

# Rights of Rivers

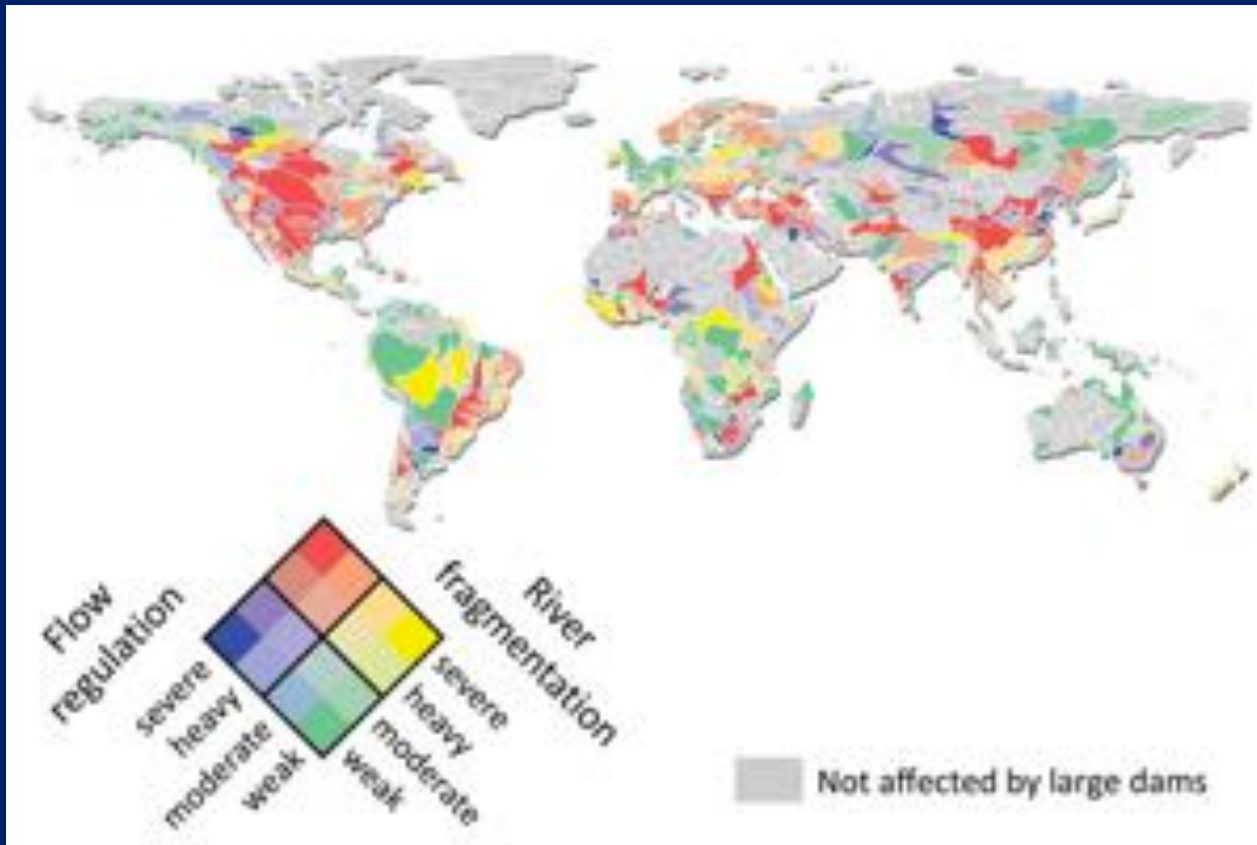
Earth Law Center “Deep Dive”

December 4, 2017



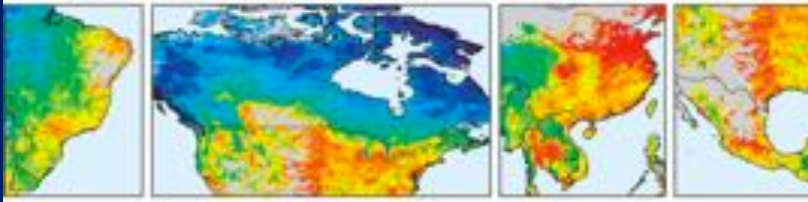
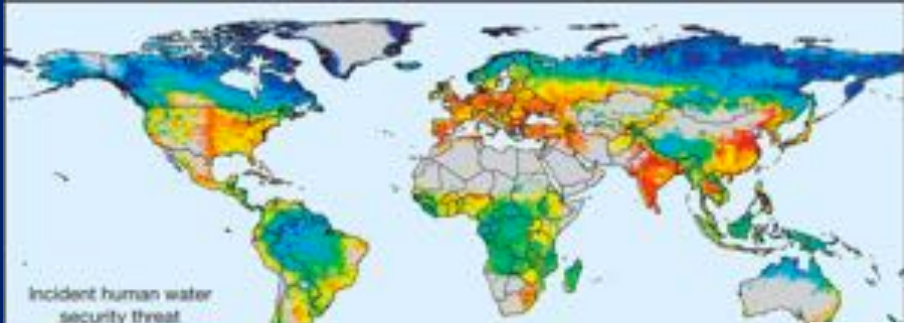
# Threats to Waterways and Humans

- **Threats to waterways:** Dams, low flows, climate change, contaminants, habitat destruction and degradation, water quality, climate change, etc.
- **Threats to humans:** Threats to food sources (salmon), exposure to climate change, diminishing connection to nature, etc.
- **Conclusion:** Current environmental laws are failing our rivers.

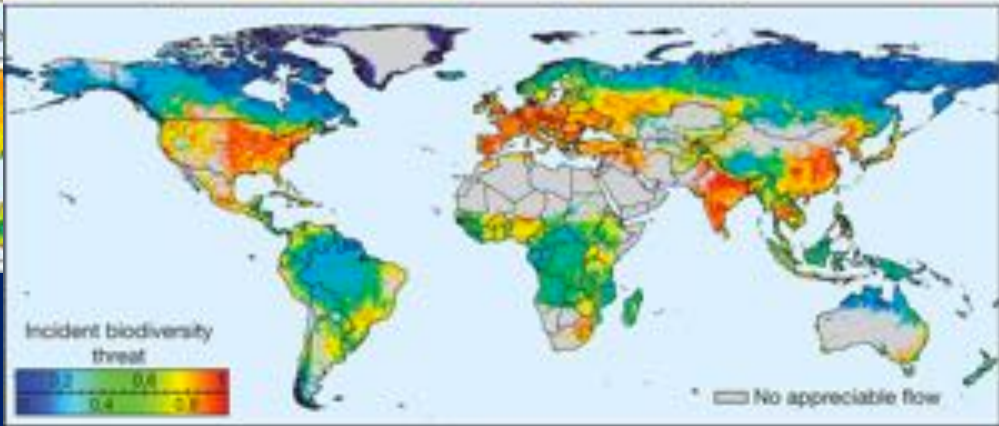


**57,000  
large  
dams  
worldwide**

# Biodiversity loss



# Threats to water human security



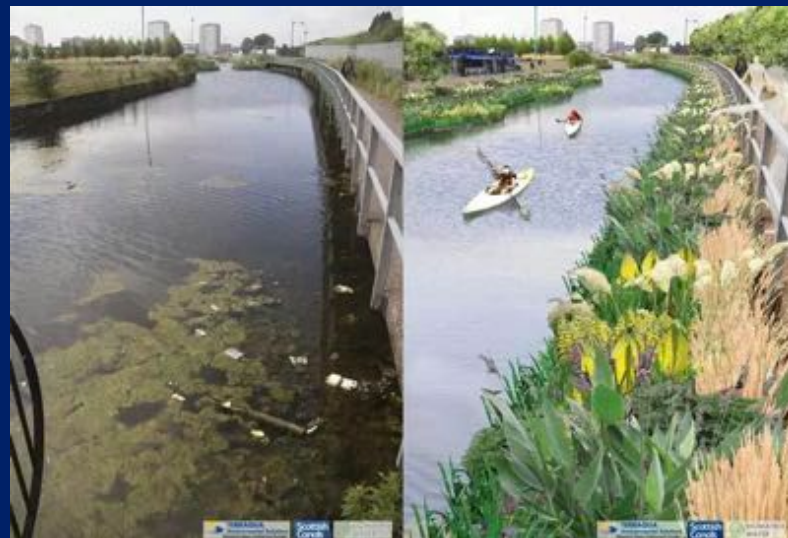
# What Problem Are We Trying to Solve?

## PROBLEM:

- Aquatic species are dying.
- River ecosystems are being (or already were) degraded or destroyed.

## SOLUTION

- Current environmental laws?
- Or an alternative paradigm:  
fundamental legal rights for rivers.



Proposed river restoration in Glasgow

# What Do We Want?

- **Problem summary:** Rivers dying, fish dying, legal system rigged against nature, ecosystems considered “property.”
- **Goal:** Prosperous communities and ecosystems, healthy fish populations, sustainability.

# How Do We Get What We Want?

- Two Options:
  1. Redouble our efforts using existing water laws.
  2. Reimagine our governance in relation to rivers.

# *Examples:*

## Rights of Rivers v. Current US Law

Status Quo	Rights of Nature Paradigm
Only humans can own a legal property right to water.	All waterways could own “rights” to their own flows – just as humans do now.
Many rivers lack minimum flows, sometimes running completely dry. Flow requirements often violated when convenient (e.g., “TUCPs”).	At minimum, “lifeline flows” for all waterways (enough to meet their basic needs).
Few conservation requirements for water users.	Water conservation is mandatory – e.g., requirement of “Best Available Technology” for heavy water users.
Pollution is allowed or “permitted” at levels that threaten ecosystems.	Polluted waterways are restored to health as a right.







# Rights for the Whanganui River (Maori People, New Zealand)

- Te Awa Tupua is a legal person.
- Establishes a fish management & conservation body with representatives from the Maori, the government, and the Whanganui itself.
- Apology from government for breaching treaty rights and customary rights of the Maori.





# Rights for the Ganges (“Ganga”) and Yamuna Rivers (India)



# Rights for the Atrato River (Colombia)



# Earth Law Center's River Campaigns

1. Universal Declaration of the Rights of Rivers
2. Rights for Rivers in Mexico
3. Seeking Dam Removal (or Opposing New Dams) Under a Rights of Rivers Paradigm
4. Other Legislation Establishing Rights for Rivers
5. Amici Curiae (“Friend of the Court”) Briefs

# 1. Universal Declaration of the Rights of Rivers

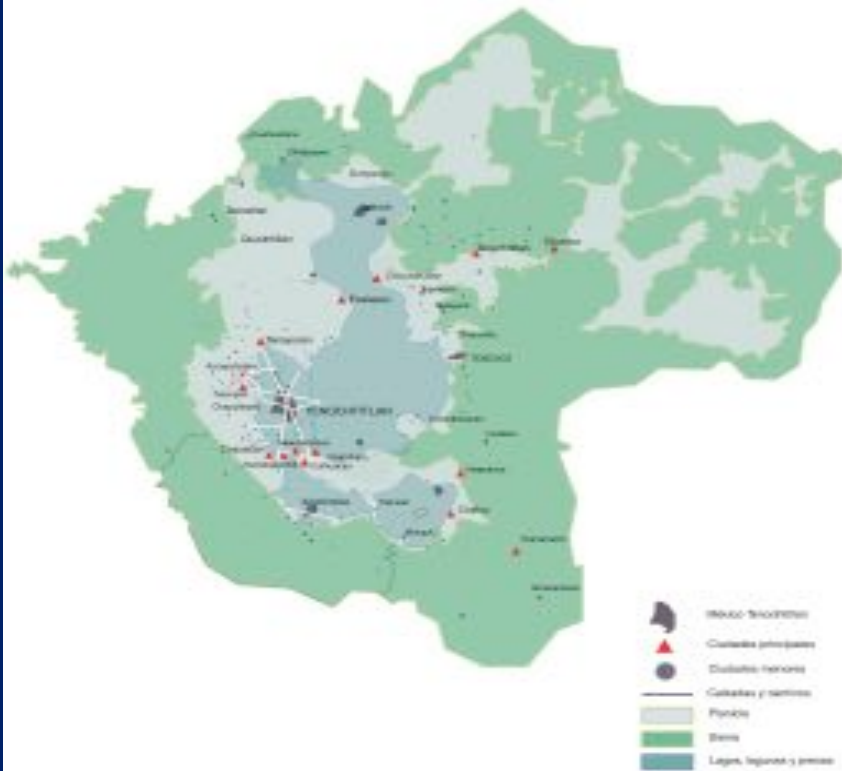
- **All rivers shall possess, at minimum, the following fundamental rights:**
  - (1) The right to flow;
  - (2) The right to perform essential functions within its ecosystem;
  - (3) The right to be free from pollution;
  - (4) The right to feed and be fed by sustainable aquifers;
  - (5) The right to native biodiversity; and
  - (6) The right to restoration.



## 2. Rights for Rivers in Mexico

- ELC works with local partners (e.g., Cuatro al Cubo) to achieve fundamental rights for three rivers in Mexico.
- ***First on the list:*** the Magdalena (Mexico City) – the last free-flowing river in Mexico City of 45.
- ***Next on the list:*** The San Pedro Mezquital (threatened by the Las Cruces Dam project) and Atoyac (extremely polluted).

# ASENTAMIENTOS



México-Tenochtitlan



México-Tenochtitlan



## Magdalena River: The last free- flowing river in Mexico City

# Ley de Sustentabilidad Hídrica de la Ciudad de México

- Mexico City's Legislative Assembly of the Federal District just voted to pass the Water Sustainability Law of Mexico City. "Publication" (final step) of law pending.
- **Key provision:** Recognizes rights of rivers -- including a right to flow, a right to avoid harmful alternations to ecosystems and biodiversity, a right to be free from contamination, and a right to rescue and rehabilitate important water zones.
- Language based on the Universal Declaration of the Rights of Rivers.
- **Next steps:** Apply these rights to the Magdalena River within Mexico City, establish waterway rights in other regions, and seek changes to federal water laws.

# 3. Addressing Dams Under a Rights of Rivers Paradigm

- Declaration: “*Asserts* that governments shall consider for decommission all dams that lack a compelling social and ecological purpose.”
- No new dams unless there is a compelling reason and there is full, prior, and informed consent of indigenous groups and local communities.



# 4. Other Legislation

## Establishing Rights for Rivers

- Currently conducting outreach and building support in USA, Canada, and elsewhere.
- Drawing from victories in Mexico and elsewhere to create replicable models.
- Other locations?

# 5. Amicus Briefs

- **What:** Submit amicus briefs on behalf of waterways.
- **Why:** Puts rights of rivers in front of courts without risking bad precedent.
- **Scope:** Submit amicus briefs on behalf of rivers throughout the United States and internationally.



# Group Discussion

- Ideas to overcome challenges?
- Increasing exposure?
- Finding early adopters?
- Messaging?
- Other questions and thoughts?