



Recognizing the Rights of River Ecosystems in Florida To Stop Environmental Degradation and Restore Environmental Health

Frequently Asked Questions (FAQ's)

What are Ecosystem Rights?

Just like people have civil rights that can be defended and enforced against actions that would violate those rights, the 'ecosystem rights' movement seeks to recognize rights for rivers, estuaries, and other ecosystems which can then be used to protect those ecosystems in court. Because state legislatures or the federal Congress are unlikely to elevate the rights of ecosystems above the rights of business entities and governmental agencies who currently exploit those ecosystems, most ecosystem rights' laws have been adopted by local elected officials - and by residents of communities directly - in cities, towns, and counties across the United States.

Don't Ecosystems Already have Rights?

No. While rivers may have some limited protections under the federal Clean Water Act and under state law, those regulations are more focused on issuing permits to *use* those rivers than on *stopping* those activities that may adversely affect rivers. Under our current system of law, ecosystems are treated as property to be used rather than as entities that deserve individual protection. Thus, the status of rivers today is similar to the status of African-Americans prior to the Civil War, or the status of women in the 1800's prior to suffrage. Both women and African-Americans were treated as property, rather than having individual protections under the law. As it took a movement to change that, it will most likely take a movement of people to establish these stringent levels of environmental protections for threatened ecosystems.

Aren't Current Environmental Laws Working? Why do we Need Something New?

No. In fact, by almost every measure, the natural environment today is in worse shape than when the major U.S. environmental laws were adopted over forty years ago. Since ecosystems are treated as "things" merely to be used by governments and business entities, it should come as no surprise that the state of our natural environment has been steadily declining for the last fifty years. Without the emergence of a more stringent system for environmental protection, the current state of affairs will only worsen.

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Where have Ecosystem Rights Laws been Adopted?

In the United States, over three dozen cities, towns, and counties have adopted local laws recognizing the rights of ecosystems. The largest U.S. city to recognize ecosystem rights is the city of Pittsburgh, Pennsylvania, which did so through a unanimous vote of its City Council. Mora County, New Mexico, is the only county in the U.S. which has adopted a law to recognize the rights of ecosystems, and it did so through a vote of its County Commissioners.

Several tribes in the U.S. have also begun to recognize legally enforceable rights of ecosystems. They include the White Earth Band of Ojibwe in Minnesota, the Ponca Tribe in Oklahoma, and the Ho-Chunk Tribe in Wisconsin.

Internationally, the country of Ecuador has adopted the rights of ecosystems into its national Constitution. The country of Bolivia has also adopted rights for ecosystems into its national laws, and courts in India and Columbia have judicially recognized rights for certain ecosystems, including river ecosystems. Groups in Nepal, India, Australia, and Ireland are beginning to move laws that would recognize rights for ecosystems.

Have those Ecosystem Rights Laws been Enforced?

Yes. Shortly after the adoption of the rights of ecosystems in the Ecuadorian Constitution, several lawsuits were brought to stop river destruction, illegal gold mining, and other destructive activities. In the *Vilcabamba River v. Province of Loja* case (the first ever enforcement case in Ecuador), the courts ruled in favor of the River against a road construction project that was damaging the River's flow.

In the United States, lawyers have used the local laws to file intervention motions on behalf of watersheds and rivers in cases filed by corporations against local governments that had adopted those laws. In 2018, individuals and groups filed the first U.S. lawsuit in federal court on behalf of the Colorado River against the state of Colorado, seeking recognition that the Colorado River possessed certain constitutional rights that made portions of water compacts (which allowed extraction of greater water amounts than held by the Colorado) unconstitutional. While that case was voluntarily withdrawn by the plaintiffs after threats from the Colorado Attorney General against their lawyer, the litigation was covered by major media outlets like the *New York Times*, *Time* magazine, and MSNBC.

What Rights do Rivers Have?

Current "rights of ecosystem" laws, as adopted by U.S. municipalities, recognize rivers as having the rights to exist, flow, regenerate, naturally evolve, and the right to be restored following an injury. The laws provide that legal actions can be brought in the name of the river as a Plaintiff, and that any resident of the community can file the action.

Can the Rights of Rivers be Enforced Upstream if only Part of the River is in my City?

Yes. While the laws recognize that a river's rights are created when it flows past the municipal boundary, those laws can be enforced against any activity which violates those rights. Defending the river's rights means that its rights can be enforced against upstream activities that are violating those rights when the river flows into a certain city, town, or county. So even if only a part of the river ecosystem exists within the municipal border, the law can be used "extra-jurisdictionally," to reach those activities which are violating the river's rights upstream.

The situation would be akin to adopting a law within a city which recognizes certain civil rights for individual people; and then being able to use that law to stop rights-denying activities from occurring which impact those people within the city, but which are conducted from outside of the city boundaries. "Rights"-based laws thus reach beyond where individual municipal regulations can reach.

Has any Florida Municipality Adopted an Ecosystems Rights Law?

No. While ecosystems rights laws have been adopted by people in municipalities in seven other states, no municipality has adopted a similar law in Florida. There are currently efforts underway in three Florida Counties to change that; and the Orange County Charter Review Committee recently voted to advance a rights of nature provision to the next stage of ballot consideration.

How Hard is it to Pass an Ecosystems Rights Law in Florida?

Pretty hard. Given the scope and newness of these laws within the state, it is unlikely that most elected local officials will be willing to adopt them. Given that state of affairs, groups interested in getting the laws passed must use the citizens' initiative processes available to them under Florida law. Those processes allow residents of certain municipalities to collect signatures for the placement of the laws directly onto the ballot for a vote by residents. In most locations, placement of a law onto the ballot requires signatures of registered voters (of that municipality) in a number exceeding ten percent (10%) of the total number of registered voters of that municipality. Once those signatures are submitted to the local government, the municipality must then place the proposed law on the general election ballot or a special election ballot. If a majority of residents voting at that election vote "yes" in favor of the proposed law, then the proposed law becomes the law of the municipality.

Given that initiative processes are not used often by residents of communities, city and county officials may try to prevent its use for these purposes. That may necessitate a lawsuit against those municipalities to force them to follow Florida law. Following the passing of the law, enforcement of the law must then be conducted, and it's unlikely that municipal officials will take the lead on that. So, the community group must be prepared to not only get the law passed, but to organize people and lawyers to enforce the law.

Is There any Help Available for the Drafting of a Law?

Yes. The Community Environmental Legal Defense Fund (CELDF), a nonprofit law firm with an office in Pennsylvania, assists communities across the United States to draft these laws, assists communities with understanding the process for adoption, and provides legal assistance for the enforcement of those laws. In this area, it provides those services through its International Center for the Rights of Nature (ICRN), a CELDF project area. The Legal Defense Fund is located at www.celdf.org, and can be reached at info@celdf.org or at (717) 498-0054.