



MEMORANDUM

AGENDA ITEM #VI.E

DATE: FEBRUARY 28, 2022
TO: COUNCIL MEMBERS
FROM: STAFF
SUBJECT: COUNCIL MEMBER INQUIRIES

At the January 24th Council meeting, the following information was requested:

1. “Right to Clean Water” Charter Amendment (Furr)

Wekiva River and Econlockhatchee River Bill of Rights. This Charter amendment, adopted by 89% of Orange County voters in November 2020, amends the Orange County Charter by providing charter protections for the natural rights of the Wekiva and Econlockhatchee Rivers or other Waters of Orange County by prohibiting pollution, providing a definition of Waters, providing a private right of action and standing for citizens of Orange County to enforce these protections against governmental agencies, non-natural persons or corporate entities that intentionally or negligently pollute the Waters, and providing for severability and exceptions.

https://library.municode.com/fl/orange_county/codes/code_of_ordinances

Article XI – Econlockhatchee River Protection

Article XIII – Wekiva River Protection

There exists a legal movement that seeks to assert the rights of nature. An outgrowth of this movement, the “Florida Rights of Nature Network” (<https://fronn.org/>), was founded in 2020 as a “grassroots collaboration of local initiatives” working in charter counties “to protect nature’s rights, people rights to healthy ecosystems, and Home Rule.” This organization was sought to place on the 2022 Ballot five amendments: 1) Right to Clean Water; 2) Florida Iconic Species; 3) Florida Wetlands Protection; 4) Captive Wildlife Hunting; and 5) Stop New Toll Roads. They did not secure the needed signatures by November 2020 and are regrouping.



South Florida Regional Planning Council
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www.sfregionalcouncil.org

Enclosure: Surma, Katie. “Does Nature Have Rights? A Burgeoning Legal Movement Says Rivers, Forests, and Wildlife Have Standing, too.” *Inside Climate News*, 2021 Sept 19

2. Code of Miami-Dade County Fertilizer Ordinance Chapter 18C Code - Implementation Experience (Geller)

Miami-Dade County adopted Chapter 18C Code of Miami-Dade County on April 20, 2021. Chapter 18C – “Miami-Dade County Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes” creates an annual fertilizer restricted period from May 15 to October 31st. Enforcement began after October 31, 2021.

3. Septic to Sewer Conversion Cost in Miami-Dade (Geller)

Conversion Costs – Anticipated Homeowner Expenses

The conversion from septic to sewer is financially challenging, with **anticipated homeowner expenses** ranging from approximately \$7,500 (when both public sewer and a public lateral are available), to \$15,000 (when only public sewer is available), to an average of \$40,000 (when no public infrastructure is available).

Source: Plan of Action Report, A Risk-Based Approach to Septic Systems Vulnerable to Sea Level Rise, Miami-Dade County December 2020

Recommendation

Information Only.

Ballot Title, Summary and Proposed Amendment – Rights of the Wekiva River and Econlockhatchee River Committee

A. Introduction.

This Charter amendment would provide for definitions, create natural rights for the waters of Orange County, the right to clean water, a private right of action and standing for citizens of Orange County to enforce these rights and injunctive remedies. The proposed amendment prohibits any governmental agency, non-natural person or corporate entity from intentionally or negligently polluting the Wekiva River and Econlockhatchee Rivers, or any other Waters within Orange County.

B. Ballot Proposal: The ballot title and question for Question #__ are as follows:

PROHIBITING POLLUTION OF THE WEKIVA
AND ECONLOCKHATCHEE RIVERS OR
OTHER WATERS OF ORANGE COUNTY

Amending the charter by providing charter protections for the natural rights of the Wekiva and Econlockhatchee Rivers or other Waters of Orange County by prohibiting pollution, providing a definition of Waters, providing a private right of action and standing for citizens of Orange County to enforce these protections against governmental agencies, non-natural persons or corporate entities that intentionally or negligently pollute the Waters, and providing for severability and exceptions.

Comptroller estimated financial impact: _____.

_____ Yes

_____ No

C. Text Revisions: Article 7 of the Orange County Charter is amended by adding Section 704.1. (Underline text is added to the charter).

Section 704.1 – Right to Clean Water, Standing and Enforcement.

A. Natural Rights of Orange County Waters and Citizens.

(1) The Wekiva River and Econlockhatchee River, portions of which are within the boundaries of Orange County, and all other Waters within the boundaries of Orange County, have a right to exist and to be protected against Pollution.

(2) All Citizens of Orange County have a right to clean water by having the Waters of Orange County protected against Pollution.

B. Standing, Private Right of Action.

Orange County, municipalities within Orange County, any other public agency within Orange County, and all Citizens of Orange County shall have standing to bring an action in their own name or in the name of the Waters to enforce the provisions of this Section of the Charter. Such actions shall be filed in the Ninth Judicial Circuit Court in and for Orange County, Florida, or, where jurisdiction exists, in the United States District Court, Middle District of Florida, Orlando Division.

C. Violations.

It shall be unlawful and a violation of this Section of the Charter for any governmental agency, non-natural person or corporate entity to intentionally or negligently pollute the Wekiva River and Econlockhatchee Rivers within the boundaries of Orange County, or any other Waters within the boundaries of Orange County. Violations include the Pollution of Waters which exist exclusively on private property owned by the same person(s) or entity, but only where Pollution thereon interferes with or causes Pollution of other Waters within Orange County or unreasonably interferes with or is injurious to the health and welfare of others. This Section of the Charter applies only to violations that occur after the effective date of the amendment as provided in Subsection (H).

D. Remedies.

(1) Remedies for violations of this Section of the Charter shall be injunctive and/or other equitable relief, including but not limited to a writ of mandamus requiring the violator, to the greatest extent reasonably possible, to restore the Waters at issue to the condition as it existed prior to being polluted by the violator. The prevailing party shall be entitled to recover its reasonable costs, including costs of expert witnesses.

(2) Attorneys' fees are not compensable unless the court determines that the action brought under this Section of the Charter is frivolous, vexatious, or is brought solely for the purpose of harassing the defendant. If such a finding is made, the Court may also award reasonable attorneys' fees to the defendant as a sanction.

E. Exception.

The provisions of the Section shall not apply to Constructed Wetlands.

F. Definitions.

(1) "Citizen" or "Citizen of Orange County" means an adult resident of Orange County with legal residence in the United States who has resided within the county for at least one (1) year prior to filing an action under this Section.

(2) “Constructed Wetland” means a non-natural swimming pool and any artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial water, greywater or stormwater runoff, to improve water quality.

(3) “Pollutant” means any substance or contaminant, whether manmade or natural, that is the source or cause of Pollution.

(4) “Pollution” shall have the same meanings as in FLA. STAT. § 376.031(17) and Rule 62-520.200(15), Florida Administrative Code, and means the non-natural presence in the Waters of Orange County of any one or more substances, contaminants, noise, or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animals, fish, plant life, and water quality or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(5) “Waters” shall have the same meaning as in Rule 62-520.200(25), Florida Administrative Code, and includes, but is not limited to rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water within the boundaries of Orange County, including fresh, brackish, saline, tidal, surface or underground waters. Waters owned entirely by one person or entity are included, but only to the extent the pollution thereon interferes or is injurious to other Waters, property or persons within Orange County.

G. Severability and Conflicts.

The rights and violations provided herein should be interpreted, to the greatest extent possible, in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable and all other provisions shall remain fully enforceable.

H. Effective Date.

This amendment shall become effective upon passage, which is the date certified by the Supervisor of Elections and shall not require further enabling legislation by the Orange County Board of County Commissioners.

D. Financial Analysis and Impact:

Based on information provided by the Comptroller’s Office, the cost of the proposed amendment is approximately _____, which represents _____.



The Whanganui River near the entrance to Whanganui National Park, near Whanganui, North Island, New Zealand. Credit: Matthew Lovette/Education Images/Universal Images Group via Getty Images

Justice

Does Nature Have Rights? A Burgeoning Legal Movement Says Rivers, Forests and Wildlife Have Standing, Too

Climate change and environmental destruction have inspired court cases around the country—and the globe—aimed at protecting the natural world.



By Katie Surma 

September 19, 2021

For Chuck O’Neal, a lifelong outdoorsman and environmentalist, the moment of truth came on election night 2020, as results rolled in from perhaps the most partisan campaign season in American history.

He wasn’t watching Trump or Biden. O’Neal had spent the past two years running a campaign in Orange County, Florida, based on an unorthodox legal doctrine that holds that rivers, mountains and forests should have legal rights, just like people.

His effort involved amending the county’s charter, its mini-constitution, with a so-called rights of nature provision. The provision would protect waterways like the glassy Wekiva River from harmful pollution, such as that linked to toxic algae blooms fueled by fertilizer runoff from agriculture, septic systems and poor stormwater management.

While the rights of nature movement has been gaining ground for decades in countries around the world and in dozens of local jurisdictions in the United States, O’Neal knew that this fast-growing county in central Florida, home to Disney World in booming Orlando, would offer one of its biggest tests.

The concept of rights of nature was so far outside of the U.S. legal mainstream, and so threatening to agribusiness and other industries, that even O’Neal doubted that more than 50 percent of voters would go for it.

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So, late on election night, when a colleague spun around his silver laptop to reveal

the final results to O’Neal, he stared in disbelief.

“You’ve got to be kidding me,” O’Neal called out to a nearly empty dining room overlooking the river.

There, on the fluorescent screen, was one of the biggest surprises of the 2020 election: 89 percent of Orange County voters had united behind the rights of nature.

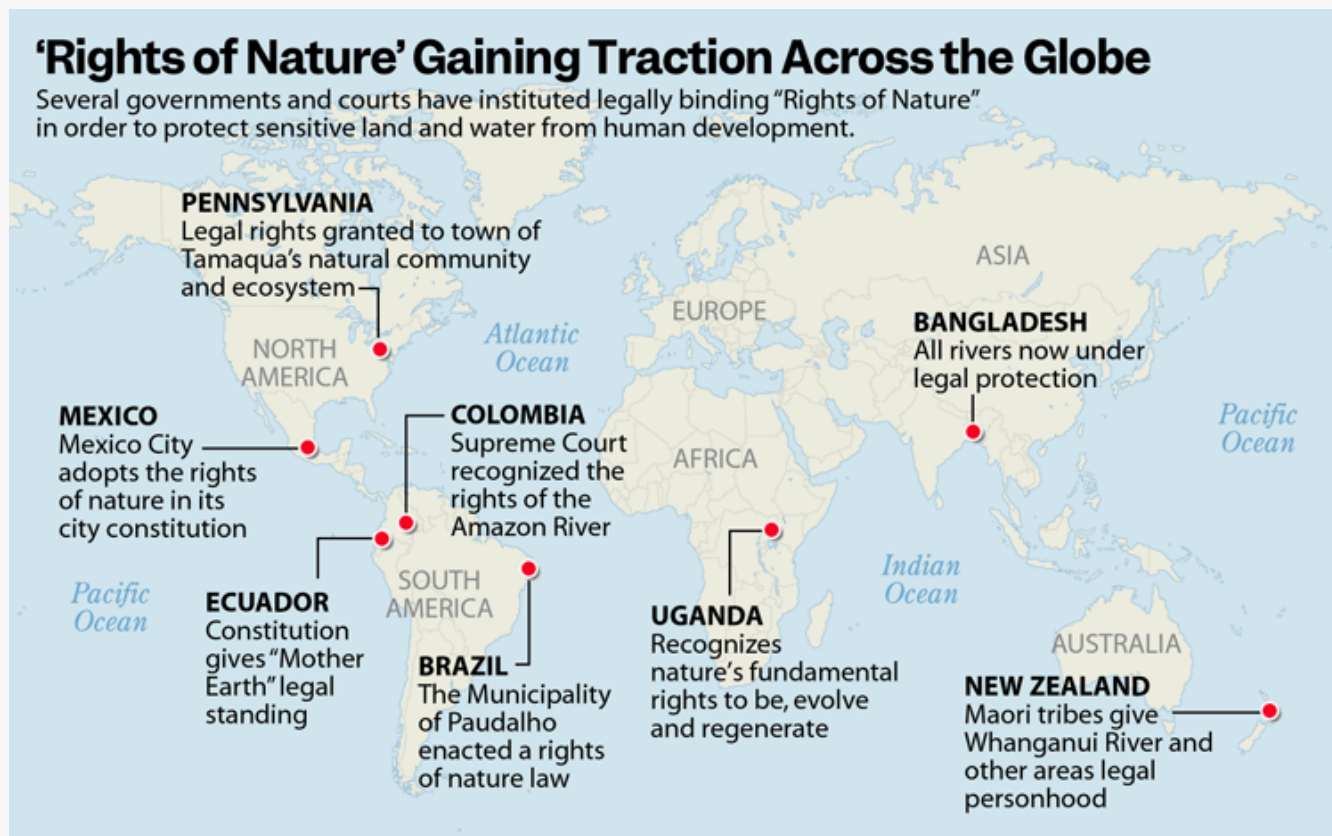
O’Neal’s fight had just begun.

Gaining Urgency

The legal movement for the rights of nature began with a seminal 1972 law review article, *Should Trees Have Standing*, by Christopher D. Stone, a law professor at the University of Southern California, who wrote that he was “quite seriously proposing” giving legal rights to nature.

The idea was famously taken up by Supreme Court Justice William O. Douglas in a dissent in the case *Sierra Club v. Morton*, but couldn’t muster support from a majority of the court.

In the years since then, the concept has surfaced globally in legislation, judicial rulings and constitutional amendments in countries that include Canada, Mexico, France, Colombia, Pakistan, Bangladesh, Bolivia, India, New Zealand, Ecuador and Uganda. At the United Nations, a *Harmony With Nature program* has helped coordinate and advance the movement, with nongovernmental organizations playing a leading role.



In the United States, rights of nature laws have taken root in more than 30 localities across the country, in, among other states, Ohio, Colorado, Pennsylvania and Minnesota. Florida, home to Republican Gov. Ron DeSantis, a leading Trump supporter, has become an unlikely epicenter, while other Florida cities like Titusville, Venice, Fort Myers, Naples and other jurisdictions are in varying stages of developing their own rights of nature ordinances, following Orange County's example.

Still, no U.S. court has ever upheld a rights of nature law, although some remain on the books, in effect awaiting litigation. The U.S. laws, so far mostly local ordinances, face unique obstacles because of legal precedent that subordinates local government laws and lawsuits to state legislation. A hearing scheduled for November on Orange County's charter change could be the most consequential legal moment to date for the rights of nature concept in the American courts.

The doctrine holds that nature and its component parts are not "things" or property but living beings with intrinsic value and an inherent right to exist. The idea is centuries old, existing primarily in Indigenous and other land-based cultures. But with pollution and deforestation threatening vast swaths of the planet and climate change amplifying sea level rise, extreme weather and mass migration, the concept of granting rights to nature has gained saliency and urgency across the globe over the last 15 years.

As the movement matures, it has dovetailed with a global push to criminalize "ecocide," or widespread destruction of the environment. That campaign aims to add "ecocide" as a fifth crime, alongside genocide and crimes against humanity, before the Hague-based International Criminal Court.



The ecocide and rights of nature movements both advance the idea that Earth is intrinsically worthy of protection: ecocide through criminal laws and the rights of nature mainly through civil and constitutional lawsuits.

Both movements are premised on the belief that a new legal framework is needed, because existing laws have failed to stop accelerating environmental emergencies like climate change and mass species die-offs.

While the crime of ecocide would outlaw only **severe** environmental destruction, rights of nature laws aim to protect against more commonplace acts, like government permitted pollution. The concept has raised the question: What level of human impact on nature is acceptable?

The movement is causing friction with what are considered fundamental rights in western legal systems: individual liberty and personal property. If nature has rights, then human beings have new responsibilities and will have to restrict certain activities that unjustifiably impair those rights.

That tradeoff between values and responsibilities isn't new in America, in the realm of environmental protection or otherwise, but as the Covid-19 pandemic has shown, some Americans resist the imposition of new duties, even if they are for the common good and the wellbeing of future generations.

Still, perhaps counterintuitively, the United States is where the vast majority of rights of nature laws have been enacted at the local level. Galvanized by oil spills, toxic waste dumps, lead-tainted water, air pollution and fracking, Americans increasingly battered by climate change have been drawn towards the rights of nature movement, as Chuck O'Neal was in Orange County.

The Battle in Orange County

An animal lover who'd grown up camping in state and national parks, O'Neal had served as the natural resources chair for the Florida chapter of the League of Women Voters in the early 2010s, helping draft legislation aimed at protecting Florida's waterways.

Time and time again, he would watch as industry lobbyists, chambers of commerce and corporate bigwigs picked over the bills until they had lost all meaningful effect. The experience left a bad taste in his mouth.

In 2018, when toxic algae blooms reached their most severe levels yet, killing off **thousands of tons** of wildlife like fish, manatees and dolphins, as well as imperiling the state's critical tourism economy, O'Neal decided he had to find a way to break the control that lobbyists and legislators had over Florida's ecosystems. Those

groups hadn't just passed watered-down environmental laws, they had also erected barriers that kept citizens and environmentalists out of court.



A landscape in Orlando. Credit:Jeffrey Greenberg/Universal Images Group via Getty Images

He thought back to a two-day course he had taken a few years earlier with a lawyer named Thomas Linzey, 52, now the senior legal counsel for the Center for Democratic and Environmental Rights, based in Spokane, Washington.

Linzey, using a wood easel, paper and magic markers, had explained how communities can challenge corporate power and protect their local environment using rights of nature laws. At the time, the concept resonated with O'Neal, but he shelved the idea, thinking Floridians weren't ready to accept it.

But by 2019, with algae blooms becoming longer and more severe, O'Neal thought a moment had arrived. That April, O'Neal asked Linzey to fly down from Pennsylvania to talk to a group of about 30 fellow environmentalists in his living room. The verdict soon was in: "People's minds were blown," O'Neal said of the meeting.

To test Floridian's acceptance of the idea, Linzey and O'Neal selected Orange County as a bellwether because of its status as a charter county, which under Florida's constitution gives citizens greater authority to enact local laws.

The two worked together for over a year, meeting weekly on Zoom, to shepherd a draft charter amendment through the lengthy review process. Included in the draft was another first in U.S. law: a human right to clean water.

Even at the local level, their efforts hit snags. To place the rights of nature on the ballot, it first had to clear the charter review commission, which included a number of developers who tried to derail it, Linzey said.

By June 2020, the amendment was on the ballot and O'Neal had inspired about 75 volunteers, who posted nearly 2,000 signs around the county emblazoned with slogans promoting their cause.

"I had never seen anything like it," Linzey, who has drafted more than 30 U.S. rights of nature laws, said of the campaign and voters' embrace of the movement.

On Nov. 3, 2020, Orange County became the largest municipality in the United States to pass such a law.

But unbeknownst to many of those voters, Florida's legislature had already put in place its own form of damage control.

The First Case: Tamaqua, Pennsylvania

Linzey, a frequent speaker and legal consultant on the rights of nature and community rights, first met Cathy Morelli, a city councilwoman in Tamaqua, Pennsylvania, in 2006.

She had come to him in her fight against toxic sewage sludge that had killed two

youths in nearby communities. The **news** stories shook Morelli, who over the previous three years had witnessed the illness and deaths of more than 10 neighbors, including her own father's battle with leukemia. The cases were unusual, such as **clusters of polycythemia vera**, a rare form of blood cancer. Though rates of the disease were over **four times higher** in the area, officials found no environmental link.

The town had become a sacrifice zone for industry, Morelli thought, and now some of its leaders wanted to issue permits for a new round of dumping. She knew she had to do something to stop it, but wasn't sure how.

Linzey and Ben Price, another rights of nature activist, helped Morelli draft an ordinance that aimed to prevent further hazardous waste dumping in Tamaqua, a town of almost 7,000 in eastern Pennsylvania's coal country. They included a provision no one had ever used before, giving legal rights to "natural communities" and ecosystems. The solidly Republican town threw its weight behind Morelli's ordinance, helping it become the first known rights of nature law in the world.

Though the 2006 Tamaqua ordinance has never been tested in court, Price credits the law with deterring a dredging company from moving forward with planned sludge dumping in a mining pit near the town.

News of the pathbreaking law would make its way around the country—and the globe—inspiring communities and governments at all levels to embrace the movement.

One of those communities was Toledo, Ohio, where residents, with Linzey's help, passed the 2019 Lake Erie Bill of Rights, in response to a number of environmental affronts, including toxic algae blooms caused by agricultural runoff.





Horacio Romero of Toledo, Ohio looks at algae in Lake Erie at Maumee Bay State Park Aug. 4, 2014 in Oregon, Ohio. Credit: Aaron P. Bernstein/Getty Images

Immediately after, an agricultural organization filed a lawsuit in federal court to stop the law from taking effect. A judge struck it down for being unconstitutionally vague. Other U.S. rights of nature laws have been nullified on grounds that they are superseded by state law.

Linzey and other lawyers are now advancing the idea that municipalities have inherent authority to self-govern and that states should set the floor, not the ceiling, on environmental regulations, allowing communities to enact more stringent protections if they choose to do so.

Most recently, Linzey has worked with attorneys who filed a lawsuit this summer in the White Earth Nation Tribal Court in Minnesota to stop construction of Enbridge Energy's Line 3 oil pipeline, asserting the legal rights of manoomin, or wild rice, to "exist, flourish, regenerate and evolve." The suit was the first rights of nature claim ever filed in a tribal court.





Demonstrators gather in the Mississippi River while others march across it during a 'Treaty People Gathering' protest in Clearwater County, Minnesota, on Monday, June 7, 2021. Credit: Nicole Neri/Bloomberg via Getty Images

At issue is Minnesota's approval of Enbridge's request to pump billions of gallons of fresh water during a drought, which attorneys say harms tribal members and the manoomin. Linzey explained that the law aims to protect the legal rights of manoomin, which is sacred to some Indigenous peoples, both on-reservation as well as off-reservation, and is part of a wider effort toward connecting the rights of nature to Indigenous treaty-held rights on territory ceded to the United States.

"That could have ramifications for all tribal nations across the United States who want to use rights of nature laws to enforce their hunting, fishing and gathering rights on traditional tribal lands," Linzey said. He expects that state governments, which have traditionally ignored tribal nations when making permitting and other decisions affecting those treaty rights, will fight hard to block the rights of nature laws.

In August, the state of Minnesota filed for an injunction in federal court to strip the White Earth Nation's Tribal Court of jurisdiction to hear the manoomin litigation. A judge denied the request, and the state has appealed.

"We can expect the same kind of hostility from other state governments, as tribes begin to enforce their treaty rights on their traditional lands," Linzey said.

In Florida, Agribusiness Calls Rights of Nature a 'Direct Threat'

At the same time O’Neal was campaigning for Orange County’s rights of nature charter amendment, an omnibus bill dubbed the 2020 Clean Waterways Act, aimed at improving state water quality, had been making its way through Florida’s legislature.

Before the final vote, a 29-word clause was inserted into the 111-page bill, preempting and prohibiting local governments from recognizing or granting legal rights to the natural environment. The preemption clause is something state legislators often use on a variety of issues to prohibit and extinguish local laws on issues from pollution to health care.

While conservatives historically have championed local control over centralized government, Florida has taken the opposite tact under Gov. DeSantis. In July 2020, he signed the Clean Waterways Act, preempting O’Neal’s charter amendment before voters in Orange County even went to the polls, voting overwhelmingly in favor of rights of nature. Most voters did not seem to realize that the state legislature had already moved to nullify their vote.

Just after the legislation went into effect, the Florida Farm Bureau Federation, an agricultural industry group, awarded state Rep. Blaise Ingoglia, a Republican, their [2020 Legislator of the Year award](#), noting Ingoglia was the “driving factor” ensuring the 2020 Clean Waterways Act “contained the Rights of Nature preemption language.”

Neither the Florida Farm Bureau Federation nor Ingoglia responded to requests for comment.

In a 2020 newsletter for the Turfgrass Producers of Florida, Charles Shinn, director of government and community affairs for the Florida Farm Bureau Federation, [wrote](#) that rights of nature laws are a “direct threat” to agriculture and that “business lobbies and any groups that are concerned about private property rights” would have to support the preemption legislation. Shinn did not respond to a request for comment.

O’Neal was incensed at what he called an anti-democratic move by Tallahassee politicians, and he and Linzey immediately began planning how to nullify the Farm Bureau’s efforts to derail the charter amendment.

Jerry Phillips, a former Florida Department of Environmental Protection lawyer, said loosening the grip of industry groups like the Farm Bureau from the institutions meant to protect Florida’s environment won’t be easy.

“You have to live in Florida to understand just how backward it is, but everything is geared towards greed,” said Phillips, now the director of Florida’s Public Employees for Environmental Responsibility. “Everything is geared towards fostering more people coming into the state, more business, more development and if that means destruction of wholesale areas of the state, so be it, they will do it.”

After the election, O’Neal began his own legal maneuvering, eyeing a developer, Beachline South Residential, which was planning to fill in over a hundred acres of wetlands, freshwater marsh and wet prairie to build mixed-use residential and commercial retail across 1,923 acres in east Orange County.

To O’Neal, the development had “test case” written all over it.

Rights of Nature Around the World

Unlike Florida, not all governments have resisted rights of nature-like laws. In countries like New Zealand, officials have welcomed the idea as a means to redress legacies of human rights abuses, create a more pluralistic legal system and safeguard important ecosystems.

In 2014, Māori tribes and New Zealand officials finalized a **settlement** in a 175-year old dispute related to the Whanganui River. The settlement established a new paradigm for the waterway, also called Te Awa Tupua, giving it a form of legal personhood that mirrored Māori worldviews. New Zealand has worked with the Māori to create similar frameworks for a national park and Mt. Taranaki.





Members of a Maori crew rest their paddles after paddling with on the Whanganui River on May 14, 2015 in Wanganui, New Zealand. Credit: Hagen Hopkins/Getty Images

The settlement recognized that the government's predecessor, the British Crown, had surreptitiously taken sovereignty over the tribes and the territories they had occupied for centuries, forcibly introducing the concept of property ownership on the Māori.

The Crown had predicated its ownership over the land on the doctrine of Discovery, an international legal concept based on the idea of western superiority over other cultures. The land grabs had crippled the tribes' way of life, including their spiritual connection to the river, which they view as their ancestor.

In other countries, courts have had opportunities to interpret the laws, and in several cases, to recognize the rights of nature of their own accord.

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In Bangladesh, known as the land of rivers, the Supreme Court in 2019 acted on its own to recognize the rights of all of the country's rivers, noting the environmental importance of water now and into the future. Courts in Colombia, Brazil and India have taken similar actions.

In 2008, Linzey and Price assisted with the drafting of Ecuador's constitution, which enshrined the rights of Pachamama, or Mother Earth. Since then, Ecuador has been the epicenter of enforcement litigation.

While there have been some adverse rulings, dozens of cases filed in Ecuadorian administrative and lower courts have resulted in decisions favorable to ecosystems, including a river, mangroves and a jaguar. And, pending before Ecuador's Constitutional Court are at least three rights of nature cases that could have bearing on how the laws are effectuated throughout the country.



Pastaza River leaving the Andes and entering the lowlands of the Oriente in Ecuador. Credit: Rolf Schulten/ullstein bild via Getty Images

At stake in one of those cases is whether government-approved mining is allowable within the Los Cedros Reserve, a protected forest. The case highlights the tension between aspiration and reality in Ecuador, which is still heavily dependent on extractive industries and the foreign investment that comes with it.

For Mari Margil, executive director at the Center for Democratic and Environmental Rights, that tension makes changing people's beliefs about nature important. "You can't just pass a law and feel comfortable that the government will properly implement it," she said. "The organizing never ends. That's the case in any social justice movement, and the rights of nature isn't an exception."

In Florida, Two Streams, Two Lakes and a Marsh File Suit

In April, Chuck O’Neal, in his capacity as president of the nonprofit Speak Up Wekiva, and five waterways protected by Orange County’s rights of nature law—Wilde Cypress Branch, Boggy Branch, Crosby Island Marsh, Lake Hart and Lake Mary Jane—all filed **suit as named plaintiffs** against Beachline South Residential, the Orlando developer. Noah Valenstein, secretary of the Florida Department of Environmental Protection, was also named as a defendant.

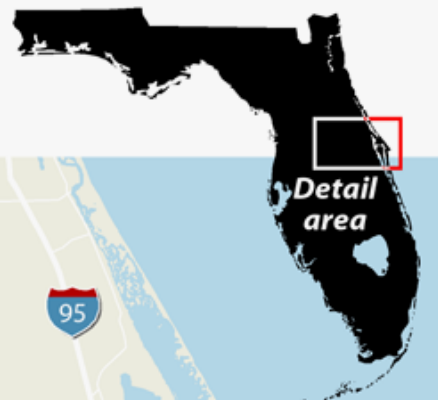
“The proposed development violates the right to exist of the Crosby Island Marsh, Lake Hart and Lake Mary Jane by cutting off and/or restricting the sufficient flow of

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‘Rights of Nature’ Suit Filed Against Florida

A cluster of two lakes (Lake Hart and Lake Mary Jane), two creeks and a marsh are plaintiffs in a landmark lawsuit against the Florida Dept. of Environmental Protection and a developer.



PAUL HORN / Inside Climate News

The defendants have invoked the Clean Waterways Act, claiming it preempts the county’s rights of nature charter amendment. The waterways and O’Neal disagree, arguing that the state legislation is vague and violates the county’s rights as a charter government to enact its own laws. A hearing on the issues is set for November, in what is likely to be the beginning of a long and potentially precedent-setting journey through the appellate courts.

At the same time, O’Neal is pursuing a statewide ballot initiative aimed at

amending Florida's constitution to, among other things, recognize certain rights of nature. The campaign is aiming to secure the required 891,000 petition signatures in time to put the initiatives on the 2022 ballot, taking the fight over the rights of nature straight to Tallahassee and potentially making the 2022 midterms the biggest moment yet for the movement.

The developments in Florida are consistent with how advocates elsewhere are advancing the laws. Enforcement of existing legislation has taken center stage, with litigation enforcing nature's rights cropping up from [Minnesota](#), as tribes battle to block Line 3, to Ecuador, where advocates are anxiously awaiting the Supreme Court's rulings.

Lawyers like Grant Wilson of the Earth Law Center expect those court cases to sharpen the practical effects of the laws: "Let's say a river has rights. What does that mean in practice?" Wilson said. "It could mean, for example, that the government must establish plans to remove dams with significant negative ecological impact. Or it could mean that a river, through a legal guardian or other means, has the opportunity to participate in governmental decision-making impacting the health of the river."

Seizing on the momentum gathering in courts around the world, Wilson has co-written an ["Earth Law" case book](#) and is working internationally with law schools to train students, lawyers, judges and government officials on the concepts.

"People say that no legal theory can stand up against all of the big industries of the world and I think we can overcome that," Wilson said. "That's part of why we're training lawyers and judges because when we bring that big landmark case against someone like Chevron, they'll recognize that nature has rights. I think we can get there."

For O'Neal, there's not only his conviction that rivers, mountains and forests have rights, but the deeply held belief that those basic rights were wrongly left out of the U.S. Constitution over 200 years ago, because of what he calls a myth about the overabundance of nature. With the Earth's population now close to 8 billion people, he said, the world is much smaller than we thought.

"We have to find a balance between nature and commerce, and right now we're so far out of balance that the world is spinning out of control," he said. "We can create a new system, building a body of law that recognizes fundamental rights of nature. I think it's our last and best hope to save the planet."



Katie Surma

Reporter, Pittsburgh

Katie Surma is a reporter at Inside Climate News focusing on international environmental law and justice. Before joining ICN, she practiced law, specializing in commercial litigation. She also wrote for a number of publications and her stories have appeared in the Washington Post, USA Today, Chicago Tribune, Seattle Times and The Associated Press, among others. Katie has a master's degree in investigative journalism from Arizona State University's Walter Cronkite School of Journalism, an LLM in international rule of law and security from ASU's Sandra Day O'Connor College of Law, a J.D. from Duquesne University, and was a History of Art and Architecture major at the University of Pittsburgh. Katie lives in Pittsburgh, Pennsylvania, with her husband, Jim Crowell.



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