 115, PÁRRAFO SEGUNDO, DE LA LEY AMBIENTAL PARA EL DESARROLLO SUSTENTABLE DEL ESTADO DE COLIMA," February 27, 2021, Edición Ordinaria, Tomo CVI.

<sup>75</sup> Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

<sup>76</sup> Fox, "Te Awa Tupua - The Whanganui River."



*Te Awa Tupua, in Aotearoa/New Zealand. [New Zealand Parliament](#).*

## India and Bangladesh

The Ganges and Yamuna rivers in India were also granted legal personhood in 2017 by the High Court of the State of Uttarakhand. However, the Supreme Court of India overturned this decision a few months later.<sup>77</sup> The Ganges river covers 26% of India's land mass, and the Yamuna is the longest tributary in India.

In 2019, the High Court of Bangladesh recognized the Turag River to be a living entity, granting it legal personhood status. The court stated that this decision should apply to all rivers in Bangladesh.<sup>78</sup>

## Spain

Most recently, in September 2022, Spain approved legislation granting legal personhood to the Mar Menor. The Mar Menor is the largest saltwater lagoon in Spain, covering 135 square kilometers.<sup>79</sup>

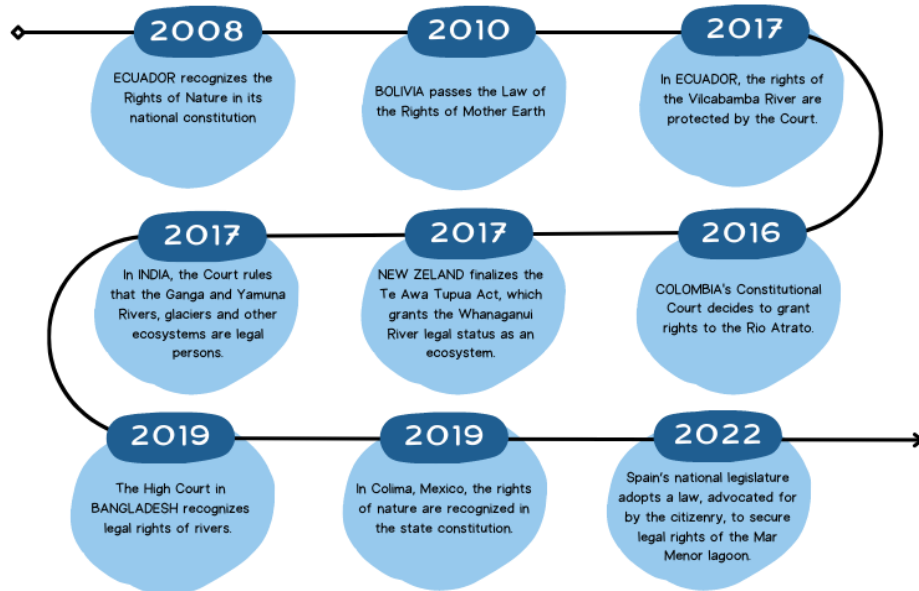
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<sup>77</sup> Alley, "River Goddesses, Personhood and Rights of Nature."

<sup>78</sup> "Bangladesh Supreme Court Upholds Rights of Rivers."

<sup>79</sup> Álvarez, "The Race to Make Spain's Mar Menor a Legal Person."

# LEGAL PERSONHOOD WINS ACROSS THE WORLD



A TIMELINE

## Challenges and Obstacles

Every legal personhood case is different. Results depend on the country's political, legal and economic context. Yet, some broad similarities can be observed in how legal personhood has been achieved worldwide, and which challenges have risen.

## Time, Energy, and Resources

Successful legal personhood cases for rivers have required immense time, energy, and work by Indigenous peoples, grassroots organizations, and citizens. For example, the *Te Awa Tupua Act* was the result of decades of negotiations and advocacy. This work came from the Māori iwi, the Indigenous peoples of Aotearoa, with the New Zealand government.<sup>80</sup> Prior to the *Te Awa Tupua*

<sup>80</sup> Rodgers, "A New Approach to Protecting Ecosystems."

Act of 2017, the New Zealand government claimed ownership and led management of the Whanganui river. The Māori iwi have contested this arrangement since 1873.<sup>81</sup>

**Successful legal personhood cases for rivers have required an immense amount of time, energy, and work by Indigenous peoples, grassroots organizations, and citizens.**

In 1990, the Whanganui tribes petitioned the Waitangi Tribunal, which was established under the [Treaty of Waitangi Act, 1975](#). The Tribunal investigates potential breaches of the *Treaty of Waitangi*, 1840, by the New Zealand government. The tribes argued that the New Zealand government was failing to recognize the inherent relationship between the Whanganui tribes and the Whanganui River. One of the goals of this claim was to give the Māori iwi the authority over fishing rights in the river to protect it against exploitation. The Tribunal released a report in 1999. The report found that the Whanganui tribes exercised authority over the river, and that this right was protected by the *Treaty of Waitangi*. This report was followed by ten years of negotiations between the Whanganui tribes and the state. In 2014, a settlement was finally reached. This settlement ultimately led to the adoption of the 2017 *Te Awa Tupua Act*.<sup>82</sup>

**Over 2000 people volunteered their time to support the successful legal personhood case for Spain's Mar Menor river.**

Similarly, achieving legal personhood for Mar Menor in Spain was a citizen-initiated movement. This movement would not have been possible without the work and energy of thousands of volunteers. For a citizen-initiated bill to be considered, the Spanish parliament requires a petition with at least 500,000 signatures from its citizens. The signatures must be collected within nine months, and electronic signatures do not count. This requirement posed significant challenges for the Mar Menor movement. Given the challenges of COVID-19, it was difficult to reach people in person. Over 2000 people volunteered their time, setting up signature collection spots across the country in supermarkets, hair salons, vaccination centers and elsewhere. The initiative was a successful one. In the end, volunteers collected over 640,000 signatures.<sup>83</sup>

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<sup>81</sup> O'Donnell and Talbot-Jones, "Creating Legal Rights for Rivers."

<sup>82</sup> Rodgers, "A New Approach to Protecting Ecosystems."

<sup>83</sup> Jones, "Endangered Mar Menor Lagoon in Spain Granted Legal Status as a Person."





Volunteers collecting signatures for the Mar Menor. Photo taken by [Pedro Martínez Rodríguez](#).

## Jurisdictional Challenges

Legal personhood is achieved through three main routes: **(1) constitutional rights**, **(2) legislation**, and **(3) the judiciary system** (i.e., by going to court). Each route has different implications, which we will explore here.

### Route 1: Constitutional Rights

Constitutional recognition of the Rights of Nature provides a legal basis to demand that the courts uphold these rights. For example, in Ecuador, where RoN are constitutionally recognized, there have been 64 documented cases of RoN legal action at a national level.<sup>84</sup> 30 of these cases have gone on to the constitutional court.<sup>85</sup> The constitutional court is an independent organism at the highest level of the country's judicial system. Successful cases (meaning those where the courts upheld the RoN and/or permissions to extractive projects were revoked) include the Vilcabamba river, the Aquepi river, the forest of Los Cedros, and the Monjas river.

However, governments may say they protect Nature in the constitutions, but in reality, they may use legal phrasing that is ambiguous or not even present, which continues to allow business as

<sup>84</sup> "Observatorio Jurídico de Derechos de la Naturaleza."

<sup>85</sup> "Observatorio Jurídico de Derechos de la Naturaleza."

usual. For instance, in 2017, Mexico City incorporated language into the city’s constitution. The means that a law has to be established that would “recognize and regulate the broader protection of the rights of nature formed by all its ecosystems and species as a collective entity subject to rights.”<sup>86</sup> To this date, no law has been created. This lack of clarity could present a problem when going to court.

## Route 2: Legislation

When taking the legislative route, the protection of an ecosystem has a national impact. Consider Aotearoa/New Zealand and Spain. In each of these countries, legal personhood for the Whanganui River and Mar Menor, respectively, was achieved through legislation adopted by parliament. This means that the rights of each natural body are recognized across their entire country.



*Example of legislation:* Te Awa Tupua Act, 2017. [New Zealand Parliamentary Counsel Office.](#)

## Route 3: The Judiciary System

Legal personhood can also be achieved by going to court. However, court decisions can be overturned, putting the protection of natural bodies at risk. For instance, the legal personhood of the Ganges and Yamuna rivers in India were only recognized by the High Court of the State of Uttarakhand. This meant that the rights of these rivers were only recognized in that specific state. The State of Uttarakhand was unhappy with the High Court’s decision, and launched an appeal. The government argued that the limits of their responsibilities towards the Ganges and Yamuna were unclear, given that these rivers extend beyond the state of Uttarakhand. Unfortunately, the Supreme Court of India then reversed the High Court decision, stripping the rivers of their legal personhood rights altogether.<sup>87</sup>

While India is an example of a court-initiated legal personhood fight that was ultimately unsuccessful, Bangladesh offers a more promising example of a court-initiated movement. The

<sup>86</sup> “Rights of Nature Timeline.”

<sup>87</sup> O’Donnell and Talbot-Jones, “Creating Legal Rights for Rivers.”



High Court of Bangladesh granted legal personhood to the Turag river in 2019, claiming that legal personhood should apply to all rivers in the country. This decision was then upheld by the Appellate Division of the Supreme Court. This decision recognizes the legal personhood of all of the rivers in Bangladesh. However, in the appeal process, the Supreme Court of Bangladesh loosened some of the lower court's restrictions and directives, such as educational requirements for schools and professional orders on biodiversity.<sup>88</sup>

These examples highlight the different routes that can be taken to achieve legal personhood, whether through constitutional rights, legislation or a court-initiated challenge against the state. In these examples, the legislative route seems to have taken much longer than the court-initiated processes (decades in the case of Te Awa Tupua) and required more citizen participation (as in Mar Menor). Despite these challenges, the legislative route affords national protection of legal personhood, whereas court rulings in specific jurisdictions risk being overturned by higher courts (as in India).



Ganges River, India. Photo taken by [Ravi Jha](#), 2022.

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<sup>88</sup> "Rights of Nature Case Study Turag River."

## Mapping the River: What exactly is protected?

Some scholars have critiqued legal personhood for being too individualistic.<sup>89</sup> While it may be easy to understand that individual humans have legal rights, applying the concept of legal personhood to Nature is more complicated. This process requires defining and mapping out exactly what makes up the natural body we are giving rights to. For example, how do we define where a river starts, and where it ends? When a river is granted legal personhood, what exactly is protected? Are rights given only to the water, or only to the land below the water? What about the microorganisms and fish living within the water—do they also have rights? If parts of the river dry up, or expand in the future, do these new geographical areas still have rights? The process of answering these questions and mapping out the natural body is often arbitrary and can be distorted through legislative and political decisions.<sup>90</sup>

**Mapping out what constitutes the river—the soil? the sky? the plants?—is often arbitrary and can be distorted through legislative and political decisions.**

For Te Awa Tupua, the legislative language grants rights to the riverbed. “Riverbed” is defined to include the land below the water and the sky above the river, including all the attached plants and soil.<sup>91</sup> This definition allows for the confines of the river to change over time, such as if the water flows or moves into new territory or merges with new streams and rivers. However, the *Te Awa Tupua Act’s* authority does not actually extend to the water itself—only the riverbed. It is therefore unclear as to whether permission is needed to use the actual water in the river.<sup>92</sup> Thus, defining and mapping what we mean by a natural body that can hold legal rights brings about operational concerns for legal personhood.

## Who gets to speak for the river?

One of the main operational goals of legal personhood is to allow nature to have standing in court. Typically, this means that a guardian is appointed to speak on behalf of the river. It can be challenging to decide who gets to speak for nature, and whose interests are prioritized. For example, in India, the judge’s selection of guardians for the Ganges and Yamuna rivers was controversial. The judge selected three guardians, and the decision assigned blame and responsibility to the state to prevent pollution. However, the decision lacked focus on the specific Hindu communities that are connected to the Ganges.<sup>93</sup>

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<sup>89</sup> Hutchinson, *Waiting for Coraf*.

<sup>90</sup> De Sousa Santos, “Law.”

<sup>91</sup> Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

<sup>92</sup> Froideville and Bowling, “Te Awa Tupua.”

<sup>93</sup> Alley, “River Goddesses, Personhood and Rights of Nature.”

**Deciding who gets to speak for nature, and whose interests are prioritized, can be challenging. Communities should consider who they imagine to be the guardians of the river, and how future responsibilities and priorities could manifest.**

In the case of Te Awa Tupua, two trustees were nominated to represent the river. As specified by the legislation, one trustee must be nominated by the New Zealand government, and the other must be nominated by the Whanganui tribes. The trustees hold broad powers to take legal action on behalf of Te Awa Tupua.<sup>94</sup> However, this arrangement relies on the assumption that the two trustees will have the same goals for protecting Te Awa Tupua. Challenges may arise in the future if the priorities of the state-appointed trustee conflict with the priorities of the trustee representing the Whanganui tribes. Communities fighting for legal personhood should consider who they imagine to be the guardians of the river, and how the guardians' responsibilities and priorities could manifest in the future.

## Insights from Rights of Nature in Ecuador

During this research, we had the opportunity to talk with Cristina Melo, a lawyer of the group [Fundacion Pachamama](#), an organization that fights for RoN in Ecuador and works with communities to ensure Mother Earth is respected as stated in the Constitution. Our conversation with her taught us many lessons, which are summarized here.

**Colonial vs Indigenous worldviews** *"In this process, the battle is always trying to make the government and companies understand the connection between human rights and rights of nature. How these coexist... you can not guarantee Human Rights without the Rights of Nature. You can't guarantee the rights of Nature without Human Rights.*

*It is hard to get them to understand because of historical, colonial, and racial issues that always need to be addressed anytime we do this work. [This is why] **Indigenous rights must be centered at the table**, in the conversation about the Rights of Nature. [...] It is very important to have Indigenous people present in the whole process to talk about the importance of that tree, or that river, and their cosmovision because the ones who really understand what RoN mean are the Indigenous people, who have been protecting the forest for hundreds of years. [...] This also becomes a **process of healing** from colonial violence. Transforming from victims to defenders and warriors, protectors of ecosystems and Mother earth."*

**Alliances make things happen** *"You need Alliances for sure... because we're up against very powerful opponents. If the Ecosystem we are trying to protect is in ancestral territories.*

<sup>94</sup> Rodgers, "A New Approach to Protecting Ecosystems"; Fox, "Te Awa Tupua - The Whanganui River."

- ★ *First alliances are made in that space, other communities that are nearby that understand the problems in that ecosystem.*
- ★ *Second alliance is everyone that wants to be part of the journey: NGOs, local governments that sometimes get involved and understand. As well as larger Indigenous organizations and confederations.*
- ★ *Third Alliance is regional connections, local initiatives in the region. [...] In order to work together, we have to identify things in common and the differences as well.<sup>95</sup>*

-Cristina Melo, July 6, 2023

## Global Wins: Conclusions

The successful cases discussed above have led to many operational and legal rights for rivers and natural bodies worldwide. For example, Te Awa Tupua was granted several operational rights. These rights include **legal standing**, **legal representation** through two trustees, and the establishment of an **advisory group** to protect the river's rights in the future.<sup>96</sup> Legal standing means that rivers have the right to bring a claim in front of a public authoritative body, most often a court, to argue that an infringement of rights has occurred. The river is represented by appointed trustees who are to protect it and advocate on its behalf. The court then determines if the infringements are justifiable, and whether legal remedies are required.

Legal personhood also recognizes and affirms the **spiritual and physical interdependence** of humans and nature. Granting legal rights to nature recognizes that humans are not superior to nature, but rather exist as a functional part of it.<sup>97</sup> For example, the *Te Awa Tupua Act* explicitly recognizes and affirms the spiritual and physical connections of the Māori iwi with the environment. This language effectively challenges the notion of "ownership" of land and broadens understanding of what constitutes the environment.<sup>98</sup>

Similarly, the High Court of Uttarakhand recognized the Ganges and Yamuna rivers' inherent connection and importance to Hinduism and spiritualism.<sup>99</sup> In granting legal personhood to rivers across Bangladesh, the court recognized that rivers are living entities. Protecting the rivers is now considered legally essential for Bangladeshi people, whose way of life has been connected to the waters for centuries.<sup>100</sup> The connection between humans and nature is also valued in

<sup>95</sup> Personal Communication with Cristina Melo, July 6, 2023

<sup>96</sup> Rodgers, "A New Approach to Protecting Ecosystems"; Fox, "Te Awa Tupua - The Whanganui River."

<sup>97</sup> Stone, "Should Trees Have Legal Standing? Toward Legal Rights for Natural Objects."

<sup>98</sup> Rodgers, "A New Approach to Protecting Ecosystems."

<sup>99</sup> Alley, "River Goddesses, Personhood and Rights of Nature."

<sup>100</sup> Willems, Lambooy, and Begum, "New Governance Ways Aimed at Protecting Nature for Future Generations: The Cases of Bangladesh, India and New Zealand: Granting Legal Personhood to Rivers."



some cases by granting protection to nature’s defendants, as in the example of the Ecuadorian constitution.

The successful cases discussed above highlight that legal personhood for nature is an effective way of giving rights to nature. These empowering stories remind us that we can reclaim democracy and reappropriate legal systems to defend Nature instead of corporations. By doing so, we challenge the nature/society dichotomy and reclaim the ancestral knowledge of interconnectedness.

## Personhood Wins: Lessons from Home

As we have seen, Ecuador, Colombia, Mexico, Aotearoa/New Zealand, Spain, Bangladesh and India have all used RoN approaches. However, similar approaches have only emerged in Canada in recent years.<sup>101</sup>

In February 2021, the Mutehekau Shipu/Magpie River became the first river in Canada to receive legal personhood.<sup>102</sup> The Mutehekau-shipu Alliance drafted two parallel resolutions adopted by the Innu Council of Ekuanitshit and the Minganie Regional County Municipality (RCM). Keepers of the Water recognized a need for information about this legal personhood approach in so-called “Canada”. This information would help to better understand the possibility of other legal personhood approaches, including that of the DehCho.

**Mutehekau Shipu means ‘the river or water passes between rocky bluffs and squares,’ or ‘the river with steep banks and sharp rocks.’ Mutehekau Shipu is the Innu name for the Magpie River.**

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<sup>101</sup> Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World*, 2017.

<sup>102</sup> Hessey, “How a River in Quebec Won the Right to Be a Legal Person”; Lowrie, “Quebec River Granted Legal Rights as Part of Global ‘Personhood’ Movement.”

## The case of the Mutehekau Shipu or Magpie River



Located on the traditional territory of the Innu Council of Ekuanitshit, and what is now called the Côte-Nord region of Quebec.



The Innu Council and the local Quebec municipality agreed to recognize the legal personhood of the River.



The River has nine rights, including the right to flow, the right to maintain its biodiversity, and the right to be safe from pollution.



The Guardians of the River are appointed by the Innu Council and the municipality and must act as protectors rather than owners.

### Two research questions were identified:

- (1) What factors created successful RoN frameworks for the Mutehekau Shipu/Magpie River in so-called Canada?
- (2) What is the [sociocultural](#) significance of the Alliance's RoN approach, according to the people involved in it?

To answer these questions, we conducted 10 virtual interviews with members of the Mutehekau-shipu Alliance. Each interview was about one hour long. Crystal Stamp-Cardinal of Keepers of the Water helped to design and co-conduct many of the interviews. The results helped to guide the research findings and establish relationships over email and Zoom. The interviewees gave their consent to use the quotes in this report anonymously.

The interviews were semi-structured. This means the researchers used open-ended questions that cannot be answered with simply a “yes” or a “no”. It also means that the researchers let

conversations flow naturally. Interviews were qualitatively analyzed. In other words, we looked for themes and patterns in the language the interviewees used.

## The Mutehekau Shipu/Magpie River: A case study

*“More than a living being, the River is life.” – Uapukun Mestokosho, Innu Leader<sup>103</sup>*



*The Mutehekau Shipu/Magpie River. Photo by [Peter Holcombe, 2017.](#)*

### Background

The Innu name for the Magpie River is Mutehekau Shipu, meaning “the river or water passes between rocky bluffs and squares,” or “the river with steep banks and sharp rocks.”<sup>104</sup> This river is an important river of [Nitassinan](#) (the ancestral territory of the Innu), Côte-Nord, Québec and Canada. The watershed is 7650 km<sup>2</sup>, and runs nearly 300 km through the Nitassinan in Eastern Québec. The river also runs through the Minganie RCM.<sup>105</sup>

**Since time immemorial, the Innu of Ekuanitshit have occupied, managed, and used the Nitassinan.** They have practiced a traditional way of life and subsisted thanks to its flora and fauna. Archeological research shows that the Innu have occupied this territory for at least 3500 years on an ongoing, continuous and exclusive basis.<sup>106</sup>

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<sup>103</sup> Thomin, “Opinion: St. Lawrence River’s Rights Should Be Recognized.”

<sup>104</sup> Résolution 919-081.

<sup>105</sup> Résolution 025-21; Résolution 919-081.

<sup>106</sup> Résolution 025-21; Résolution 919-081.



Until the 1960s, the Ekuanitshinnuat lived a nomadic lifestyle in the geographic area encompassing the River. The Mutehekau Shipu played an important role for Innu families. It helped them to reach the coast in spring after spending the winter in the interior of the lands of Nitassinan.

Innu Aitun is “the practice of customary, traditional, cultural, social, economic and subsistence activities linked to the land, such as hunting, fishing, trapping, and gathering.” It occupies a primary place in Innu culture and spirituality.<sup>107</sup> The river is, and will continue to be, an important region for Innu Aitun.

**Innu Aitun is “the practice of customary, traditional, cultural, social, economic and subsistence activities linked to the land, such as hunting, fishing, trapping, and gathering.”**

Colonial forces, destruction of culture, and resulting trauma have harmed the Innu of Ekuanitshit’s way of life.<sup>108</sup> Yet there has always been Innu resistance, resilience, and resurgence. Some of these instances are demonstrated throughout this text. Spending time on the river is described as “a form of healing” by Uapukun Mestokosho, a young leader in the Innu community.<sup>109</sup> It’s a way to reconnect to traditional land-based practices that were partially abandoned due to colonial violence and its resulting trauma.<sup>110</sup>

The Innu of Ekuanitshit are a First Nation band governed by a band council. The band council uses a custom electoral system in accordance with regulations governing elections in the *Indian Act* of 1985.<sup>111</sup> The community lives mostly in the Mingan Reserve on the north coast of the St. Lawrence River. The reserve was founded in 1963, despite unresolved land claims in surrounding areas.<sup>112</sup>

On April 30, 1963, the Government of Québec transferred 18km<sup>2</sup> of land to the Government of Canada to establish a reserve for the Mingan region Innu.<sup>113</sup> After 20 years of struggle to gain access to the Mingan River, the riverbanks were added to the reserve in 1983. In 1979, The Atikamekw and Montagnais (Innu) comprehensive land claims were accepted by Canada. In 1994, the Mamu Pakatatau Mamit Assembly was created. The Assembly represented the Innu communities of Ekuanitshit, Unamen Shipu and Pakua Shipi.<sup>114</sup>

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<sup>107</sup> Résolution 919-081, 4.

<sup>108</sup> Hessey, “How a River in Quebec Won the Right to Be a Legal Person.”

<sup>109</sup> Lowrie, “Quebec River Granted Legal Rights as Part of Global ‘Personhood’ Movement.”

<sup>110</sup> Lowrie, “Quebec River Granted Legal Rights as Part of Global ‘Personhood’ Movement.”

<sup>111</sup> Indigenous Services Canada, “First Nations Electoral System Breakdown, by Province and Territory, in Canada.”

<sup>112</sup> Nametau innu, “Ekuanitshit”; Canada, “General Briefing Note on Canada’s Self-Government and Comprehensive Land Claims Policies and the Status of Negotiations”; Council of the Innu of Ekuanitshit v. Canada (Attorney General).

<sup>113</sup> Land Surveys Division Historical Review, “Mingan.”

<sup>114</sup> Canada, “General Briefing Note on Canada’s Self-Government and Comprehensive Land Claims Policies and the Status of Negotiations.”

From 1995-2007, negotiations took place between Canada, Québec, and the Mamu Pakatatau Mamit Assembly. In 2008, the communities of the Assembly decided to stop the negotiation process in favour of a legal approach. The land claims of the Innu of Ekuanitshit remain unresolved in the eyes of the colonial state.<sup>115</sup>

More than 85% of the Mutehekau Shipu/Magpie River is also located on the territory of the Minganie RCM. The river's protection is of key importance to the environmental, social, and economic wellbeing of residents.<sup>116</sup> It also has exceptional potential for whitewater expeditions. The river is internationally renowned as a destination for adventure tourism and ecotourism. *National Geographic* ranks it in the top ten best rivers in the world for whitewater and rafting activities.<sup>117</sup>

The Mutehekau Shipu/Magpie River has undergone various human alterations throughout history. It continues to be threatened by the potential of hydroelectric development in the area. In 2009, Hydro-Québec began building a massive hydroelectric development on the neighbouring Romaine River. It was part of the largest project the company has undertaken since the 1970s construction of the James Bay dam. The Romaine River project flooded nearly 280km<sup>2</sup> of forest and altered the river and the landscape forever. This event occurred even after a cooperative [environmental assessment](#). This type of assessment is a requirement of the Canada-Quebec Agreement on Environmental Assessment Cooperation.<sup>118</sup>

Hydro-Québec has explored similar plans for the Mutehekau Shipu/Magpie River. The river was included in the company's 2009-2013 Strategic Plan for potential hydroelectric development. The Quebec newspaper *Le Journal* obtained an email exchange in 2017 revealing that a proposed Mutehekau Shipu/Magpie River watershed protected area received an "unfavourable opinion" from the Ministry of Natural Resources, due to the area's "energy potential".<sup>119</sup> The future potential for hydro development therefore continues to put the river and its surrounding environment at risk.

## The Mutehekau Shipu Alliance

Various groups have lobbied provincial ministers to protect the watershed for over a decade. Non-profits, conservationists, the Innu of Ekuanitshit, white-water rafting enthusiasts and local RCM government officials have all been unsuccessful in their efforts to seek provincial legal protections for the area.<sup>120</sup> As a result, the Mutehekau-shipu Alliance was formed in 2018. The

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<sup>115</sup> Canada; Council of the Innu of Ekuanitshit v. Canada (Attorney General).

<sup>116</sup> Résolution 025-21; Résolution 919-081.

<sup>117</sup> SNAP Québec, "Communiqué de Presse: L'Alliance Mutehekau Shipu Réclame La Protection de La Rivière Magpie d'ici La Fin de l'année."

<sup>118</sup> Hessey, "How a River in Quebec Won the Right to Be a Legal Person"; Bureau d'audiences publiques sur l'environnement (BAPE), "Report 256."

<sup>119</sup> Lecavalier, "Toujours Pas de Protection Pour La Magpie: Québec Veut Préserver Le Potentiel Hydroélectrique d'une Rivière Au Détriment d'une Aire Protégée," translated.

<sup>120</sup> Hessey, "How a River in Quebec Won the Right to Be a Legal Person."

Alliance includes the Innu Council of Ekuanitshit, the Minganie RCM, Société pour la nature et les parcs du Canada (SNAP) Québec (the Quebec chapter of the Canadian Parks and Wilderness Society), and the Association Eaux-Vives Minganie. The Alliance's purpose was to formally unite efforts in a new legal context.

The Alliance called for the protection of the Mutehekau Shipu/Magpie River as part of achieving the 17% goal of land protection in Québec.<sup>121</sup> The commitment was made under the Convention on Biological Diversity. Unfortunately, this commitment expired at the end of 2020, having never been met.<sup>122</sup> Other approaches within the existing legal system have therefore failed to provide adequate protection for the river.



On February 16, 2021, the Mutehekau-shipu Alliance took a new approach in partnership with the Observatoire International des Droits de la Nature (OIDN) based in Montréal. They drafted two parallel resolutions. The resolutions were adopted by the Innu Council of Ekuanitshit and the Minganie RCM, granting the River legal personhood.<sup>123</sup> **It is the first river in Canada to receive this recognition.**

The resolutions declare that, as a legal Person, the Mutehekau Shipu/Magpie River holds the following fundamental rights:

- *The right to live, to exist and to flow,*
- *The right to respect for its natural cycles,*
- *The right to evolve naturally, to be preserved and to be protected,*
- *The right to maintain its natural biodiversity,*
- *The right to perform essential functions within its ecosystem,*
- *The right to maintain its integrity,*
- *The right to be free from pollution,*
- *The right to regeneration and restoration, and*
- *The right to sue.*<sup>124</sup>

According to the resolutions, the Mutehekau Shipu/Magpie River will be represented by Guardians. The Guardians will be appointed by the Minganie RCM and the Innu First Nation of Ekuanitshit, and they will be given the duty to act in the name of the rights and interests of the river. They will also ensure the protection of its fundamental rights. No other conditions are

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<sup>121</sup> SNAP Québec, “Communiqué de Presse: L’Alliance Mutehekau Shipu Réclame La Protection de La Rivière Magpie d’ici La Fin de l’année.”

<sup>122</sup> SNAP Québec, “Communiqué de Presse: L’Alliance Mutehekau Shipu Réclame La Protection de La Rivière Magpie d’ici La Fin de l’année.”

<sup>123</sup> Résolution 025-21; Résolution 919-081.

<sup>124</sup> Résolution 025-21; Résolution 919-081.

included in the resolutions about the number, composition, or process to appoint the Guardians. These details are being decided upon collaboratively outside of current written legislation.<sup>125</sup>

**The appointed Guardians will be able to undertake legal actions on behalf of the Mutehekau Shipu/Magpie River.** They can also claim [reparations](#) for a prejudice suffered by the river, and receive compensation for the river's own benefit.<sup>126</sup> The interests of the Mutehekau Shipu/Magpie River are determined by its Guardians. These interests must be considered by governments and private entities every time a decision may affect the rights of the river. This guarantees the participation of the Innu of Ekuanitshit and the inclusion of Innu knowledge.

The two resolutions state that the Innu Council of Ekuanitshit and the Minganie RCM are also interested in establishing a co-management agreement. This agreement would recognize the rights of the Mutehekau Shipu/Magpie River. It would also guarantee the joint guardianship of the ecosystem on a nation-to-nation basis. The agreement would be part of the process of reconciliation and self-government.

The co-management agreement would include establishing an Indigenous Protected and Conserved Area (IPCA) around the river. This IPCA would reflect Innu laws and traditions. It would also ensure that the Innu of Ekuanitshit maintain a strong relationship with their ancestral lands.<sup>127</sup> Permanent stewardship of the IPCA and protection of the rights of the Mutehekau Shipu/Magpie River would come from the Guardians of the River.

The Innu Council of Ekuanitshit's resolution cites the Thaidene Nëné Indigenous Protected Area in the Northwest Territories as an example of the co-management potential of the Mutehekau Shipu/Magpie River area. The Thaidene Nëné Indigenous Protected Area was created by the Łutsël K'é Dene First Nation using Dene Law. It was created in partnership with Parks Canada and the Government of the Northwest Territories. This highlights the relevance of reconciliation in Canada and links to larger political developments unfolding across the country.

## **The governments of Canada and Québec have not officially responded to either resolution.**

As of June 2023, neither the Government of Québec nor the Government of Canada have responded in any official manner to either resolution.<sup>128</sup> The two resolutions have not yet been challenged in the Canadian court system. But, they rely on various municipal, provincial, national and international laws that give them legitimacy. These laws are useful for future legal personhood cases in the Canadian context.

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<sup>125</sup> Anonymous, Personal communication, February 20, 2023

<sup>126</sup> Résolution 025-21; Résolution 919-081.

<sup>127</sup> Résolution 919-081.

<sup>128</sup> Despite the lack of explicit federal and provincial recognition, the "Mutehekau-shipu Alliance" was awarded the 2022 prize from Québec's Commission des Droits de la Personne et de la Jeunesse.

The Mutehekau Shipu/Magpie River was nonetheless excluded from Hydro-Québec's 2022-2026 Strategic Plan. It is unclear if the legal personhood designation impacted this decision. However, during a 2017 protest in downtown Montreal, the manager of public affairs and media for Hydro-Quebec said, "It is not in our strategic plan anymore. It is not [among] our projects ... be reassured, there is no [hydroelectric] project [for] this river, [and] we won't touch it. We won't go there."<sup>129</sup>

## Key Factors

Eleven key factors emerged from the interviews. These factors were identified to have contributed to creating successful Rights of Nature frameworks for the Mutehekau Shipu/Magpie River. The 11 factors are shown in the box below:



Participants identified that the top two factors (underlined) were the most important. Many factors are related to each other and each of the factors is applicable to advancing legal personhood approaches across the country, as explained in the following subsections.

### Factor 1: Regional Consensus

The Mutehekau Shipu/Magpie River legal personhood initiative was successful because of regional consensus. It was also successful because of the focus on relationship-building

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<sup>129</sup> Goujard, "Hydro-Québec Abandons Dam Project on Majestic Magpie River."

between key actors. Many key actors were involved in the process, including:

- First Nations and Municipal governments,
- Environmental non-profit organizations,
- Tourism industry groups,
- Legal organizations,
- Academic actors and institutions, and
- Community members, including youth.

Building trust between local government leaders was identified as being particularly important. Key government and civil society actors had already been working together for a long time on different files. In many ways, this history of collaboration helped with the success of the legal personhood approach.

An international forum for the protection of whitewater rivers was organized in Sept-Îles in 2018. This forum helped to mobilize local stakeholders to unify toward a common goal: the protection of the river. The key actors agreed on this goal before they decided to take any specific approach. The forum formalized the relationship between key actors. The Innu of Ekuanitshit joined forces with the Minganie RCM, local paddlers, and SNAP Québec, forming the Mutehekau-shipu Alliance. Two of the folks involved that we interviewed, shared that:

*“Make sure that you have a consensus on the vision about the river or the ecosystem, because otherwise it's probably not going to work.”<sup>130</sup>*

*“For me, I think that it's the unanimity of the communities. After that it's about unanimity of the region. It's also the work, the trust that we have for each other the more time passes.”<sup>131</sup>*

The decision to undertake a collaborative governance approach helped the Alliance succeed. After agreeing upon a common goal, many meetings were held. Key actors came to the meetings with their own perspectives and interests. But, they all agreed to work together in the long-term to protect the river.

**A collaborative governance approach allowed key actors to join various perspectives and interests toward the river's protection. Decisions were made by consensus and based on trust.**

The Alliance decided to take the legal personhood approach. The OIDN was brought in to work on the project. The OIDN facilitated workshops with key actors around interests and goals for the initiative. They also [co-drafted](#) two parallel resolutions with the Alliance. This means that the

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<sup>130</sup> Anonymous, Personal communication, February 20, 2023

<sup>131</sup> Anonymous, Personal communication, translated, March 28, 2023



OIDN and the Alliance wrote the resolutions together in close and continuous collaboration. These resolutions were edited and ratified by the Indigenous and Municipal governments.

There was a strong relationship and foundation of trust between members of the Mutehekau-shipu Alliance. This created a “carte blanche” environment. This meant that work could be done without normal bureaucratic red tape, because the members trusted each other.

The First Nation and Municipality made decisions by consensus. Both entities needed to be on the same page in order to legislate ideas into practice. This approach recognized the strength of their collective jurisdictional power and influence. It shows an understanding that they could achieve more together. The people we spoke with reflected this concept in their interviews.

*“I think having kind of a long-term outlook, being patient, and not necessarily having to have all the pieces in play...”<sup>132</sup>*

*“We had to make sure that we had everybody around the table.”<sup>133</sup>*

*“But the real bridge I think is the approach of reconciliation, between non-Indigenous and Indigenous actors, actually resulting in putting all of us on this path together with the Magpie.”<sup>134</sup>*

## Factor 2: Indigenous and Youth Leadership

*“The Rivers do not belong to anyone. We are only passing through. We don’t own anything. We only wish that future generations can also follow the current.” – Shanice Mollen-Picard and Uapukun Mestokosho<sup>135</sup>*

The Mutehekau Shipu Alliance legal personhood initiative was guided by the leadership of the Innu of Ekuanitshit. Chief Pietacho explained to us that the Innu of Ekuanitshit were guided by their ancestral relationship to land and water, and their vision for the territory.<sup>136</sup>

**The Mutehekau Shipu/Magpie River’s personhood reflects Innu culture. It is also a form of regeneration and healing for the community, particularly Innu youth.**

Chief Pietacho also explained that, for the Innu, water is life and rivers are living beings with their own spirit and agency.<sup>137</sup> This [ontology](#) is reflected in the Innu’s Indigenous knowledge, traditions, language, and way of being in relation with the world. The Innu do not see

<sup>132</sup> Anonymous, Personal communication, May 21, 2023

<sup>133</sup> Anonymous, Personal communication, February 20, 2023

<sup>134</sup> Anonymous, Personal communication, translated, March 28, 2023

<sup>135</sup> *Shipu*, translated.

<sup>136</sup> Jean Charles Pietacho, personal communication, June 9, 2023

<sup>137</sup> Jean Charles Pietacho, personal communication, June 9, 2023



themselves as separate from land and water, but part of it. The recognition of the Mutehekau Shipu's personhood is a reflection of Innu culture. It is also a form of regeneration and healing for the community, particularly for Innu youth. Guardianship is an important aspect of this.

Spending time on the river is important to youth empowerment and cultural reclamation. For many years, youth have had the opportunity to take rafting trips organized by the Conseil Tribal Mamit Innuat (Mamit Innuat Tribal Council) and local whitewater rafting companies. These trips have intimately and spiritually impacted their connection to the territory and to each other.

In 2015, Shanice Mollen-Picard and Uapukun Mestokosho, two young Innu leaders in the community, released the film "Shipu" in collaboration with Wapikoni Mobile. The film told the story of the importance of water for Innu youth. The youth presented their film to the United Nations, giving the river a voice on an international stage.

It was also at the United Nations that Innu leaders and youth were introduced to the concept of legal personhood. Chief Piétacho told us that the Innu were particularly inspired by the Maori's Indigenous-led approach to protecting the Whanganui River.<sup>138</sup> The Innu met with the Māori to inform the Innu's legal personhood approach. This relationship building demonstrates the critical role of the international Indigenous community, and intergenerational Indigenous leadership in the RoN movement.

Innu youth supported the legal personhood approach. Chief Jean-Charles Piétacho has stood alongside the youth, uplifting their vision for the region. He has been unwavering in the face of hydroelectric development and resolute in the Innu's position on protecting the river together. For Chief Piétacho, regional unity is key for future generations. The Innu of Ekuanitshit's willingness to work alongside their neighbours in the Minganie MRC demonstrates their deep and relational sense of responsibility, care, and guidance toward their community and all their relations.

### Factor 3: Municipal Political Will

*"So if our [provincial and federal] governments don't understand that [economies should not be built on the destruction of nature], it will be problematic for your generation, really, that is unfortunate.... it's not what I wish for my grandkids, and to my kids, neither to you, neither to your kids... to anyone. [Your generation] will have to move protections to consolidate to go forward together."<sup>139</sup>*

*"[The Chief] sent me a message to say that we are in the same boat, and we will go forward together. So this is where the trust between us and the Innu began [with the fight for the protection of Anticosti Island]... yes, it began in government but then it became a friendship. And even though we were friends before, on cases of this magnitude*

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<sup>138</sup> Jean Charles Pietacho, personal communication, June 9, 2023

<sup>139</sup> Anonymous, Personal communication, translated, March 28, 2023

*sometimes we have seen friends leaving their friends behind. But on this one, we are friends, we are allies, and we are inseparable.*"<sup>140</sup>

Political will is another way to describe commitment. It describes the willingness to take risks to support a policy, or a solution to a problem. The commitment of municipal staff and decision makers in the region was essential to the success of the legal personhood initiative. This commitment was a turning point in the river's protection.

### **Municipal staff and decision makers were critical to the personhood initiative's success, especially the RCM prefect.**

Throughout the interviews, there was a strong and fundamental recognition that municipal staff were at the forefront of the work on the side of the RCM. Municipal staff helped drive the initiative forward internally.

Luc Noël, the prefect of the RCM, also played a key role in demonstrating commitment to the river's protection. He provided the necessary motivation and perseverance to navigate through bureaucratic hurdles, vested interests, and opposition. Noël's dedication sent a powerful message to the public and to provincial and federal governments. He was willing to take political risks for the sake of long-term benefits and sustainability. A commitment to ecological protection, the wellbeing of his constituents, and a responsibility to future generations propelled his work.

Noël's commitment to work in partnership with the Innu of Ekuanitshit was significant to the initiative's success. His willingness to follow the lead of Chief Piétacho, his friend and partner in governance, shows reconciliatory leadership. It highlights that collaborative efforts are key to driving positive change.

#### Factor 4: Ecological Threats and Previous Industrial Development

*"A lot of people got good jobs with the Romaine [River hydroelectric project], but then there was fallout. Some people with small contracting companies benefitted very well, but at a certain point, the narrative became: most of the workers are not from here, they're flying into the camp. The executives are not from here. And then, even though they had these high paying jobs, there was a lot of problems that came with it, including a huge increase in divorce rates. Like, you know, those mega camps, it's like the oil fields... those camps have huge problems with drugs and prostitution and there were people from Ekuanitshit who went in their early 20s, worked for five years on the Romaine, made over \$100,000 a year, and came back with nothing. Literally addicted to drugs and... again, I don't want to generalize, some people could have gone there and saved up a lot of money, did really well off of it. But I know that, for example, that happened with a lot of people."*<sup>141</sup>

<sup>140</sup> Anonymous, Personal communication, translated, March 28, 2023

<sup>141</sup> Anonymous, Personal communication, May 21, 2023

Many Bureau d'audiences publiques sur l'environnement (BAPE) Public Hearing reports recommended the protection of the Mutehekau Shipu/Magpie River. These reports played an important role in the success of the legal personhood initiative.

The first report was released in 2004. It was written following public hearings on the refurbishment of a decommissioned dam on the mouth of the river. The assessment panel approved the project, but recommended that "...hydroelectric development on the river should be limited to the proposed generating station at the Magpie dam."<sup>142</sup> Moreover, "the entire upper stretch of the Magpie River should remain intact." The panel reasoned that this was necessary "to preserve the natural attractions of a sector that is extremely popular among outdoor enthusiasts."<sup>143</sup>

In 2007, the BAPE made another recommendation following public hearings on new protected areas in Québec's North Shore region. The BAPE recommended that the Magpie "should be exempt from any new hydroelectricity development projects and should be given protected status, in order to preserve its natural character and its recreation and tourism potential".<sup>144</sup>

In 2009, the Joint Federal-Provincial Review Panel for the mega hydro complex made another recommendation concerning the neighbouring Romaine River. The panel stated that, "If the project goes ahead, a similar river in the region offering comparable aesthetic and recreational features according to recognized criteria in this area should be protected."<sup>145</sup> The recommendation also stated that "...harnessing rivers for hydroelectric purposes on the North Shore should be accompanied by the protection, in the region, of a natural heritage that is qualitatively and quantitatively equivalent in terms of ecosystem, landscape and recreational richness."<sup>146</sup>

These recommendations echoed many public comments requesting protection for the Mutehekau Shipu/Magpie River as a compensatory measure for the loss of the Romaine River.<sup>147</sup> This was around the time that the Romaine River project revealed many underlying issues.

The Minganie region was generally receptive to the Romaine River project when it was first proposed. The local community was promised economic benefits and jobs. These outcomes were negotiated in Impact Benefit Agreements. Instead, the Romaine project resulted in socio-cultural consequences and unfulfilled economic promises. People were angry and disappointed. Many hopes for the region didn't materialize, and the ones that did were not enough to justify the losses.

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<sup>142</sup> Bureau d'audiences publiques sur l'environnement (BAPE), "Report 198," 47.

<sup>143</sup> Bureau d'audiences publiques sur l'environnement (BAPE), "Report 198," 47.

<sup>144</sup> Bureau d'audiences publiques sur l'environnement (BAPE), "Report 236," 23.

<sup>145</sup> Bureau d'audiences publiques sur l'environnement (BAPE), "Report 256," 166–67.

<sup>146</sup> Bureau d'audiences publiques sur l'environnement (BAPE), 166–67.

<sup>147</sup> Troutet and Charest, "Rivière d'Eau Romaine, Rivière d'eau Vive: Submission Presented to the Joint Review Panel on the Romaine River Hydroelectric Complex Development Project."

## **By being proactive, local communities could imagine and build the future they desire.**

These setbacks led local community members to mobilize toward an alternate vision for the future. This alternate vision was the legal personhood model.

The Mutehekau Shipu/Magpie River was included in the 2009-2013 Hydro Québec Strategic Plan. This showed that the river was threatened by hydroelectric development, but no project had been proposed yet. This meant that people didn't have to use time and resources to fight against a project proposal that had already been designed and funded. By being proactive, local communities could imagine and build the future they wanted.

### Factor 5: Research and Academia

Academic research played a key role in the success of the Mutehekau Shipu/Magpie River legal personhood initiative. Many collaborations between academic researchers, institutions, and advocacy groups occurred thanks to friendships made on the river. These collaborations helped get the data needed to advocate for the river's protection. The data provided greater authority and credibility to the initiative.

Yann Troutet and André Charest's 2008 study "Rivière d'Eau Romaine, rivière d'eau vive" analyzed exceptional whitewater rivers in Côte-Nord. The research developed a "Whitewater Index." The index was based on multiplying the length and class of each rapid. The research compared different rivers based on their whitewater. The researchers found that the Mutehekau Shipu/Magpie River was the top river in Côte-Nord for whitewater potential.

SNAP Québec commissioned a second study in 2013. It was conducted by Lorie Ouellet, a whitewater rafter and researcher at the Université du Québec à Chicoutimi. Ouellet's study built on the Whitewater Index work in the Côte-Nord. The study compared world-renowned rivers in North and South America. Ouellet concluded that the Mutehekau Shipu/Magpie River "...offers a density and calibre of rapids unequalled by other internationally renowned expedition rivers."<sup>148</sup> The Mutehekau Shipu/Magpie River was also the only river in the study that was not protected or conserved. Conserving the river would ensure the "...development, enhancement and the sustainability of its whitewater potential for the benefit of future generations."<sup>149</sup>

## **National Geographic ranked the Mutehekau Shipu/Magpie River the #2 river worldwide for whitewater rafting expeditions, solidifying its recreation and touristic potential.**

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<sup>148</sup> Ouellet, "La Rivière Magpie: Une Rivière de Class Mondiale à Protéger," 1.

<sup>149</sup> Ouellet, 1.

The Mutehekau Shipu/Magpie River was ranked #2 on *National Geographic's* 2007 list of the world's best rivers for whitewater rafting expeditions. Importantly, the research findings by Troutet, Charest, and Oueller proved that the *National Geographic* ranking was legitimate based on scientific data. This recognition and research demonstrated that the Mutehekau Shipu/Magpie River is a world-class river that holds recreation and touristic value beyond its hydroelectric development potential.

Volunteer law students played a key role in the strategic planning leading up to the legal personhood approach. The students conducted research on international examples of legal personhood. Their analysis identified tools and processes used in similar cases worldwide. The student researchers used these tools and processes to consider the river's legal context. This research guided the Mutehekau-shipu Alliance to select an informed and effective approach.

#### Factor 6: Eco-Tourism and Alternative Economic Opportunities

*"That's a sociocultural benefit, you know, sending people on the river and having them learn about wilderness, about themselves, about each other."<sup>150</sup>*

*"And my relationship with the river is also a relationship with other human beings because we're working together to protect this river. So it's a kind of melting pot of, you know, nature, humans, and love."<sup>151</sup>*

The success of the legal personhood initiative was influenced by the river's eco-touristic potential. This potential was considered a viable economic alternative to hydro development.

The area's whitewater rafting tourism industry helped to build relationships between community activists. Ecotourism also generated support for the river's protection from the very beginning. Whitewater festivals across the province were a site of mobilization. Activists shared petitions with whitewater enthusiasts at these gatherings. These actions helped to spread the word about the threat of hydro development.

Rafting trips connected people to both the river and to each other. These trips fostered a deep connection to place and to the group. The trips contributed to developing a shared sense of care and appreciation for the river.

People in the region were already familiar with the conservation economy. As the Réserve de Parc National de l'Archipel-de-Mingan is located just south of the river, people understood the job opportunities that could come from protecting the river. The legal personhood initiative provided a potential alternative to hydro development, i.e., the eco-tourism industry. This example showed that an alternative economy was possible.

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<sup>150</sup> Anonymous, Personal communication, February 20, 2023

<sup>151</sup> Anonymous, Personal communication, February 20, 2023

## **Land guardianship is grounded in relationality. Guardianship champions Indigenous stewardship and place-based knowledge.**

The land guardianship aspect of the river's protection also helped the campaign to succeed. This approach is grounded in [relationality](#) with the territory. Guardianship champions Indigenous stewardship and place-based knowledge. This approach was an opportunity to avoid the long-term consequences of short-sighted development decisions. Instead, a guardianship approach emphasizes the importance of cultural and community development for future generations.

### Factor 7: Recognition and Publicity

*"We've always framed our action in a positive way by 'celebrating something' and not 'opposing anything'. It was more or less a celebration of the beauty of the river that has carried us forward, rather than opposing this or that project, and that was kind of strategic."<sup>152</sup>*

Recognition and publicity also played an important role in the legal personhood initiative's success. These factors influenced the public and mobilized support for the Mutehekau Shipu/Magpie River.

*National Geographic* recognized the river as a top destination for whitewater activities. This recognition established the river's place on the world stage. It also attracted national and international tourism and interest in the area. The popularity of whitewater expeditions worldwide also helped to generate support for the river's protection.

## **Local people led the movement, which focused on future-building and used positive language to frame the discussion.**

Building internal capacity and support was a strong focus. This approach ensured that the movement was led by local people. Many key actors emphasized using positive language. Interviewees noted that they moved away from framing the initiative as "against development". Instead, they focused on [future-building](#), and refused to frame the discussion around loss and victimization.

The legal personhood initiative was kept low-profile before it was announced. The Mutehekau-shipu Alliance prepared a press conference to capture national and international attention. This conference attracted many journalists, who played an important role in spreading the news about the river's legal personhood designation.

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<sup>152</sup> Anonymous, Personal communication, May 23, 2023

The initiative has gained increased visibility and recognition since it was announced. The Mutehekau-shipu Alliance has received many questions, interview requests, and event invitations. The publicity has created a platform for discussions and actions to protect the river. It has also inspired similar projects across the country and around the world.

#### Factor 8: The Global Rights of Nature Movement

*“At that time, the movement about Rights of Nature was growing internationally. We had the Whanganui River in New Zealand, who was declared a legal person, and the Atrato River in Colombia... there was a lot of interest around the rights of nature and we just thought, could we do that in Québec?”<sup>153</sup>*

The global Rights of Nature movement played a key role. Other examples of legal personhood introduced the idea, and showed that a successful campaign was possible. The movement’s momentum generated ideas about new legal approaches to protect the environment.

**The Alliance was inspired by Indigenous-led conservation efforts from the global RoN movement. These examples provided a basis for legal personhood in so-called Canada.**

Other communities’ successes were used as inspiration. The lessons from these case studies helped the Mutehekau-shipu Alliance. The OIDN held workshops and presented these lessons to the key actors involved in the Mutehekau-shipu/Magpie River case.

The global RoN movement showed examples of Indigenous-led conservation initiatives using the legal personhood approach. This provided the basis for legal personhood in so-called Canada.

#### Factor 9: Innovative Legal Support, Mechanisms, and Strategies

***“The most important is the inner epistemology... that is the keystone of this declaration.” – Yenny Vega Cárdenas<sup>154</sup>***

The OIDN are lawyers who specialize in the Rights of Nature. Their expertise helped guide the community through the complicated legal process. They provided guidance, conducted legal research, and facilitated workshops in the community. They also translated the key actors’ goals into legal language. This support helped the Mutehekau-shipu Alliance to decide which approach would work best for them.

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<sup>153</sup> Anonymous, Personal communication, February 20, 2023

<sup>154</sup> Vega Cárdenas, Personal communication.



First, key actors were brought together to identify major themes. These themes included:

- **A description of territory**
- **A description of the river**
- **A vision for the river, and**
- **The desired outcome for the initiative.**

The key actors wrote their answers on a whiteboard. This information was used to create a draft of the two resolutions. Then everyone reviewed and edited the resolutions together. This process ensured that each government agreed on the wording and the content.

The process focused on identifying commonalities between the Innu of Ekuanitshit and Minganie RCM's goals for the river. The aim was to have harmonious, parallel resolutions. The two governments would pass the resolutions under their own legal systems and jurisdiction.

The lawyers were uniquely positioned to “start a conversation between systems”.<sup>155</sup> They understood the theories of knowledge surrounding the concept of legal personhood and how the personhood designation relates to both the Innu of Ekuanitshit and Minganie RCM's worldviews.

#### Factor 10: Funding

*“Well, people still have to work full time jobs. They can't just mobilize people in their spare time and that be enough to push it forward.”<sup>156</sup>*

*“That really helped... because if it wasn't for that, I couldn't have gone to Montreal for a week, etc., it would have slowed down the initiative. ... I wouldn't have been able to do this without the funding. I could've never went to represent the river if it wasn't for that.”<sup>157</sup>*

Funding played a key background role in direct and indirect ways. It provided important financial resources to support many of the initiative's activities. Costs such as travel expenses, legal fees, workshops, and meetings were covered. The First Nation, municipality, and non-profit organization were also able to each cover the salary of a dedicated staff member. This was extremely useful to drive the initiative forward. Having employees provided consistency and helped with coordination because staff could prioritize their time. And, by working together, the partner organizations could combine their resources, expertise, and networks to advance the cause of protecting the river.

**While funding helped to support specific activities, much of the mobilization work was led by volunteers.**

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<sup>155</sup> Anonymous, Personal communication, February 20, 2023

<sup>156</sup> Anonymous, Personal communication, May 25, 2023

<sup>157</sup> Anonymous, Personal communication, translated, May 22, 2023

The funding supported specific project activities. But, it is important to note that much of the work was done by community volunteers. Volunteers led the mobilization work for many years before the Alliance was formalized and the personhood approach was undertaken. Many people said that this important groundwork was necessary to the success of the personhood initiative.

## Factor 11: Provincial Legislation

Québec is the only jurisdiction in Canada to enshrine the right to water in legislation. Water rights are protected through Act C-6.2, An act to affirm the collective nature of water resources and to promote better governance of water and associated environments.<sup>158</sup> Notably, the Canadian government has abstained (refused to vote yes or no) from recognizing the human right to water at the international level many times within their work with the United Nations. The Canadian government only finally recognized the human right to water internationally at the 2012 Earth Summit.<sup>159</sup>

The Government of the Northwest Territories has not legislated the right to water. But, the province does recognize this right in a number of documents. The NWT government passed a motion in 2007 recognizing the human right to water.<sup>160</sup> This right is also included in the 2010 *Northern Voices, Northern Waters: NWT Water Stewardship Strategy*.<sup>161</sup>

The Province of Québec's *Charte des droits et libertés de la personne* (Charter of Human Rights and Freedoms) states that "everyone has the right, to the extent and according to the standards provided for by law, to live in a healthy environment that respects biodiversity."<sup>162</sup> The *Loi sur la qualité de l'environnement* (Environment Quality Act) states that "...every person has a right to a healthy environment and to its protection, and to the protection of the living species inhabiting it."<sup>163</sup> Further, the *Loi sur le développement durable* (Sustainable Development Act) states that "human activities must be respectful of the support capacity of ecosystems and ensure the perennality of ecosystems."<sup>164</sup>

These laws are included in the two parallel resolutions. Together, they provide legislative support to the legal personhood concept in Quebec.

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<sup>158</sup> Act to affirm the collective nature of water resources and to promote better governance of water and associated environments.

<sup>159</sup> Turp and Cárdenas, *A Legal Personhood for the St. Lawrence River and Other Rivers of the World*.

<sup>160</sup> Government of the Northwest Territories, "Northern Voices, Northern Waters: NWT Water Stewardship Strategy."

<sup>161</sup> Government of the Northwest Territories, "Northern Voices, Northern Waters: NWT Water Stewardship Strategy."

<sup>162</sup> Québec Official Publisher, *Charte des droits et libertés de la personne*, 8 translated.

<sup>163</sup> *Loi sur la qualité de l'environnement*, 12 (translated).

<sup>164</sup> *Loi sur le développement durable*, 4 (translated).

## Socio-Cultural Significance

It is not yet clear how legal personhood will provide increased protection for the Mutehekau Shipu/Magpie River. However, it is an immediate action taken with urgency within the existing legal system and broader context of an international movement. Legal personhood for the Mutehekau Shipu/Magpie River signals the critically insufficient protection of ecosystems and Indigenous rights. This effect is important to acknowledge in response to critiques of this approach.<sup>165</sup>

Legal personhood could encourage cultural shifts in the Canadian legal context. These shifts may impact how environmental protections are undertaken in the future. The resolutions challenge the nature/culture dichotomy. They recognize human interdependence with the natural world and view nature as a subject rather than an object. As such, legal personhood offers “an ontological challenge to the forms of politics and nature that have generated such a crisis in the first place”.<sup>166</sup>

Anthropocentrism is at the core of the issue. This dominant worldview needs to change if we want natural beings to be granted the protection they need to survive. This perspective must evolve to maintain the interconnected world we all live in. Changes in law require cultural change and support.

**This case is the first collaboration of its kind between a First Nation and a non-Indigenous government. Alliances like these champion Indigenous knowledge, signify change, and encourage reconciliation.**

The Mutehekau Shipu/Magpie River case is the first collaboration between a First Nation and a non-Indigenous government in establishing environmental personhood. This model sets an example for the RoN movement as a whole.<sup>167</sup> Moreover, this worldview has positively impacted non-Indigenous Canadian culture. Alliances and partnerships that champion Indigenous knowledge signify transformative change and reconciliation in the Canadian legal context.

These shifts may not immediately transform existing legal structures at a constitutional level. But, change is happening at the level of collaborative governance and decision making. These conditions may be necessary for the type of broader change required to build reconciliatory futures.

The Mutehekau Shipu/Magpie River’s personhood has not been formally established by the provincial and federal government. Nor has personhood been challenged in court. Still, the

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<sup>165</sup> Garver, “Are Rights of Nature Radical Enough for Ecological Law?”

<sup>166</sup> Youatt, “Personhood and the Rights of Nature: The New Subjects of Contemporary Earth Politics,” 52.

<sup>167</sup> Hessey, “How a River in Quebec Won the Right to Be a Legal Person.”

river's Personhood status could have a significant impact over industry and development stakeholders, such as Hydro Québec. The lack of provincial and federal recognition does not undo the influence of the legal personhood resolutions. This kind of tool—one that states a region's stance on development—can be powerful on its own. It may be enough to enable change on the ground and have considerable influence. This is especially true because of the need for Free Prior and Informed Consent in Canada.

Leanne Betasamosake Simpson is a Michi Saagiig Nishnaabeg scholar, writer, and artist. She wrote a book titled *A Short History of the Blockade*, in which she cites Mohawk scholar Audra Simpson's concept of "refusal."<sup>168</sup> Leanne Betasamosake Simpson writes that "Indigenous blockades are a refusal of the dominant political and economic systems of Canada. They are a refusal to accept erasure, banishment, disappearance, and death from our homelands."<sup>169</sup> She also explains that blockades are "an amplification and centering of Indigenous political economies—Indigenous forms of governance, economy, production, and exchange. They are indeed a resurgence of social and political practices, ethics and knowledge systems, and in this way they are a generative refusal."<sup>170</sup>

**Legal personhood can be seen as a form of "generative refusal" that affirms a vision of a life-giving world.**

Leanne Betasamosake Simpson provides a valuable way to view the legal personhood model in so-called Canada. For the Mutehekau-shipu Alliance, legal personhood can be seen as a type of barricade, or legal dam. Personhood can be seen as a refusal to accept industrial development and ecological and cultural destruction. Critically to Simpson's point, it is not only a refusal. It is also an affirmation of the type of life-giving world that the Innu of Ekuanitshit and Minganie RCM together imagine their future to hold. In this sense, it is transformative.

## Toward a Community-Led Campaign for the DehCho: Key Takeaways

This project set out to determine what lessons can be learned from legal personhood cases worldwide. We also wished to better understand the legal context surrounding the DehCho.

First, we explored western and Indigenous concepts of personhood. Next, we looked at the colonial legal context and the emergence of environmental personhood. We then connected this context to the legal conditions surrounding the DehCho. We considered how Indigenous law and

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<sup>168</sup> Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States*.

<sup>169</sup> Simpson, *A Short History of the Blockade: Giant Beavers, Diplomacy, and Regeneration in Nishnaabewin*, 10.

<sup>170</sup> Simpson, *A Short History of the Blockade: Giant Beavers, Diplomacy, and Regeneration in Nishnaabewin*, 10.

inherent rights shape this context. We surveyed international and local cases from the Rights of Nature movement, an international, Indigenous-led movement for climate justice and Indigenous rights.

By looking at local and global examples, we deepened our understanding of the potential opportunities and challenges of a similar campaign for the DehCho. Finally, we conducted a study on the Mutehekau Shipu/Magpie River legal personhood initiative. This study identified 11 key factors that led to the initiative's success. It also demonstrated the initiative's sociocultural impacts.

By drawing this information together, we were able to identify the following key takeaways. It is important to note that some of these are challenges, some are opportunities, and some are both.

## Key Lessons to inform the DehCho River's protection

### ***Navigating conflicting worldviews and legal systems***

- **Indigenous and western worldviews consider “personhood” differently.** Where an Indigenous perspective views humans and nature as interdependent, personhood is a moving target in western law. This difference can be leveraged toward achieving legal protections for non-human beings in a colonial legal context. However, western laws are founded upon views that fundamentally contradict Indigenous worldviews. This conflict presents a challenge for the legal personhood movement and the DehCho case.
- **Any initiative to support the DehCho likely means engaging with the Canadian colonial legal system and their laws.** While this can present challenges, current Canadian federal environmental laws could be applied to grant protections to the DehCho. However, for such a project to be truly transformative, it must be grounded in Indigenous legal systems. Therefore, any movement to protect the river means upending the colonial legal system.
- **Successful global and local environmental personhood initiatives demonstrate that it is possible to achieve important wins, even through colonial legal systems.** By doing so, we can effectively defend nature and reclaim ancestral knowledges. The campaign to protect the DehCho can be **an important step towards an Indigenous, multi-juridical legal system.**

### ***Engaging with the colonial legal system: suggestions***

- **Legal principles like *in dubio pro aqua* are a promising option, rather than written laws.** The reason for this is that principles can be broadly applied. Legal principles also do not rely on human-created definitions of nature, etc.

- **Of the three main routes to legal personhood (constitutional, legislative, or judicial), the legislative option seems to offer the most clear protection for the rights of nature.** Legislation affords national protection, and is more difficult to overturn than court decisions. This is true even though legislation is a lengthy process and requires a lot of people power.

### **Grounding this work in Indigenous Rights, Title, and Laws**

- Protecting the river means moving toward traditional forms of governance; **towards an Indigenous legal order, an Indigenous, multi-juridical legal system.**
- Indigenous Peoples in Canada hold inherent and treaty rights to engage in traditional water-related customs and practices. **These rights are affirmed in Section 35 of the Canadian Constitution.** As such, protection for the DehCho could come about via a constitutional challenge because Canadian governments are not supposed to interfere with these rights. Whether federally, provincially, or both, constitutional rights mean that **Indigenous peoples' needs and rights must be considered.** This consideration extends to water quality, protection, and conservation. In affirming Indigenous Peoples' rights to protect their lands and waters, the Rights of Nature/legal personhood approach for the DehCho provides an opportunity to move toward meaningful reconciliation in so called Canada.
- **The Rights of Nature and Indigenous Rights can reinforce each other in important ways.** Canada's participation in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides an international legal foundation to support Indigenous people's right to protect their lands and waters, including through Rights of Nature claims. claim for nature's personhood.

### **Building strong alliances**

- **Building strong alliances is key to successful RoN movements.** The alliances that are emphasized include
  - ◆ All Indigenous communities in the area,
  - ◆ Allied settler communities, experts and stakeholders in the region
  - ◆ Environmental and Indigenous rights movements across the country.
- The **consent, collaboration, and guidance of all Indigenous groups** living along the river must be a priority. Regional consensus has been found to be crucial. The DehCho First Nations Leadership could consider creating a committee to report on the possibility of attaining legal personhood for the DehCho River.



## **Being prepared for the challenges**

- **Some challenges are material**, e.g., limited time, energy, and resources. **Some are more abstract**, such as issues around jurisdiction, i.e., how legal personhood is achieved legally.
- **Determining the boundaries of what is meant by a “river” can be tricky.** Similarly, communities must think critically about who gets to speak for the river, and how river guardians’ priorities or responsibilities may shift over time.

## **Learning from successful movements around the world**

- The Mutehekau Shipu/Magpie River study identified 11 key factors supporting a successful campaign. Of these factors, the top two are **regional consensus** and **Indigenous and youth leadership**.
- **A successful campaign for legal personhood has positive social and cultural impacts that extend beyond the local community.** Examples include centering Indigenous political economies, and creating a precedent that may impact industry and development stakeholders. Therefore, even if the colonial state does not recognize legal personhood, the implications of legal personhood are far-reaching.


In summary, legal personhood is a complicated, but potentially powerful approach to protecting water. As a strategy, it holds transformative potential for a “generative refusal”<sup>171</sup> of industrial development and ecological and cultural destruction. It also has the capacity to affirm a vision of life-giving worlds. Finally, legal personhood provides an opportunity to not only protect the DehCho river but to build together toward a more just future.

How will legal personhood affect environmental protections of the Mutehekau Shipu/Magpie River? While the answer is not yet clear, it has transformative potential. Legal personhood has the ability to build relationships, foster consensus, and champion Indigenous stewardship. The campaign to protect the DehCho can be an important step towards an Indigenous, multi-juridical legal system.

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<sup>171</sup> Simpson, *Mohawk Interruptus : Political Life across the Borders of Settler States*.

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