

Minnesota tribe asks: Can wild rice have its own legal rights?

By Jennifer Bjorhus | February 09, 2019



Minnesota's natural wild rice holds deep cultural, spiritual and economic importance for the state's American Indian tribes.

Now, in one part of the state at least, the native grass holds even more: its own legal rights.

Girding for a fight against a proposed oil pipeline, the state's largest Indian tribe, the White Earth Band of Ojibwe, has passed a [tribal law](#) granting wild rice its own enforceable legal rights, much like those enjoyed by American citizens. They include the rights to "flourish, regenerate, and evolve." A similar law has been adopted by the 1855 Treaty Authority, a tribal group representing beneficiaries of an 1855 land pact the Chippewa tribes made with the U.S. government.

The laws make it illegal for any business or other entity to violate the plant's rights.

It appears to be the first time in the United States that a plant species has been granted legal personhood, although last year the Ponca Tribe in Oklahoma passed what's believed to be the first law to codify the rights of nature as a whole.

It also puts White Earth on the leading edge of an environmental movement known as "[rights of nature](#)," championed by a Pennsylvania nonprofit called the [Community Environmental Legal Defense Fund](#) (CELDF). Attorneys with the tribe and the nonprofit say American law treats nature as property, and that environmental protection laws have failed as a result.

Whether the novel legal concept holds up in court remains to be seen.

[Kevin Reuther](#), a veteran environmental lawyer at the [Minnesota Center for Environmental Advocacy](#), said he's sympathetic to the idea of nature's legal rights, but at present it's more philosophical than practical.

"That changed paradigm would need to be adopted in a state court here for it to have a practical impact on our practice," he said.

Tribal attorneys describe the law as something of a disruptive political tactic, a way to throw a spotlight on Minnesota's fundamental values. Consider the dwindling walleye populations in Lake Mille Lacs, said White Earth tribal lawyer Frank Bibeau, who also is executive director of the [1855 Treaty Authority](#).



“If the state of Minnesota is going to let this premier walleye lake become a bass fishing spot, then they don’t give [care],” Bibeau said. “We can’t pretend that they’re watching out for our environment when this is happening.”

But Bibeau said the laws could also help the tribe in an emerging court battle.

White Earth has been fighting Enbridge Energy’s controversial Line 3 oil pipeline across north-central Minnesota. The \$2.6 billion pipeline would carry Canadian oil to Enbridge’s terminal in Superior, Wis.

Although it won’t cross White Earth land, it would cross nontribal waters where tribes have treaty rights to hunt, fish and harvest rice.

In October, Enbridge applied to the Minnesota Pollution Control Agency for a water quality certification for the pipeline, which is required for the company to get a key permit from the U.S. Army Corps of Engineers.

If White Earth opposes the certification, it can go to court — with the new laws in hand, Bibeau said. “We have a good chance because wild rice is mentioned in a treaty specifically,” he said.

Late last week, the tribe sent a letter to Gov. Tim Walz requesting a full hearing on the pipeline, and attached the new provisions to it.

[Sierra Club vs. Morton](#)

The Rights of Manoomin (the Ojibwe word for wild rice) were adopted Dec. 31 by the White Earth tribe, which has 25,000 members throughout the country. The 1855 Treaty Authority adopted them on Dec. 5. Among the rights conferred are the right to “pure water and freshwater habitat” and “a healthy climate.”

Bibeau said he hopes that codifying the rights will help state regulators understand the tribe’s spiritual connection to wild rice. It’s not just an important food, but a “major part of our cultural, spiritual connection with the Creator who guided our ancestors to where the food grows on water,” he said.

[Angelique EagleWoman](#), a visiting professor at Mitchell Hamline School of Law in St. Paul, said she applauds the law and hopes other tribes follow suit. EagleWoman said she sees the law as a return to long-standing indigenous legal traditions, in which humans don’t have dominion over other beings the way they do in American and European law.



“White Earth is ... really just reiterating very old traditional legal principles and putting them in a modern code,” EagleWoman said. “I think we’re at the start of the recognition of these types of rights.”

Environmental personhood may strike many as a fringe idea. But Reuther noted that the U.S. Supreme Court considered the concept in a 1972 decision, *Sierra Club vs. Morton*. Although the Sierra Club ultimately lost its bid to prevent Walt Disney from building a ski resort in California, Justice William O. Douglas wrote a famous dissent saying the environment should have legal standing.

“Contemporary public concern for protecting nature’s ecological equilibrium,” Douglas wrote, “should lead to the conferral of standing upon environmental objects to sue for their own preservation.”

Protecting Lake Erie

The idea has been taken up elsewhere around the world. A Maori tribe gave the Whanganui River on New Zealand’s North Island its own legal rights of personhood in 2017; Ecuador recognizes the rights of nature in its constitution.

CELDf has promoted the idea for decades. It has helped scores of local governments write something known as a community bill of rights, which establishes nature’s right to flourish. The ordinances typically ban certain activities, such as oil- and gas-fracking. Residents of Toledo, Ohio, for example, will vote this month on a bill of rights for Lake Erie to fight pollution.



The effort has drawn the ire of some business groups, who decry CELDF as anti-development. Getting local measures on the ballot when they’re unlikely to hold up in court is a waste of taxpayer dollars, said Chris Ventura, executive director of [Consumer Energy Alliance-Midwest](#).

“They’re utilizing a legal theory that is based more on fundraising practices than the actual law itself,” he said, “It’s an abuse of the law.”

The community bills of rights laws have been frequently challenged in court, and haven’t had a favorable end-ruling — yet, said CELDF founder [Thomas Linzey](#).

Still, he cited Grant Township in Pennsylvania, which passed an ordinance to stop a frack wastewater-injection well. Last year, after Pennsylvania General Electric sued the town, a federal judge [deemed the ordinance “frivolous.”](#) She ordered Linzey and another lawyer to pay the company \$52,000 and reported them to the disciplinary board of the state’s Supreme Court.



Linzey is still awaiting the outcome of that procedure, but said what’s important is that Grant Township’s law resulted in the ecosystem being allowed to participate in arguments before a federal judge, while delaying the company’s fracking permit review.

Linzey said he sees the group's work with Indian tribes as "a logical next step." Tribes not only have more leeway than the municipal governments, he said, but they have a long cultural tradition of valuing nature.

"The bigger change that has to happen, is long term," Linzey said. "It's no small mountain to climb."