

# Why Does the Colorado River Need to Sue For Rights?

September 25, 2017 by [Will Falk](#) [2 Comments](#)



*Dead Horse Point, Colorado River. (Clément Bardot/[Wikimedia/CC-BY-SA-3.0](#))*

*By Will Falk*

On Tuesday, September 26, the Colorado River will sue the State of Colorado in a first-in-the-nation lawsuit requesting that the United States District Court in Denver recognize the river’s rights of nature. These rights include the rights to exist, flourish, regenerate, and naturally evolve. To enforce these rights, the Colorado River will also request that the court grant the river “personhood” and standing to sue in American courts.

Four of my comrades in the international environmental organization [Deep Green Resistance](#) and I, are serving as “next friends” to the Colorado River. We are represented by the noted civil rights attorney Jason Flores-Williams who is based in Denver. [Community Environmental Legal Defense Fund](#) is serving as advisors in the case.

The term “as next friends” is a legal concept that means we have signed on to the lawsuit as fiduciaries or guardians of the river. Under current law, the Colorado River is not “legally competent” and, so needs “next friends” to ensure her rights are protected. A “next friend” is someone who appears in court in place of another who is not competent to do so – like a minor or someone with a mental disability. My role, as next friend to the Colorado River, is to protect the river’s rights.

We recently released a [press release](#) that has been widely shared on social media. National media outlets are beginning to take notice. And, we’re getting interviews, receiving email inquiries, and responding to online comments. So far, the most common question is: Why does the Colorado River need rights?

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The most fearless environmental philosophers – thinkers like Susan Griffin, Neil Evernden, Derrick Jensen, and John Livingston – have insisted that we will never be safe so long as the natural world we depend on is objectified and valued only for the way humans use it. Livingston calls the objectification of nature “resourcism” and explains: “A ‘resource’ is anything that can be put to human use ... It is the concept of ‘resource’ that allows us to perceive nature as our subsidiary.” Livingston notes that once the nonhuman “is perceived as having some utility – any utility – and is thus perceived as a ‘resource,’ its depletion is only a matter of time.”

Because our legal system currently defines nature as property, “resourcism” is institutionalized in American law. While climate change worsens, water continues to be polluted, and the collapse of every major ecosystem on the

continent intensifies, we must conclude that our system of law fails to protect the natural world and fails to protect the human and nonhuman communities who depend on it.

Jensen, while diagnosing widespread ecocide, observes a fundamental psychological principle: “We act according to the way we experience the world. We experience the world according to how we perceive it. We perceive it the way we have been taught.” Jensen quotes a Canadian lumberman who once said, “When I look at trees I see dollar bills.”

The lumberman’s words represent the dominant culture’s view of the natural world. Jensen explains the psychology of this objectification, “If, when you look at trees you see dollar bills, you will act a certain way. If, when you look at trees, you see trees you will act a different way. If, when you look at this tree right here you see this tree right here, you will act differently still.”

Law shapes our experience of the world. Currently, law teaches that nature is property, an object, or a resource to use. This entrenches a worldview that encourages environmental destruction. In other words, when law teaches us to see the Colorado River as dollar bills, as simple gallons of water, as an abstract percentage to be allocated, it is no wonder that corporations like [Nestle can gain the right to run plastic bottling operations that drain anywhere from 250 million to 510 million gallons of Colorado River water per year.](#)

The American legal system can take a good step toward protecting us all – human and nonhuman alike – by granting ecosystems like the Colorado River rights and allowing communities to sue on these ecosystems’ behalf. When standing is recognized on behalf of ecosystems themselves, environmental law will reflect a conception of legal “causation” that is more friendly to the natural world than it is to the corporations destroying the natural world. At a time when the effects of technology are outpacing science’s capacity to research these effects, injured individuals and communities often have difficulty proving that corporate actions are the cause of their injuries. When

ecosystems, like the Colorado River, are granted the rights to exist, flourish, regenerate, and naturally evolve, the obsolete causation theory, en vogue, will be corrected.

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American history is haunted by notorious failures to afford rights to those who always deserved them. Americans will forever shudder, for example, at Chief Justice Roger Taney's words, when the Supreme Court, in 1857, ruled persons of African descent cannot be, nor were never intended to be, citizens under the Constitution in *Dred Scott v. Sanford*. Justice Taney wrote of African Americans, "They had for more than a century before been regarded as being of an inferior order, and altogether unfit to associate with the white race ... and so far inferior, that they had no rights which the white man was bound to respect..." And, of course, without rights that white, slave-owning men were bound to respect, the horrors of slavery continued.

The most hopeful moments in American history, on the other hand, have occurred when the oppressed have demanded and were granted their rights in American courts. Despite centuries of treating African Americans as less than human while defining them as property, our system of law now gives the same rights to African Americans that American citizens have always enjoyed. Once property, African Americans are now persons under the law. Similarly, despite a centuries-old tradition where women were, in the legal sense, owned by men, our system of law now gives the same rights to women that American citizens have always enjoyed. Once property, women are now a person under the law.

It's tempting to describe this history as "inevitable progress" or as "the legal system correcting itself" or with some other congratulatory language. But, this glosses over the violent struggles it took for rights to be won. The truth is, and we see this clearly in Justice Taney's words, the American legal system resisted justice until change was forced upon it. It took four centuries of genocide and the nation's bloodiest civil war before our system of law

recognized the rights of African Americans. While the courts resisted, African Americans were enslaved, exploited, and killed.

Right now, the natural world is struggling violently for its survival. We watch hurricanes, exacerbated by human-induced climate change, rock coastal communities. We choke through wildfires, also exacerbated by human-induced climate change, sweeping across the West. We feel the Colorado River's thirst as overdraw and drought dries it up. It is the time that American law stop resisting. Our system of law must change to reflect ecological reality.

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This is ecological reality: all life depends on clean water, breathable air, healthy soil, a habitable climate, and complex relationships formed by living creatures in natural communities. Water is life and in the arid American Southwest, no natural community is more responsible for the facilitation of life than the

Colorado River. Because so much life depends on her, the needs of the Colorado River are primary. Social morality must emerge from a humble understanding of this reality. Law is integral to any society's morality, so law must emerge from this understanding, too.

Human language lacks the complexity to adequately describe the Colorado River and any attempt to account for the sheer amount of life she supports will necessarily be arbitrary. Nevertheless, many creatures of feather, fin, and fur rely on the Colorado River. Iconic, and endangered or threatened, birds like the bald eagle, greater sage grouse, Gunnison sage grouse, peregrine falcon, yellow-billed cuckoo, summer tanager, and southwestern willow flycatcher [make their homes in the Colorado River watershed](#). Fourteen endemic fish species swim the river's currents including four fish that are



*Colorado River between Marble Canyon*  
(Source: [Alex Proimos/Flickr/CC-BY-NC-2.0](#))

now endangered: the humpback chub, Colorado pikeminnow, razorback sucker, and bonytail.

Many of the West's most recognizable mammals depend on the Colorado River for water and to sustain adequate food sources. Gray wolves, grizzly bear, black bear, mountain lions, coyotes, and lynx walk the river's banks. Elk, mule deer, and bighorn sheep live in her forests. Beavers, river otters, and muskrats live directly in the river's flow as well as in streams and creeks throughout the Colorado River basin.

The Colorado River provides water for close to 40 million people and irrigates nearly 4 million acres of American and Mexican cropland. Agriculture uses the vast majority of the river's water. In 2012, 78% of the Colorado's water was used for agriculture alone. 45% of the water is diverted from the Colorado River basin which spells disaster for basin ecosystems. Major cities that rely on these trans-basin diversions include [Denver, Los Angeles, San Diego, and Salt Lake City](#).

Despite the Colorado River's importance to life, she is being destroyed. Before the construction of dams and large-scale diversion, the Colorado flowed 1,450 miles into the Pacific Ocean near Sonora, Mexico. The river's life story is an epic saga of strength, determination, and the will to deliver her waters to the communities who need them. Across those 1,450 miles, she softened mountainsides, carved through red rock, and braved the deserts who sought to exhaust her.

Now, however, the Colorado River suffers under a set of laws, court decrees, and multi-state compacts that are collectively known as the "Law of the River." The Law of the River allows humans to take more water from the river than actually exists. Granting the river the rights we seek for her would help the courts revise problematic laws.

The regulations set forth in the 1922 Colorado River Compact are the most important and, perhaps, the most problematic. Seven states (Arizona,

California, Colorado, New Mexico, Nevada, Utah, and Wyoming) are allotted water under the Compact. When the Compact was enacted, the parties assumed that the river's flow would remain at a reliable 17 million acre-feet of water per year and divided the water using a 15-million acre feet per year standard. But, hydrologists now know 17 million acre-feet represented an unusually high flow and was a mistake. Records show that the Colorado River's flow was only 9 million acre-feet in 1902, for example. From 2000-2016, the river's flow only averaged 12.4 million acre-feet per year. So, for the last 16 years, the Compact states have been legally allowed to use water that isn't there.

["Use it or lose it" laws](#) are also common throughout the Colorado River basin. These laws threaten ranchers, farmers, and governments holding water rights who use less water than they are legally entitled to with seeing their allotments cut. So, those with water rights are encouraged to trap or use more water than they need.

Since the completion of the Glen Canyon Dam in 1963, [the Colorado River has rarely connected with the sea](#). Stop and let that sink in. Many scientists believe the river is [between 4 and 6.5 million years old](#). The Colorado River is so strong, so determined, she cut out the Grand Canyon. This magnificent being, millions of years old, who formed the Grand Canyon is being strangled to death by dams, climate change, overallocation, and a legal system that refuses to remedy its own insanity.

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When you contemplate all those who depend on the Colorado River when you know the sheer quantity of life the river sustains, is it possible to mistake her inherent value?

I hate to reduce a being so ancient and so powerful to an argument based in human self-interest. Know this: If you're one of the 40 million Americans who depend on the Colorado River's water and you're hydrated right now, the

river is literally part of you. If that water is poisoned, if that water dries up, if corporate rights to steal that water and sell it back to you continue to trump the river's right to exist, you will be hurt. This is not law. This not rhetoric. This is reality.

This is also why the Colorado River needs rights. Life requires clean water, breathable air, healthy soil and a habitable climate to create healthy ecosystems. Without these ecosystems, life is impossible and the right to life is meaningless. American law fails to protect life's requirements because it defines nature as property and does not recognize the rights of nature. In a rights-based system of law, to be without rights is to be defenseless. And, after witnessing centuries of the exploitation of the natural world, we know that to be defenseless is to ultimately be destroyed. It's time we protect those, like the Colorado River, who give us life.

## **Will Falk**

Will Falk moved to the West Coast from Milwaukee, WI where he was a public defender. His first passion is poetry and his work is an effort to record the way the land is speaking. He feels the largest and most pressing issue confronting us today is the destruction of natural communities. He received a Society of Professional Journalists, San Diego Chapter, 2016 Journalism award. He is currently living in Utah.