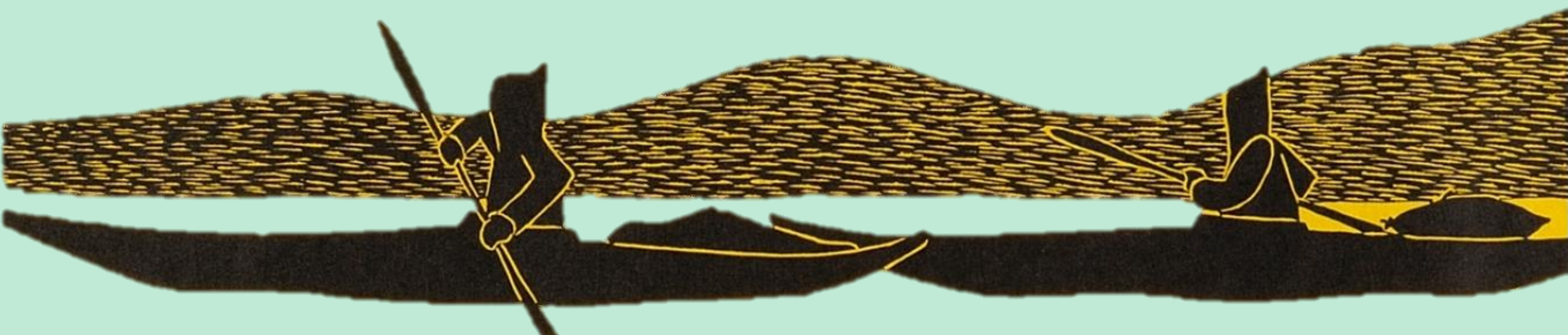


# Factors motivating legal recognition of nature's rights: The Case of River Whanganui in New Zealand and lessons for environmental decision making

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## Introduction

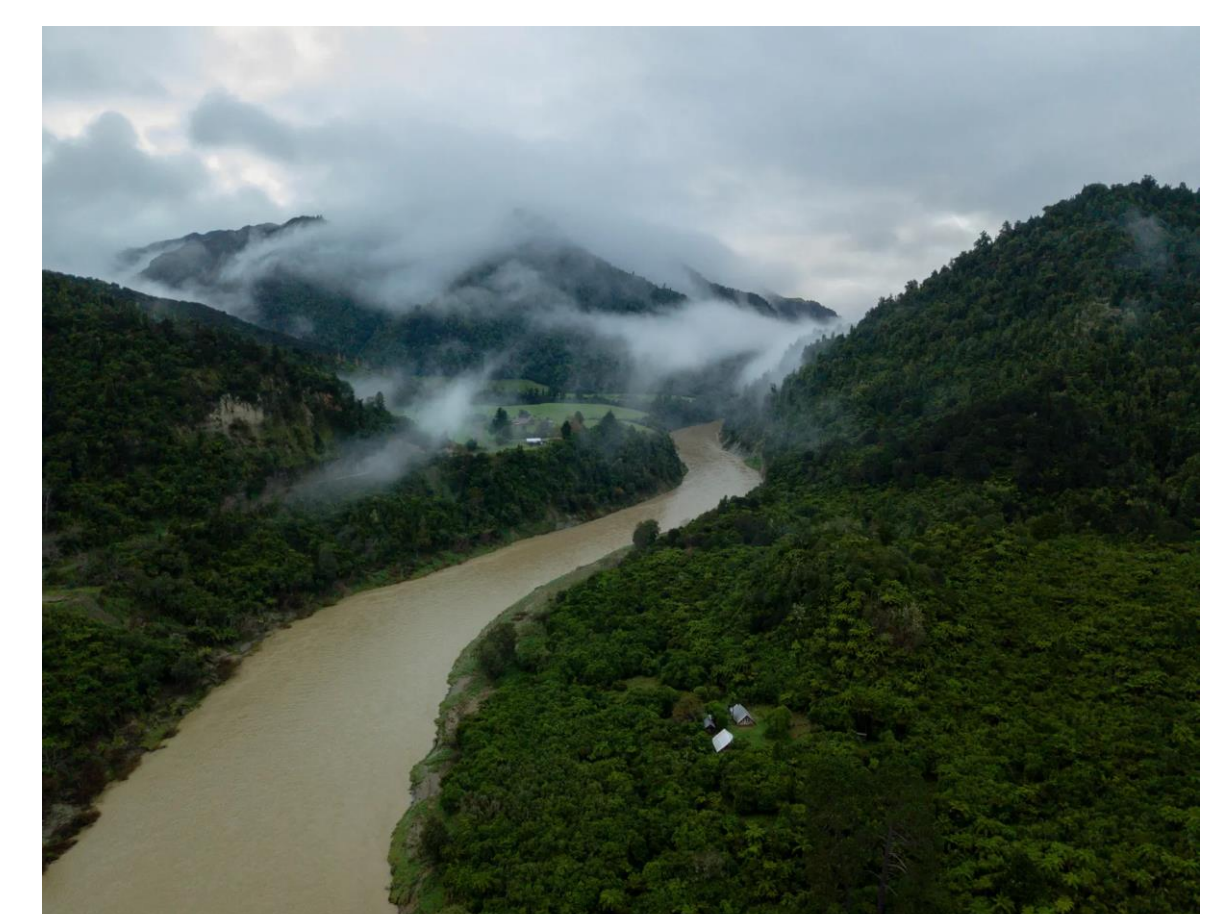
Within the past two decades, several national and international decisions have emerged that recognize nature as a “subject of rights”. Several courts and legislatures are providing non-human natural entities with legally enforceable rights as a way to protect the natural world. In 2008, Ecuador became the first country to recognize Mother Earth as a rights-holder in its constitution. Following this model, several other countries, including, Bolivia, Colombia, India, the Philippines, Bangladesh, New Zealand, Australia, and the U.S have all attempted to give rights to various natural entities such as rivers, lakes, mountains, forests and glaciers. In 2017, New Zealand, for instance, recognized its longest navigable river, River Whanganui, as a legal person. India similarly recognized Rivers Ganges and Yamuna as legal persons in a court decision, while in 2018, Colombia gave legal standing to the Amazon rainforest.

This global development, dubbed the “Rights of Nature” movement, represents a critical turning point in environmental decision making and sustainability policy. Not only are rights of nature decision a stark deviations from existing human-centric approaches to environmental governance, they also imply significant shifts in dominant socio-political and economic structures if implemented. This prompts one to consider what has motivated nations around the world to undertake these decisions despite the critical systemic changes they propose.

**In the face of a worsening planetary crisis and weak global responses to calls for action, could rights of nature decisions provide us with insight into motivating more sustainable environmental decisions?**

A **case study approach** was taken and a specific case example of successful rights of nature implementation was evaluated. In particular, the **case of River Whanganui in New Zealand was chosen for this study**, where legal personhood status was given to the river.  
A **descriptive case study methodology** was used to contextualize the decision. Policy documents, media reports and scholarly literature relating to the decision were reviewed to describe and evaluate the case to determine the factors that played a role in enabling the decision.

In March 2017, New Zealand passed the **Te Awa Tupua (Whanganui River Claims Settlement) Act**, intended to settle long-standing claims of the Indigenous Maori community of River Whanganui with regards to their customary interests in the river. Uniquely, as part of the settlement, the Act conferred legal personality to River Whanganui and established a new legal framework based on **Maori worldviews** for the river's future management. The Act **identified River Whanganui as Te Awa Tupua**, an “indivisible and living whole” in accordance with the Maori view of the river and recognized the river as a **legal person** with all the corresponding rights, duties and liabilities of a legal person.



Top: River Whanganui; Bottom: Whanganui Iwi ride waka on River Whanganui

## Te Awa Tupua Model of Legal Personhood

The Te Awa Tupua Act is **strongly based in Maori views** and ways of caring for the river. In addition to recognizing the river as “an indivisible and living whole from the mountains to the sea”, the Act **declares the river's being, Te Awa Tupua, as a legal person**. Further, it proposes a legal framework for **future management of the river that is based on a territorial “whole-of-river” approach**, in accordance with Iwi's personified and indivisible view of the river. The framework will be guided by Tupua te Kawa, the four intrinsic values that represent the essence of Te Awa Tupua. **This approach vastly differs from the Western common law approach** to resource management that has traditionally been observed in New Zealand. Importantly, the Act emphasizes **collaborative management and planning** to ensure the health and well-being of the river and establishes Crown-Maori co-governance bodies as well as advisory bodies with representatives from various other stakeholders.

## Motivations and Enabling factors for decision

**Primary motivation** Desire to achieve “meaningful” reconciliation by upholding Maori views of the river and providing them a voice in the river's management

**1** “Maori-focus” of the Treaty settlements process and Whanganui Iwi's unique vision for the river

National government's drive to achieve Indigenous justice

**2**

**3** Decision makers' cultural sensibilities and openness to environmental innovation

Negotiating parties' foresight into potential implementation benefits of legal personhood

**4**

## Objectives

Identifying the factors that motivate rights of nature decisions could provide valuable lessons into likely pathways and mechanisms that enable environmental decisions. Although rights of nature has received much scholarly interest, there is currently a gap in literature in relation to what has driven present decisions.

Hence, the given research seeks to address this gap and provide preliminary insight into the motivations of rights of nature decisions with the aim of determining potential lessons that these decisions might have to offer for future environmental decision making. Essentially, the research questions being posed are,

**What are the factors motivating rights of nature decisions globally? What lessons can be drawn from these decisions for wider environmental decision making?**

## Results of Contextual Study on River Whanganui decision

- Current **water policy environment in New Zealand is surcharged with a political desire to achieve Maori reconciliation**
- Te Awa Tupua Act, which gives **legal personhood to River Whanganui**, arose out of an **important Crown-led reparative process** – namely, the process of resolving long-standing disputes over the 1840 Treaty of Waitangi
- **Treaty settlements process has a distinct “Maori focus”**
- Although several settlements over land, water disputes have been reached under the Treaty settlements process, the **government broke new ground when it recognized River Whanganui as a legal person** as part of the settlement with Whanganui Iwi (river Maori tribe)
- This decision is also seen to be **particularly important in the context of a deteriorating freshwater environment in New Zealand** and the urgent need to protect the country's waterways



Minister of Treaty Negotiations (L) engaged in hongi with Dame Tariana Turia (R)



During ceremony where Iwi inaugurated Dame Tariana Turia and Turama Hawira as the two human voices of the river.

## Conclusions and Implications for Future Environmental Decision-making

River Whanganui and the Te Awa Tupua arrangement in New Zealand have valuable insights to offer to wider environmental decision making.

**Indigenous justice can become a pathway for environmental sustainability**

Potential for colligating varied legal-ontological views of nature for innovative environmental solutions

**Value of participative decision-making and collaborative planning for the environment**

**Importance of decision makers' cultural and environmental sensibilities**



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