

## **Using the corporation to protect rivers in Australia and New Zealand: integrating rights for nature in existing legal frameworks**

Erin O'Donnell<sup>1</sup> and J Talbot-Jones<sup>2</sup>

<sup>1</sup> Senior Fellow, Melbourne Law School, University of Melbourne, Victoria 3010

<sup>2</sup> PhD candidate, Australian National University, Canberra, ACT 2600

### *Abstract:*

Effectively protecting the environment through the judicial process continues to be a challenge for law-makers. In the search for effective tools, Christopher Stone's concept of granting nature legal standing has been largely ignored, except for in a few, select cases. In this paper we explore Stone's concept, highlighting the pragmatic challenges for implementation in terms of integrating rights for nature within existing institutions. We suggest that one of the reasons for ineffective application to-date is a lack of institutional embeddedness across multiple levels of governance. We find that one way this can be addressed is by using existing legal tools, namely the corporation. This paper presents two comparative case studies from Australia and New Zealand that use the corporate form to personify the environment in law, in the context of water resource management. In Australia, the Victorian Environmental Water Holder is a statutory corporation with responsibility for holding and managing water rights in a water market to achieve environmental outcomes; in New Zealand, the Whanganui River catchment itself is to become a legal entity and treated as a person in a court of law. These novel legal developments provide insight into how legal rights for nature can be embedded within legal frameworks and institutions using existing legal tools. We find that, although neither case was an explicit attempt to implement Stone's concept, both cases do so effectively through the use of the corporate form and robust institutional embeddedness. These two cases demonstrate how creative use of the corporation can allow it to be employed as a practical tool for implementing legal rights for nature.

*Keywords:* corporation, environment, institution, regulation, rights for nature, water

## **BIOGRAPHY**

### **ERIN O'DONNELL**

Erin O'Donnell is a water law and environmental governance specialist. She has worked in environmental management and water governance since 2003, in the private and public sectors. Most recently, Erin was responsible for developing the Victorian Environmental Water Holder, as well as policy on environmental water trading and water market rules enabling environmental water managers to access the water market. Erin is currently a Senior Fellow at the Melbourne Law School, where she is completing her PhD on the opportunities created by using a corporation to hold and manage environmental water. Erin has a BSc (first-class honours in ecology) from the University of Adelaide, and a LLB (first-class honours) from Deakin University.

### **JULIA TALBOT-JONES**

Julia Talbot-Jones is an environmental economics PhD candidate at the Crawford School of Public Policy, Australian National University, investigating the economic effects of granting a river legal standing. She is interested in how different institutional arrangements influence collective action and is currently evaluating how granting rights to nature may impact people's choices and preferences towards public good provision and common pool resource use. A former (NZ-USA) Fulbright scholar, she has an academic background in economics, ecology, and natural resource management. She is the current editor of Global Water Forum.