

The cover image of Asin-badakide-ziibi, the Baptism River, is courtesy of M. Baxley, Bear Witness Media.

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OPEN RIVERS: ISSUE 26: SPRING 2024

## **CONTENTS**

Ι.	- 1	ı.		_		l	- 1	13		
п	וו	П	r	N	п	ш	C	П	ın	n
ш	ш	u	ш	u	u	ıu	U	u	ıu	ш

Introduction to Issue 26   Commitment By Laurie Moberg, Editor	4
Features (Peer Review)	
Rivers of Lake Superior's North Shore: Historical Methodology and Ojibwe Dialects By Erik Martin Redix	7
On The Physicality of Hope By Joanne Richardson	27
Rights of Nature and the St. Louis River Estuary By Emily Levang	46
Geographies	
Libraries Burning By Phyllis Mauch Messenger	64
In Review	
Stories to the Surface: Revealing the Impacts of Hydroelectric Development in Manitoba By Caroline Fidan Tyler Doenmez	85
Perspectives	
Reflections on <i>UPRIVER: A Watershed Film</i> By Chris O'Brien	98
Primary Sources	
Ghost Streams and Redlining By Jacob Napieralski	102
Teaching and Practice	
Centering Water: Practices of Commitment By Boyce Upholt, Katie Hart Potapoff, Michael Anderson, Britt Gangeness, Angie Hong, Coosa Rive Greg Seitz. and Andy Erickson	

OPEN RIVERS: ISSUE 26: SPRING 2024

#### **FEATURE**

# RIGHTS OF NATURE AND THE ST. LOUIS RIVER ESTUARY

### By Emily Levang

What if we related to water as our kin? I went to the St. Louis River estuary in early January together with my friend Cristin, who shares a dedication to care for this ecosystem. This estuary is the largest tributary to Lake Superior, which holds 10 percent of our entire world's fresh surface water. As our world heads deeper into the water crisis, protecting this source of life is ever more vital. I try to begin with listening.

I am part of a small organization in Duluth, Minnesota called *Waankam: People for the Estuary*. We are a collective of both Anishinaabe and non-native members who are dedicated to raising awareness about rights of nature as an approach to protecting the headwaters of Lake Superior. We work to connect our community with the sacredness of water and all life, and to eventually pass a rights of nature law for the estuary with the hope of protecting it for all



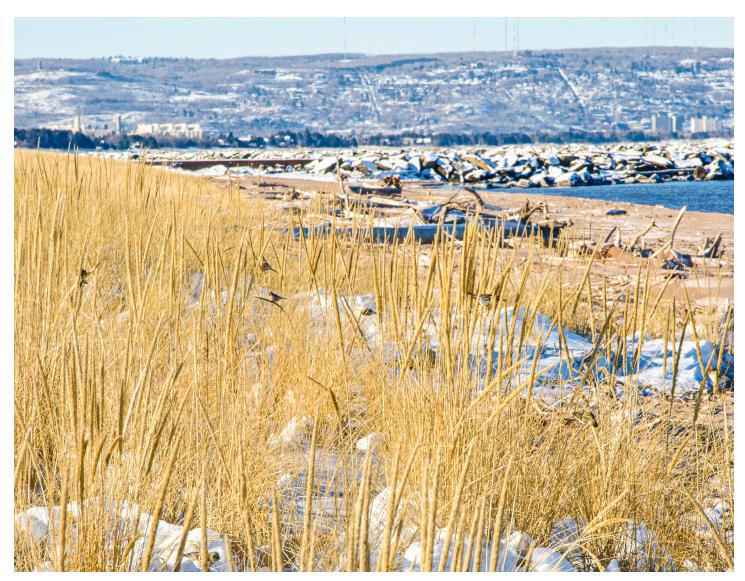
The St. Louis River in Jay Cooke State Park in northern Minnesota. Image via Unsplash by Ricky Turner.

future generations, putting an end to the cycle of repeated harm. I come to this work as a white person of settler ancestry who grew up near this body of water named Gichigami-ziibi in Anishinaabemowin.

Cristin also works to protect the estuary as an organizer for the Minnesota Environmental Partnership. We visited the estuary together to learn from the water. Cristin laid a woven blanket on the dock, and we knelt down, gazing into the swirling white and gray of snow and ice. We gave offerings to the estuary: a stone, an acorn, a jar of

purified water. We asked for guidance, then sat in silence to listen.

I felt immediately the immanence, the presence of the body of water, alive. But then heaviness, and my mind went to all the trauma this water has endured—the U.S. Steel Superfund site, the heavy metals and PCBs (or polychlorinated biphenyls), the logging that once choked all the oxygen out of the river, the time not so long ago when raw sewage was dumped here. Growing up near the estuary, it was not safe to go in the water, not safe to fish.



This peaceful wintery landscape near the estuary shows industrial buildings in the distance.

Image courtesy of Michael K. Anderson.

I reached my palm down to the frozen surface, traced my finger, gently melting lines of touch in the snow. I was here to listen to the water, to allow this relationship to inform my organizing work for rights of nature, but these thoughts of the past made it hard for me to hear.

Since the beginning of colonization, this place has been damaged and to this day faces devastating potential threats. A massive effort to remediate and restore this ecosystem has been underway for decades, and some of that work is nearing completion. I honor the enormous dedication, energy, and love that so many individuals and organizations have put into mitigating a legacy of harm done to the St. Louis River estuary. This work is important and needed. At the same time, I am critical of the dominant system that normalizes a cycle of repeated harm and the false narrative that leads us to believe that "fixing" and "cleaning up" pollution is a sustainable long-term solution.

The dominant culture has not shifted the underlying belief system that allowed the estuary to be so harmed in the first place—the idea that we are separate from and above nature, and that nature is an object here for us to exploit and control. Even though regulations are now in place, the

estuary is still just as vulnerable to harm as it was 100 years ago. We need a different approach.[1]

Big snowflakes began to fall; the wind rustled through cattails. We completed the silence, and I was grateful that Cristin had been able to hear more clearly. She told me what she heard the estuary say: We are tired of the suffering. What if we could harmoniously coexist?

Our conversation turned to how: How can we envision coexistence with this place? Can we attend to the harm while also creating a very different path forward? What would it take to collectively say, "We'll never let this happen again."

Cristin and I fell back into silence, listening. Then something shifted: the swirling dance of ice, snow, and wind emanated a kind of radiance, revealing a beauty that spoke to my heart instead of my mind. Witness my beauty. Strengthen what is already here. Anything that you do, do it from love.

It was an answer to the question of how to coexist. Not in a practical sense, but as an anchor for how to show up: with love.

Love occurs in relationships. In order to be in a relationship, we have to recognize that the other exists—and most importantly, has a right to exist.

## Indigenous Cosmologies, Western Frameworks, and the Rights of Nature Approach

Our current western systems do not recognize the St. Louis River as a living entity with the right to exist; rather, they view this body of water as an object to exploit. What if instead, relationship and reciprocity were central to how our systems relate to this ecosystem?

Rights of nature is one approach to center interconnection with nature in our communities and in our legal system. Rights of nature is an emerging legal movement to recognize that ecosystems, bodies of water, and species have the inherent right to exist, thrive, flourish, and regenerate.

Rights of nature is based in Indigenous worldviews, calling upon communities to not only shift the legal standing of the environment, but to also decolonize how our society relates to nature. Rather than seeing water just as a resource to use, this approach centers the view that nature has its own right to life.

Around the world, Indigenous groups are leading the way to assert a reciprocal relationship with nature into the western legal model. In New Zealand, the Maori people led the nation to legally recognize "Te Awa Tupua;" the Whanganui River is a living being. [2] Ecuadorian Indigenous groups campaigned for rights of nature, and with support from U.S.-based legal organizations, became the first country to include rights of nature in their constitution in 2008. Article 71 states, "Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes."[3] In the United States, at least seven tribes have passed rights of nature laws, including the White Earth Band in

northwestern Minnesota, which passed a rights of nature law recognizing the rights of Manoomin (wild rice).[4]

Here in Northern Minnesota, the city of Duluth was built on the traditional homeland of the Anishinaabe people, and before them the Dakota people. The inherent rights of nature are fundamental to their traditional worldview and its application in daily life. As I've learned from Ricky DeFoe, Anishinaabe Elder and a leader of Waankam, "In Anishinaabe/Indigenous worldview, there are four orders of life that make up this home of ours on Mother Earth: First came the mountains and the rock nations. Second came the seeds, grasses, plants, trees. Third came the animals—the flyers, the swimmers, the crawlers, then finally the walkers. All of the others can



Rapids in the St. Louis River in northern Minnesota illustrate the complex and layered nature of these landscapes. Image courtesy of Michael K. Anderson.

live without humans, but we cannot live without them. All are interdependent on one another for life."

In the Anishinaabe cosmology, rivers, streams, and lakes are the Earth's lifeblood. This is recognized not only spiritually, but also legally and practically. According to *Revitalization of Anishinabek Legal Traditions*, "The traditional legal principle of 'all our relations' is a sacred law that all things in the universe are gifts from Creator and have meaning and purpose. All beings (people, plants and trees, insects, birds, fish, four-leggeds, etc.), all elements (earth, fire, wind, and water), Mother Earth and our land bases are to be considered to be alive and to possess each's own purpose."[5]

Ricky compares this cosmology to the western worldview: "In the West we are all socialized to believe in the great chain of being, a hierarchy of life." The concept of the great chain of being dates back to Aristotle and Plato and ranks white people above people of color, as well as above all aspects of nature. Ricky says, "In the great chain of being you have a male god at the top, a rock at the bottom. In the great chain of being, the rock nation is just inanimate, it has no spirit. In our Indigenous worldview the rocks have spirit, they were here first."

This Western worldview perpetuates dominance over other living beings, whether that be dominance over Indigenous people or dominance over the living entities of nature. Ricky explains, "For generations, Indigenous peoples were seen as part of the flora and fauna—they were looked down upon as second-class people, as subhuman." As European settlers colonized this land, they also sought to control and dominate Indigenous peoples by stripping them of their land and cultural practices, including those that connected them in reciprocity with the living world.

"The world we're in is upside down," Ricky asserts. "It's our challenge to right-side it up." Rights of nature is a movement sourced in these Indigenous worldviews, attempting to integrate this view into the western legal system. In Duluth, we have seen a cycle of repeated harm to the estuary, stemming from the mindset of separation from and dominion over nature. While important work is being done to remediate the estuary, it isn't enough to protect the estuary into the future. We need an approach that transforms Western worldviews, one that centers Indigenous perspectives and leadership.

Waankam begins our work with the recognition that water is a living being, one with whom any of us (Indigenous or not) may enter into direct, reciprocal relationship. As a living being, water deserves to be honored and recognized as a holder of rights. In order to transform public awareness and codify this status into law, we seek to amend our city charter, to recognize the estuary as a living, rights-bearing entity with legal standing. Let's contextualize this vision within the estuary's past and present circumstances, which have led us to believe that this transformation is necessary.

### **Legacy Contamination and Remediation**

Prior to colonization, Gichigami-ziibi was an abundant place of rich biodiversity where sacred wild rice grew on water.[6] The Anishinaabe, and the Dakota before them, lived in reciprocity with the water and land.

Beginning in the 1850s, more than a century of unchecked industrial pollution degraded the estuary into one of the most polluted waterways in the entire United States.[7] The riverbed's sediments are now contaminated with mercury, dioxins, polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons, and other toxins; the estuary was designated an Area of Concern (AOC) by the U.S.-Canada Great Lakes Water Quality Agreement in 1987.[8]

In part because of this AOC designation, over several decades, hundreds of millions of dollars is going into remediation and restoration work carried out by four organizations with assistance from many collaborators. By the time of completion, millions of cubic tons of contaminated material will have been dredged and removed, capped with cement, or amended with activated carbon.[9] Wild rice has been carefully seeded and tended, and sturgeon are being successfully reintroduced.[10] There are nine "Beneficial Use Impairments," and when each of these has been sufficiently addressed, the estuary will be delisted as an AOC. As of this writing, four of the nine impairments have been removed.



Contrasting sharply with the rapids in the above image, this image shows the rich and accessible wetlands of the estuary. Image courtesy of Michael K. Anderson.

Body contact and fish consumption advisories are among the remaining impairments.[11]

One requirement for delisting this AOC is that *fif-ty percent* of degraded aquatic habitat must be restored.[12] The estuary will not have been returned to its original state.

As public attention turns toward an eventual completion of this work, I feel immense gratitude for all those who have contributed significant efforts to caring for this place. Yet I am critical of the narrative that we can be "done with this," which sends a false message—that we can simply fix pollution without changing how we fundamentally relate to nature. I worry that commonly used phrases, such as "once polluted," give the impression that when this work is done, the river will be completely restored, no longer polluted. The way I hear people talking, you'd think the days of damaging this ecosystem are a bygone era.

This is clearly not so, both in terms of future threats and still existing pollution. Mercury, for example, is an ongoing concern that will not be addressed by the completion of this work. Mercury contamination diminishes insect, bird, and fish reproduction. For humans, one in ten babies born in the Lake Superior basin have elevated levels of mercury, high enough to impair health and development. The river is still polluted and is still being polluted today. [13] This is an environmental justice issue for communities relying on fish for cultural identity or subsistence.

Federal funds for restoration only cover work done to remediate historical contamination. However, unregulated mercury contamination from taconite mining and related facilities is ongoing, and in the future could become even more dangerous with an increase in sulfates from proposed copper mining upstream.[14] The ecosystem is an intricate balance where past, present, and future mingle in ways that we are still coming to understand. While many individuals doing this work are motivated by care for the estuary, the system that this work happens within is not designed to account for interconnection. "Completion" is based on external metrics given by the EPA, not the lived experience of the human and more-than-human world within the estuary ecosystem.

I celebrate the return of the wild rice and sturgeon, and increasing safe access for humans, yet I worry that the message that the estuary has been "fixed" plays into the narrative that we humans have the power to harm nature and then fix it afterwards, which is untrue and is used by corporate interests as a justification for more pollution to be allowed. I don't want to see our community right back in the same place 20 years from now, with another devastating contamination to the very same body of water. Without acknowledging the deeply rooted beliefs in the dominant western culture that allowed the river to become so harmed in the first place, the estuary will remain vulnerable to more abuse in the future.

## **Future Threats to the Estuary**

Of the numerous potential harms to the St. Louis River estuary, one of the most egregious is the proposed NewRange (formerly PolyMet) copper-sulfide mine, which would be situated 60 miles from Duluth, upstream from the estuary and Lake Superior. As of 2023, NewRange is a wholly-owned subsidiary of Glencore, a multinational corporation with one of the worst human and environmental rights track records in the world.[15]

At the same time as many individuals have spent decades remediating the river, others have spent many of those same decades working to protect the river from the future threat of upstream extreme extraction. The NewRange (PolyMet) copper mine was permitted by the state of Minnesota with disregard for ecological and human safety, which has now come to public light through legal battles resulting in revocation or reversal of nearly all of NewRange's permits.

NewRange proposed removing vast amounts of earth, destroying about 1000 acres of wetlands and indirectly impacting 7000 more.[17] The immense amount of sequestered carbon currently held in those wetlands would be released into the

atmosphere as greenhouse gasses. Contamination from atmospheric mercury and past mining that is currently held in the peat bogs would be released into the watershed.[18]

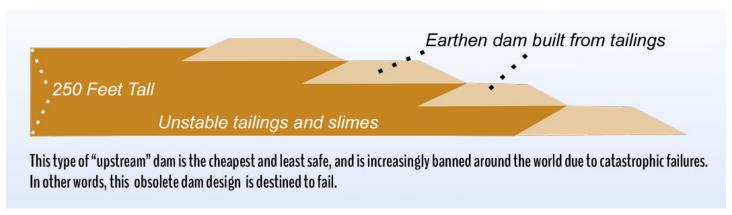
Copper-nickel mining exposes sulfide ores to water and air, which releases sulfuric acid.

[19] The already existing mercury contamination in the river from historic mining and coal burning plants would then be exposed to sulfates and converted into methylmercury, a bioaccumulating neurotoxin that would move up the food chain in fish, birds, mammals, and humans.

[20] Past, present, and future intermingle here, a chemistry of impacts we cannot control.

Over 20 years of operation, NewRange proposed to dig and blast 500 million tons of rock with explosives. Only 1 percent of the targeted ore is economically valuable, requiring vast amounts of energy to grind it into a powder to extract the metal. The remaining 99 percent—the tailings—would be stored as a slurry behind a dam constructed on top of an old, deteriorating taconite tailings dam built in the 1950s.

[21] NewRange would construct their tailings dam using an "upstream" construction design, the cheapest and riskiest way to build a tailings



The instability of the upstream tailings dam is apparent in this diagram.

Image via Duluth for Clean Water, Friends of the Boundary Waters Wilderness,

WaterLegacy, and MCEA, used with permission.

dam.[22] The NewRange tailings would contain arsenic, asbestos, cadmium, lead, and mercury. [23] The World Health Organization lists these as five of the ten most toxic contaminants for human exposure.[24]

In November 2023, a state administrative judge recommended that the DNR deny NewRange's permit to mine because their plan to use a bentonite clay liner to contain the contaminated waste was proven insufficient, meaning that hazardous waste would enter the environment even under normal operating conditions (which don't account for the increased risks associated with climate change.)[25] NewRange's own assessment of the "best case scenario" is that it would release 16 million gallons of toxic water into our groundwater per year, as stated in the environmental impact statement.[26]

Beyond NewRange's expected daily leakage, there is also the risk of a total dam collapse, which has happened with upstream dams in both British Colombia and Brazil.[27] The dam would be built up over time using toxic tailings and sand reaching 250 feet. These dams are susceptible to "liquefaction" and complete failure.[28] A plume from a failed dam can travel hundreds of miles into the watershed.[29] There's a 50 percent chance that the dam would fail in the first 54 years; there's a 0.5 percent chance that it wouldn't fail for 500 years.[30] While several other countries have made this type of dam construction completely illegal, the Minnesota DNR, the US Army Corps of Engineers, and the Minnesota Pollution Control Agency gave the go-ahead to PolyMet in 2018, issuing permits that have since been almost all rescinded, remanded, or revoked.[31]



The aftermath of the dam disaster in Brumadinho, Brazil in 2019 shows the risk of upstream tailings dam failures. Image via Wikimedia Commons by Romerito Pontes.

See the video: <u>Aerials of destruction caused by</u> <u>Mount Polley Mine tailings pond breach.</u>

See the video: <u>Terrifying moment of Brazil dam</u> <u>collapse caught on camera.</u>

And I wonder, did anybody kneel down on this land, ask for permission, and listen? How out of place this question appears here amidst an onslaught of the worldview that nature is an object.

Fortunately, the Fond du Lac Band and a coalition of nonprofit environmental organizations demonstrated the faulty logic behind the issuance

of these permits. No one, especially not the Fond du Lac Band, which is supposed to have treaty rights to unlimited hunting, fishing, and gathering of medicinal plants on this land, should have had to spend decades stopping this mine. And although it is currently halted, there is nothing preventing NewRange from challenging the court decisions or starting the process all over again by submitting a new application.[32]

Thus, in the absence of a transformation in how our community and laws relate to this ecosystem, we have not broken free from the cycle of harm.



The devastation following the dam disaster in Brumadinho, Brazil demonstrates the immediate and long-term effects of this kind of dam failure.

Image via Wikimedia Commons by Romerito Pontes.

### **Environmental Regulation Legalizes Pollution**

Since the very beginning of the PolyMet proposal, numerous experts, scientists, tribal representatives, health officials, and citizens have detailed extensive evidence as to the grave risk of this mine. Tribal reviews were repeatedly ignored, and although tens of thousands of people submitted comments on the environmental review process, these too, were disregarded.[33] No human Health Impact Assessment was conducted, though 46 health care workers detailed their concerns to the permitting agencies.[34] There was never an evidentiary hearing, which would have allowed for an unbiased review of the data. [35] The permits were granted solely on the data provided by the corporation attempting to profit. This is how pollution is legalized.

Our current system of environmental regulation stems from the worldview that nature is a commodity to use and control. From this standpoint, regulation is determined at a state level, with heavy influence from the corporations that seek to benefit from the use of those resources.

Regulation determines how much pollution is allowed and where it is allowed. "Where" is often low income and BIPOC communities. NewRange would be directly upstream from the Fond du Lac reservation and the low-income side of Duluth located along the estuary, where the <u>US Steel Superfund Site</u> and dozens of toxic hotspots are located.[36] These are already the <u>communities</u> most affected by historic contamination from over 150 years of unchecked industrial pollution in the estuary.

See the video: Mercury in the St.Louis River.

NewRange is a case of legalized pollution of epic proportions. While the historic impetus for environmental regulation was well-intentioned and indeed has served to protect and restore many places that would have otherwise been continuously degraded, I believe it does not have the capacity to go far enough to preserve vital ecosystems, in large part because it is fundamentally based in a worldview that sees us as separate from nature and does not recognize ecosystems as interconnected living entities.

Within the framework of the regulatory system, there are a set of predetermined ways that concerned citizens can engage. It does not allow us, as a community, to simply say *no* to something that would harm the very ecosystems upon which all of life depends.

## The Rights of Nature Legal Movement and Its Intersection with Environmental Justice

Rights of nature steps completely outside of the state permitting system and begins with knowing that nature is alive. As a living entity, we can enter into a reciprocal relationship with the estuary, recognizing that this ecosystem has the right to exist.

Within the western legal system, <u>this approach</u> was first proposed by Christopher D.

Stone, an American legal scholar, in the 1970s. He argued that within the regulatory system, a plaintiff must prove that harm has been done to property. This is incredibly difficult to prove and is inherently based in the idea that nature is an inert object to use and exploit. Rights-based law expands who and what has rights, with rights of nature working to include nature as a rights holder.[37]

Rather than working within the predetermined actions allowed by the state permitting system, rights of nature places the power in people's hands to establish constitution-type rights for nature that could eventually take precedence over regulations.

Historically, we can look to the precedence that legal rights have expanded to include women, enslaved people, children, even corporations. Women, at one time, were seen as property under the law. As a white woman in the United States 200 years ago, I would not have had the right to run for office, vote, own property, attend college, use birth control, or even have bodily autonomy. These rights have expanded over time. For women of color, many of these rights were not legally recognized until much later and are still heavily challenged today. [38] Indigenous people were the last to be legally recognized as citizens under the law in 1924, and even then, were not eligible to vote in some states until the 1960s. [39]

While some argue that we should focus on human rights before turning our attention to rights for nature, the two are deeply intertwined, both because we humans are nature—we are not separate from nature—and because those who are most harmed by environmental destruction are often those who are most oppressed and whose human rights are already most in question. It is not a coincidence that the rights of the original people who have lived on and cared for this land for millennia were the last to be legally recognized as rights holders in this country. In what is now called northern Minnesota, traditional Dakota and Anishinaabe cultures live in caring reciprocity with the water. Worldwide, 80 percent of all existing biodiversity is protected by Indigenous communities.[40] One might assume that those communities who are protecting the majority of our ecosystems would have access to clean water themselves, yet race is the strongest predictor of lack of water and sanitation access in the U.S.[41]

Thus, rights of nature works at the intersection of human and nature rights. This movement seeks to recognize the inherent rights and interconnectedness of all living beings, human and more-than-human, and is inextricably linked to justice and equity for Indigenous people.

As we see with civil rights, rights-based law is an ongoing long-haul effort. Rights of nature is not a quick fix. But it is a potential way out of the cycle, integrating Indigenous wisdom into the western legal system. It is an approach that holds the long view of future generations, beyond just the issues of today.

Anyone can participate in rights of nature <u>movements</u>. There are grassroots initiatives popping up in towns and cities around the country motivated by individuals and communities who are committed to transforming how we relate to nature, both culturally and legally.

In the U.S., this approach typically expands rights at a local level, working within a municipality, or within tribal law (which is more akin to the state level). Tamaqua Borough, Pennsylvania, was the first place in the world to recognize the rights of nature in law in 2006, when the community banned the dumping of toxic sewage as a violation of the rights of nature. Since then, dozens of communities in the U.S. have passed rights of nature laws.[42] The more communities take this on, the more powerful it will become. No specific skill set is needed to contribute; I fully believe anyone who wants to get involved can bring their love for the land and water to this effort. I encourage anyone who is interested to begin by searching for initiatives in their area, and reaching out to volunteer if there is one. If there isn't an existing initiative, start learning more, find others to collaborate with, and in particular for white folks, begin with the lifelong work of "decolonizing our minds," as Ricky often says.

An important part of this work is taking back our power—from regulatory agencies, from corporations, from the idea that someone "out there" has this all under control. Communities tend to know best what they need, and it is in our communities that we live in direct relationship with the land and water. As such, nature rights and community rights are interrelated, because we humans are nature, our communities are nature, and because it is at a local level that people most directly experience the effects of environmental destruction. Practically speaking, this means that in the U.S., a rights of nature law is often passed along with a community bill of rights. Community rights are generally more human-oriented, expanding on democratic rights, such as the right to clean water, which goes along with

a river or lake's rights to exist, thrive, flourish, and regenerate. We see these human and natural rights as interconnected and interdependent.

Work around the rights of nature is growing. This year, a rights of Manoomin/Psíŋ resolution is being introduced to the Minnesota state legislature.[43] Internationally, rights of nature laws have been passed at the national level in New Zealand, Ecuador, Bolivia, Uganda, and Spain. Many other countries have local laws recognizing the rights of specific ecosystems or species.[44] In 2023, a major legal victory halted a copper mine from entering Ecuador's Intag Valley, one of the world's most biodiverse forests, on the grounds that the mine would violate the rights of nature. [45]



The estuary is a rich and varied ecosystem. Image courtesy of Michael K. Anderson.

## Azhe-mino-waankamitoodaa: "Let's return the water to its original pristine condition!"

Efforts to recognize legal rights for Gitchi-gamiziibi could protect the estuary for the long-term and could also bring together the concentrated efforts of many individuals and groups who are working to protect and restore this body of water. If passed in Duluth, a rights of nature law would enable any resident of the city to stand for the St. Louis River estuary ecosystem in court, to defend these rights against polluting industries.

As we celebrate the return of the wild rice and sturgeon to the estuary and the current halting of NewRange, perhaps this moment offers an invitation to reflect. With the upcoming increased access to the estuary, new trails and access points will provide more opportunity to connect with this ecosystem, to strengthen our collective love for this place.

Groups like the <u>St. Louis River Alliance</u> offer programming to support the community's knowledge of, connection with, and stewardship of the estuary. Waankam hosts a seasonal ceremonial gathering to connect the community to this sacred place. <u>The Indigenous Women's Water Sisterhood</u> is working to create an outdoor classroom and <u>ceremony space</u> along the estuary at Munger Landing.

In this moment of fruition, as the hard work of so many has paid off, what would it take to envision a future in which we are, with each passing year, returning the water more and more fully to its original pristine condition? In this future, we have ceased to cause more harm and are together building on the beauty and strengths of this place. Our group's name, Waankam, is an Anishinaabe word that represents this vision. Waankam is the most pristine state that water has ever been in, in its original state of being. This name was given to our work in traditional fashion, by an Anishinaabe Elder. The full phrase is a call to action: "Azhe-mino-waankamitoodaa," which means "Let's return the water to its original pristine condition!" This is the vision we hold, through our collective prayers for the water and through our practical organizing work. We see a rights of nature law as a path to bring this vision into concrete form. With the passing of a rights of nature law, and the change in consciousness that would necessarily accompany that change to our system, we can envision a future where we will continue to cultivate the estuary's strength and learn to coexist within this ecosystem.

#### **Footnotes**

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#### **About the Author**

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