

THE FIGHT FOR ANCESTRAL RIVERS: A STUDY OF THE MĀORI AND THE LEGAL PERSONHOOD STATUS OF THE WHANGANUI RIVER AND WHETHER MĀORI STRATEGIES CAN BE USED TO PRESERVE THE MENOMINEE RIVER

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In early 2017, the New Zealand government and the Māori passed a law that formally recognized the Whanganui River as a living entity that was inseparable from the Māori themselves, a concept known as Te Awa Tupua. Te Awa Tupua was given legal personhood status and the government ceded its rights to the Whanganui River to Te Awa Tupua. Comparatively, the Menominee River in the United States of America is involved in a legal battle between the Menominee Tribe, who want to protect it, and a mining company that is trying to build a mine on it. This note briefly looks at the history of the Māori and the history of the Menominee and their ties to their ancestral Rivers. Finally, this note will examine the feasibility of applying the strategies the Māori used to the struggle for protecting the Menominee River. This note concludes that the large-scale social movements and political lobbying that the Māori utilized would likely not be as successful in a U.S. framework because of political differences and the limited timeframe the Menominee are working within.

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I. INTRODUCTION

Recently, governments across the world have been granting legal personhood, or some variation of it, to environmental entities that have cultural or historical significance to primarily Indigenous groups of people.¹ In early 2017, the parliament government in New Zealand worked with a group of Indigenous people, the Māori, to establish a framework within which the Whanganui River is considered a legal person.² Through the passage of legislation, national protests, and political lobbying, the Māori were able to protect one of their sacred rivers, the Whanganui River.³ Similarly, the Menominee Tribe of Wisconsin in the United States of America is fighting to protect the river that is sacred to them, the Menominee River.⁴ The Māori and the Menominee are similar in several ways, and those similarities can be analyzed to determine if some of the same strategies the Māori have used would be useful in the Menominee fight to protect their River.⁵ First, both Indigenous groups hold their respective Rivers in high cultural regard and have actively sought to protect their Rivers.⁶ Second, both Indigenous groups have suffered from settler-colonial policies and treaties that caused them to lose exclusive control over their sacred land and rivers.⁷ The Māori used large-scale social movements and political lobbying to bring awareness to the cultural importance of the Whanganui River,⁸ and, given the aforementioned similarities between the Māori and

1. See generally Erin O'Donnell & Julia Talbot-Jones, *Three rivers are now legally people – but that's just the start of looking after them*, CONVERSATION, (Mar. 23, 2017, 3:13 PM), <http://theconversation.com/three-rivers-are-now-legally-people-but-thats-just-the-start-of-looking-after-them-74983>; See *New Zealand*, EARTH LAW CTR. (Aug. 16, 2016), <https://www.earthlawcenter.org/international-law/2016/8/new-zealand>; See Devon O'Neil, *Parks are People Too*, OUTSIDE (Aug. 3, 2016), <https://www.outsideonline.com/2102536/parks-are-people-too>.

2. See *infra* Part II.

3. See *infra* Part II.

4. See *infra* Part III.

5. See *infra* Part IV.

6. See *infra* Parts II, III.

7. See *infra* Parts II, III.

8. See *infra* Part IV.

the Menominee, the Menominee ought to be able to utilize some of those same strategies to obtain protection for the Menominee River.

II. THE MĀORI OF NEW ZEALAND: A BRIEF HISTORY

A. The Treaty Of Waitangi

The history of the Whanganui River began long before Europeans came to colonize New Zealand. The tribes who lived around the river were the “Hinengākau of the upper river, Tama Ūpoko of the middle [river] and Tūpoho of the lower Whanganui.”⁹ After Europeans began to arrive in New Zealand, these tribes became known collectively as the “Māori,” which initially meant “ordinary or local” in the Maori language.¹⁰ Māori is the official government designation for the Indigenous people of New Zealand.¹¹ While the Whanganui River has significant history prior to European colonization, the Treaty of Waitangi in 1840 (“Treaty”) marked a significant shift in the history and use of the Whanganui River.¹² In essence, this Treaty gave Britain the right to rule over New Zealand and made British immigrants in New Zealand full citizens with legal rights.¹³ The Treaty was an agreement between 500 Māori Chiefs and the British government to officially make New Zealand a British colony.¹⁴ The Treaty was prepared in English and then translated into Māori by two missionaries in New Zealand.¹⁵ The translation proved to be problematic in primarily two of the three

9. Diana Beaglehole, *Whanganui places – Whanganui River*, TE ARA – THE ENCYCLOPEDIA OF N.Z. (June 15, 2015), <http://www.TeAra.govt.nz/en/whanganui-places/page-5>.

10. Rawiri Taonui, *Ngā tuakiri hōu – new Māori identities - Early Māori identities*, TE ARA - THE ENCYCLOPEDIA OF N.Z. (June 1, 2017), <http://www.TeAra.govt.nz/en/nga-tuakiri-hou-new-Māori-identities/page-1>.

11. *Id.*

12. Jock Phillips, *History of immigration - British immigration and the New Zealand Company*, TE ARA - THE ENCYCLOPEDIA OF N.Z. (Aug. 1, 2015), <http://www.TeAra.govt.nz/en/history-of-immigration/page-3>.

13. *Id.*

14. Claudia Orange, *Treaty of Waitangi*, TE ARA - THE ENCYCLOPEDIA OF N.Z. (June 20, 2012), <http://www.TeAra.govt.nz/en/treaty-of-waitangi>.

15. *Id.*

articles.¹⁶ In the first article of the Treaty, the English version gave England “sovereignty over the land,” while the Māori version only gave England “governance over the land.”¹⁷ Sovereignty has a stronger connotation than mere governance, and the discrepancy between these terms was a central component in the forthcoming interactions between the Māori and the British government.¹⁸ In the second article of the Treaty, the English version gave the British government the *exclusive right* to negotiate with the Māori when buying land.¹⁹ In contrast, the Māori version only gave the British the *right* to deal with the Māori when buying land, and this right was not exclusive to the British.²⁰ Additionally, the Treaty of Waitangi had protections for the Māori, but the Treaty was often ignored or circumvented at the expense and to the detriment of the Māori.²¹

An additional problem with the Treaty of Waitangi was that it was not unanimously agreed to by all the Māori Chiefs.²² While 500 Māori Chiefs did sign the treaty, there were some Chiefs who refused to sign because of concerns with having New Zealand colonized, and some who never had the chance to look at or sign the Treaty.²³ Despite this lack of unanimous agreement, the British government applied the Treaty to all the Māori in New Zealand.²⁴

Initially, the Treaty agreed to protect the Māori Chiefs’ claim to power, but four years after the Treaty was signed, the British government admitted to limiting the Māori Chiefs’ power because it clashed with the

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*; Orange also argues that the Treaty of Waitangi was seen by humanitarians as a way for Britain to redeem itself for the impacts its colonization usually had on Indigenous people. CLAUDIA ORANGE, *THE TREATY OF WAITANGI* viii (Bridget Williams Books 2015) (1987) [hereinafter *TREATY OF WAITANGI BOOK*]. However, the overarching intention of the Treaty was to destroy Māori society and combine the Māori with the settler community. *Id.* This was motivated by self-preservation; the settlers were a minority and not well armed, whereas the Māori were populous and well-armed. *Id.* at ix.

power of the British government to rule over New Zealand.²⁵ Tensions reached an apex when, in 1858, the Māori selected a Māori King to represent their interests and coexist in New Zealand alongside Queen Victoria and the British government.²⁶ The British government viewed the election of a Māori King as a treasonous act and invaded Waikato, an action which then escalated into warfare and additional battles.²⁷ This warfare resulted in the British taking a substantial amount of land from the Māori, which directly violated the protections in the Treaty of Waitangi for the Māori and their land.²⁸ To address these concerns, the Māori had many meetings with one another and sent hundreds of petitions to the British government to try and reclaim the original protections afforded to the Māori under the Treaty of Waitangi.²⁹ Four times from 1880 – 1924:

[D]eputations of Māori traveled to England to take petitions based on the [T]reaty to the British monarch and the government. Each of these petitions asked for [T]reaty rights to be observed. They were all referred back by the Crown to the New Zealand Parliament (“Parliament”), which denied breaching the treaty.³⁰

At this point in the converging history of the Māori and the British government, it was clear to the Māori that the British government was not honoring the Treaty of Waitangi as it had agreed to do.³¹

The Public Works Acts of 1864 and 1876 illustrate the lack of Treaty enforcement regarding Māori land ownership. The Public Works Lands Act of 1864 (“Act of 1864”) authorized the taking of “Native” land for

25. Orange, *supra* note 14, at Page 3.

26. *Id.*

27. Claudia Orange, *Treaty of Waitangi - Dishonouring the treaty – 1860 to 1880*, TE ARA - THE ENCYCLOPEDIA OF N.Z. (June 20, 2012), <http://www.TeAra.govt.nz/en/treaty-of-waitangi/page-4> [hereinafter Orange, *Dishonouring the treaty*].

28. *Id.*

29. Claudia Orange, *Treaty of Waitangi - Māori responses to the treaty – 1880 to 1900*, TE ARA - THE ENCYCLOPEDIA OF N.Z. (June 20, 2012), <http://www.TeAra.govt.nz/en/treaty-of-waitangi/page-5> [hereinafter Orange, *Responses to the treaty*].

30. *Id.*

31. *Id.*

any public purposes “necessary for the civilization of certain parts of the Colony.”³² The Act of 1864 gave the British government, working through the Governor, the ability to claim any lands that the government had determined could be used for development, regardless of who owned the lands.³³ Once lands were seized, they belonged to the British government and the Queen indefinitely; and to further throw salt in the proverbial wound, compensation for the lands was only required in “certain cases.”³⁴ The Public Works Act of 1876 (“Act of 1876”) gave the British government the ability to claim land for the government.³⁵ In contrast to the Act of 1864, the Act of 1876 required surveyors to receive special permission to survey Maori land.³⁶ This ability of the British government to create Acts that dealt with Māori land without first consulting the Māori illustrates the power differential between the Māori and the British government. The power to claim and designate land usage overstepped the British government’s right of governance as outlined in the Māori language version of the Treaty of Waitangi.³⁷ The British government had more power than the Māori Chiefs; thus, the British government was acting much more like a “sovereign,” as outlined in the English version of the Treaty of Waitangi but not the Māori language version.³⁸ Further, the Act of 1876 gave the British government power to claim any natural or artificial river that was in a gold field or could possibly supply a gold field.³⁹ There was no exception made for rivers that were either culturally or economically significant to the Māori, nor

32. The Public Works Lands Act 1864, s 2 (N.Z.), http://www.nzlii.org/nz/legis/hist_act/pwla186428v1864n5324/.

33. *Id.* ss 3–4.

34. *See id.* s 5.

35. *See* The Public Works Act 1876, pt. 2 (N.Z.), http://www.nzlii.org/cgi-bin/download.cgi/cgi-bin/download.cgi/download/nz/legis/hist_act/pwa187640v1876n50279.pdf.

36. *Id.* at pt 3, para 78.

37. *Id.*; Orange, *supra* note 14.

38. *See* Claudia Orange, *Treaty of Waitangi - Interpretations of the Treaty of Waitangi*, TE ARA - THE ENCYCLOPEDIA OF N.Z. (June 20, 2012), <http://www.TeAra.govt.nz/en/treaty-of-waitangi/page-2> [hereinafter Orange, *Interpretations*].

39. The Public Works Acts 1876, pt VIII, paras 199–200 (N.Z.).

was there any mention of the Māori in the Act of 1876, other than to specify that special permission must be granted to survey their land.⁴⁰

The Treaty of Waitangi again rose to the forefront of public discourse in the 20th century, particularly in the 1970s.⁴¹ The Māori Affairs Amendment Act of 1967 (“MAA Act of 1967”) gave the Parliament government⁴² the ability to determine if Māori land was being put to its most “efficient” use and, if not, to take action to “promote the effective and profitable use and the efficient administration of Māori land in the interest of the owners.”⁴³ The Parliament government assessed Māori land, and any land that was determined to be noneconomic was then assigned to the Māori Trustee, which was a government office created in 1953.⁴⁴ The Parliament government evaluated and graded the Māori’s land based on how efficiently and profitably the Māori were using the land.⁴⁵ Based on that evaluation, the Parliament determined whether the land should remain with the Māori owner or be given to a government entity.⁴⁶ The MAA Act of 1967 also “introduced compulsory conversion of Māori freehold land with four or fewer owners into general land. It

40. *Id.* at para 78.

41. See generally Claudia Orange, *Treaty of Waitangi - Honouring the treaty - 1940 to 2000s*, TE ARA - THE ENCYCLOPEDIA OF N.Z. (June 20, 2012), <http://www.TeAra.govt.nz/en/treaty-of-waitangi/page-7> [hereinafter Orange, *honouring the treaty*].

42. New Zealand officially became a fully sovereign nation in 1987 after it passed the Constitution Act 1986. John Wilson, *New Zealand Sovereignty: 1857, 1907, 1947, or 1987?*, N.Z. PARLIAMENT (Aug. 28, 2007), <https://www.parliament.nz/resource/en-NZ/00PLLawRP07041/6d87951341c92fc989bd5ef50648383cf1fd9598>. It is arguable whether the New Zealand Parliament was functioning as completely sovereign as early as 1947, but for purposes of this paper, the colonization of New Zealand and the impact that had on the Māori was equally damaging whether the Parliament was acting as a sovereign or not. *Id.*

43. Māori Affairs Amendment Act 1967, pt II, s 15 (N.Z.), http://www.nzlii.org/cgi-bin/download.cgi/cgi-bin/download.cgi/download/nz/legis/hist_act/maaa19671967n124232.pdf.

44. *Id.* at pt II, ss 17–18; see generally The Māori Trustee Act 1953 (N.Z.), http://www.nzlii.org/nz/legis/hist_act/mta19531953n95200/.

45. The Māori Affairs Amendment Act 1967, pt II, s 15 (N.Z.), http://www.nzlii.org/cgi-bin/download.cgi/cgi-bin/download.cgi/download/nz/legis/hist_act/maaa19671967n124232.pdf.

46. *Id.* at pt II, s 17.

increased the powers of the Māori Trustee to compulsorily acquire and sell so-called uneconomic interests in Māori land.⁴⁷ The Māori viewed this Act as an excuse for the Parliament government to take more Māori land.⁴⁸ The MAA Act of 1967 added tension to the already problematic relationship between the Māori and both the British and Parliament government, particularly as it pertained to Māori land.⁴⁹

In 1975, after the passage of the Māori Affairs Amendment Act of 1967, the Māori staged a large-scale march to protest the continued taking of Māori land.⁵⁰ The group of Māori protestors marched from the far north area of Te Hāpua and walked approximately 622 miles to deliver a petition with 60,000 signatures to the Parliament in Wellington.⁵¹ The march started with fifty protestors and swelled to about 5,000 protestors by the time the group reached the Parliament.⁵² In addition to this protest, there were several other protests on Waitangi Day, which was a national holiday to celebrate the signing of the Treaty.⁵³ While New Zealand citizens protested the taking of Māori land, Māori Members of Parliament (MPs) worked in the government to improve relations between the Māori and the government.⁵⁴ In response to the growing tension with the Māori, the British government (through the New Zealand Parliament) passed the Treaty of Waitangi Act of 1975, which finally addressed the contention that the Treaty of Waitangi was not being honored by the British or Parliament government.⁵⁵ The purpose of the Treaty of Waitangi Act of 1975 was:

47. *Treaty Timeline: Treaty events since 1950*, N.Z. HISTORY, <https://nzhistory.govt.nz/politics/treaty/treaty-timeline/treaty-events-1950> (last updated May 17, 2017).

48. *Id.*

49. See Orange, *honouring the treaty*, *supra* note 41.

50. *Id.*

51. *Whina Cooper leads land march to Parliament*, N.Z. HISTORY, <https://nzhistory.govt.nz/whina-cooper-led-land-march-te-ropu-o-te-matakite-reaches-parliament> (last updated Mar. 13, 2018).

52. *Id.*

53. Orange, *honouring the treaty*, *supra* note 41.

54. *Id.*

55. *Treaty Timeline: Treaty events since 1950*, *supra* note 47; Treaty of Waitangi Act 1975, Preamble (N.Z.), Preamble, http://www.nzlii.org/nz/legis/hist_act/towa19751975n114226/.

[T]o provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty.

WHEREAS on the 6th day of February 1840 a Treaty was entered into at Waitangi between Her late Majesty Queen Victoria and the Maori people of New Zealand: And whereas the text of the Treaty in the English language differs from the text of the Treaty in the Maori language: And whereas it is desirable that a Tribunal be established to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles.⁵⁶

This two-fold purpose—to establish the Waitangi Tribunal to enforce the provisions of the Treaty of Waitangi and to respond to and remedy any claims the Māori have—was the first significant step toward acknowledging the discrepancies between the two different translations of the Treaty and recognizing the disregard of the Treaty in land acquisitions.⁵⁷

However, there were still problems with the Treaty of Waitangi Act of 1975. First, the only complaints the Waitangi Tribunal could hear were regarding issues that arose after the Act was signed in 1975.⁵⁸ This effectively ignored the unfair land acquisition practices and any other complaints the Māori might have regarding their treatment by the British government since New Zealand became a British colony.⁵⁹ Second, the Waitangi Tribunal could only act as fact finders and make recommendations based on those findings.⁶⁰ They were not able to make any binding decisions to remedy any complaints they received.⁶¹

56. Treaty of Waitangi Act 1975, Preamble (N.Z.), http://www.nzlii.org/nz/legis/hist_act/towa19751975n114226/.

57. *Id.*

58. *Treaty Timeline: Treaty events since 1950*, *supra* note 47; Treaty of Waitangi Act 1975, s 6, subs c (N.Z.).

59. *Treaty Timeline: Treaty events since 1950*, *supra* note 47.

60. *Id.*

61. *Id.*

In 1980, the Māori formed into an official political party, the Mana Motuhake party.⁶² The creation of the Mana Motuhake political party and the creation of other Māori-specific political institutions aided in the passage of an amendment to the Treaty of Waitangi Act of 1975.⁶³ It was due in part to this political lobbying that the problems in the Treaty of Waitangi Act of 1975 were remedied.⁶⁴ First, the Treaty of Waitangi Amended Act of 1985 extended the Waitangi Tribunal's authority to hear complaints dating back to the formation of the Waitangi Treaty in 1840.⁶⁵ Second, the Treaty of Waitangi Amended Act of 1985 also extended the membership of the Waitangi Tribunal from just three government appointed officials⁶⁶ to a seven-person panel that must consist of at least four Māori.⁶⁷ Additionally, the members of the seven-person panel must have knowledge and experience that would be relevant to matters that might come before the Tribunal.⁶⁸ Third, after the Treaty of Waitangi Amended Act of 1985, the Treaty of Waitangi has been considered in political decisions, and principles from it have been applied in numerous legislative acts.⁶⁹

62. *Id.*

63. See generally RICHARD S. HILL, MĀORI AND THE STATE: CROWN-MĀORI RELATIONS IN NEW ZEALAND/AOTEAROA, 1950-2000 205–09 (2009). It is also significant to note that in 1980, the Waitangi Tribunal published the Motunui Outfall Report of 1983, which asserted that traditional fishing grounds had been contaminated with pollution and made recommendations of solutions that clashed with government policies. *Id.* at 187. After this report was published, the Tribunal continued to break with government policies and instead connected current issues with past happenings. *Id.*

64. See Orange, *honouring the treaty*, *supra* note 41.

65. Treaty of Waitangi Amendment Act 1985, pt 3, s 1, sub a (N.Z.), http://www.nzlii.org/nz/legis/hist_act/towaa19851985n148306/.

66. Treaty of Waitangi Act 1975, pt 4 (N.Z.).

67. Treaty of Waitangi Amendment Act 1985, pt 2, s 2, sub b (N.Z.).

68. *Id.* sub 2a.

69. See Orange, *honouring the treaty*, *supra* note 41; see discussion of the New Zealand government *supra* note 42.

B. The Whanganui Settlement And The Recognition Of Te Awa Tupua

The Whanganui Tribes, who were later incorporated into the Māori, have two main ancestors: Paerangi and Ruatipua.⁷⁰ “Ruatipua draws life force from the headwaters of the Whanganui River on Mount Tongariro and its tributaries which stretch down to the sea.”⁷¹ The Māori call the Whanganui River “Te Awa Tupua” and view it as a living being that is inseparable from themselves, thus they need to protect, manage, and care for the Whanganui River.⁷² Te Awa Tupua is both what the Māori call the Whanganui River and the concept of inseparability between the people and the River.⁷³

The British government interference with the Māori and their use of the Whanganui River began after the British government purchased 86,200 acres of land that surrounded the Whanganui River.⁷⁴ In the late 1800s, the British government established a steamer service that destroyed the Māori’s eel weirs and fisheries, thus ruining a major food source for the Māori.⁷⁵ In addition to the steamer service, from 1893 through the 1920s, the British government extracted and sold gravel from the Whanganui River, which further degraded the Māori’s ability to use and preserve the Whanganui River.⁷⁶ Further, in 1903, the Coal-Mines Act Amendment gave the beds of all navigable rivers to the government, stating that these beds had and always will belong to the government.⁷⁷

70. Record of Understanding in relation to Whanganui River Settlement 2011 Between Whanganui Iwi and The Crown, para 1.1 (Oct. 13, 2011) (N.Z.), <https://www.govt.nz/dmsdocument/3700.pdf> [hereinafter Record of Understanding in relation to Whanganui River Settlement 2011].

71. *Id.*

72. *Id.* at paras 1.2–1.4.

73. *Id.*

74. *Whanganui Iwi (Whanganui River) Deed of Settlement Summary 5 Aug 2014: Summary of the historical background to the Whanganui River claims of Whanganui Iwi*, N.Z. Gov’t, <https://www.govt.nz/treaty-settlement-documents/whanganui-iwi/whanganui-iwi-whanganui-river-deed-of-settlement-summary-5-aug-2014/background/> (last updated Oct. 31, 2016) [hereinafter *Summary of the historical background to the Whanganui River claims of Whanganui Iwi*].

75. *Id.*

76. *Id.*

77. The Coal-mines Act Amendment Act 1903, para 14 (N.Z.).

The Supreme Court, and later the Court of Appeals, upheld the vestment of the Whanganui River rights to the government because of the Coal-Mines Act Amendment and the government's purchase of the land that surrounded the Whanganui River.⁷⁸ While the government was using the Whanganui River for its own benefit, the Māori asserted their ownership and petitioned the government for compensation and recognition of their rights to the River.⁷⁹ In 1990, after decades of petitioning and filing complaints, the members of the Whanganui River Māori Trust Board filed the Whanganui River claim with the Waitangi Tribunal, which helped facilitate the Whanganui River Settlement.⁸⁰ The Māori have continually fought to regain their rights to the Whanganui River and the Whanganui River Settlement is the outcome of 144 years of petitioning and lobbying.⁸¹

In 2011, the British government (referred to as the "Crown") and the Māori entered into a Record of Understanding, which laid the groundwork for the Whanganui River Deed of Settlement.⁸² The Record of Understanding essentially detailed the importance of the Whanganui River to the Māori, the legal history of the Māori's claims to the Whanganui River, and the goals of future negotiations to settle any claims regarding the Whanganui River that are based on the Treaty of Waitangi.⁸³ The Record also acknowledged that the Crown and the Māori would be negotiating issues related to "[a] historical account, apologies and acknowledgments and other relevant cultural redress; and financial redress."⁸⁴ About one year after the Record of Understanding was signed, an Agreement regarding Whanganui River claims, Tūtohu Whakatupua,

78. *Summary of the historical background to the Whanganui River claims of Whanganui Iwi*, *supra* note 74. After the Supreme Court made its ruling, a Royal Commission determined that the Māori should receive compensation for the gravel extraction. *Id.* However, the Commission decision was overturned by the Court of Appeals, who ultimately held that the Māori did not have ownership rights. *Id.*

79. *Id.*

80. Ruruku Whakatupua – Te Mana Te Iwi O Whanganui 2014, para 2.97 (N.Z.).

81. *Summary of the historical background to the Whanganui River claims of Whanganui Iwi*, *supra* note 74.

82. *See* Record of Understanding in relation to Whanganui River Settlement 2011, *supra* note 70, ss 1.25–1.26.

83. *See generally id.* at para 1.1–1.19.4.

84. *Id.* at para 4.5.1–4.5.2.

was signed by the Māori and the Crown.⁸⁵ This agreement dealt with only the arrangements for legally acknowledging Te Awa Tupua.⁸⁶ In this agreement, the Crown and the Māori statutorily recognized the Whanganui River as Te Awa Tupua, which provided the River with standing as a legal entity.⁸⁷ Importantly, the Tūtohu Whakatupua explained the parties' intention in vesting Te Awa Tupua with legal personhood.⁸⁸

2.7 The creation of a legal personality for the River is intended to:

2.7.1 reflect the Whanganui Iwi view that the River is a living entity in its own right and is incapable of being “owned” in an absolute sense; and

2.7.2 enable the River to have legal standing in its own right.⁸⁹

This agreement acknowledged that no one can own Te Awa Tupua as it is its own being; thus, the Crown's claims to the Whanganui River can no longer exist.⁹⁰ The agreement also included the appointment of two guardian-type people, each known as the Te Pou Tupua, who will act in the interest of Te Awa Tupua and carry out any necessary functions on behalf of Te Awa Tupua.⁹¹

The Whanganui River Deed of Settlement (“Deed of Settlement”) was the next step in gaining legal personhood status for the Whanganui River. The Deed of Settlement was signed in 2014 and represents a formal agreement between the Crown and the Māori to establish Te Awa Tupua and settle any claims about the Whanganui River and the Treaty of

85. See Tūtohu Whakatupua 2012, (N.Z.), <https://www.govt.nz/dmsdocument/3706.pdf>.

86. *Id.* s 2.1.

87. *Id.* ss 2.1.1–2.1.2. The legal language recognizing the Whanganui River as Te Awa Tupua is: “Te Awa Tupua comprises the Whanganui River as an indivisible and living whole, from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements.” *Id.* s 2.4.

88. *Id.* s 2.6–2.9.

89. *Id.* s 2.7–2.7.2.

90. *Id.* s 2.9–2.10.

91. *Id.* s 2.18–2.22.

Waitangi.⁹² The claims only apply to those actions that occurred before September 1992.⁹³ The Deed of Settlement acknowledges the Māori have been fighting to have control over the Whanganui River since 1840, when the Treaty of Waitangi was signed.⁹⁴ The British government consistently used the Whanganui River and passed Acts governing its use without ever consulting with the Māori.⁹⁵ This was problematic for the Māori because the Māori hold the Whanganui River in high regard and consider it to be “central to the existence of the Whanganui [Tribes] and their health and wellbeing. The Whanganui River has provided both physical and spiritual sustenance . . . from time immemorial.”⁹⁶ The Whanganui River is culturally significant to the Māori people, hence their interest in protecting and preserving it goes beyond normal environmental concerns.⁹⁷

The Settlement is broken into two parts:

[1] Ruruku Whakatupua – Te Mana o Te Awa Tupua is primarily directed towards the establishment of a new legal framework (Te Pā Auroa nā Te Awa Tupua) for the Whanganui River that is centered on the legal recognition of the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements, as an indivisible and living whole – Te Awa Tupua.

92. See Ruruku Whakatupua – Te Tānekaha Supplementary Deed 2016 (N.Z.). As at least one legal scholar has noted, the Deed of Settlement is also notable for its use of Māori language and reference to traditional Māori sayings in each section. Linda Te Aho, *Ruruku Whakatupua Te Mana o te Awa Tupua – Upholding the Mana of the Whanganui River*, MĀORI L. REV. (2014), <http://Māorilawreview.co.nz/2014/05/ruruku-whakatupua-te-mana-o-te-awa-tupua-upholding-the-mana-of-the-whanganui-river/#note-4549-1>. The use of specific Māori phrases reinforces the interconnected nature of the relationship between the Māori and the Whanganui River, which is one of the most important acknowledgments in the Deed of Settlement. *Id.* This acknowledgment helps to set the tone and intention for the entire document. *Id.*

93. *Whanganui Iwi (Whanganui River) Deed of Settlement Summary 5 Aug 2014*, N.Z. GOV'T, <https://www.govt.nz/treaty-settlement-documents/whanganui-iwi/whanganui-iwi-whanganui-river-deed-of-settlement-summary-5-aug-2014/> (last updated Oct. 31, 2016).

94. See *Summary of the historical background to the Whanganui River claims of Whanganui Iwi*, *supra* note 74.

95. *Id.*

96. *Id.* at *General Background*.

97. *Id.*

[2] Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui is primarily directed towards Whanganui Iwi and the recognition and further development of the relationship between Whanganui Iwi and the Whanganui River through both cultural and financial redress.⁹⁸

The Whanganui River Māori Trust Board represented the Māori in the negotiations, while the Office of Treaty Settlements represented the government in the day-to-day proceedings.⁹⁹

The first part of the Settlement, Ruruku Whakatupua – Te Mana o Te Awa Tupua, explains the framework under which the Whanganui River can operate as a legal person, which was established in the Tūtohu Whakatupua.¹⁰⁰ The second part of the Settlement, Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui, details the history of the Whanganui River and the confrontations between the Crown and the Māori regarding its use,¹⁰¹ as well as addresses issues of redress and contains an apology from the Crown.¹⁰²

Finally, in March 2017, the Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017 (“Settlement Act”) was passed.¹⁰³ The purpose of this legislation was to formally give legal effect to the agreement reached in the Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui.¹⁰⁴ Unlike the Deed of Settlement, the Settlement Act legally binds the Crown to the agreement.¹⁰⁵ In the Settlement Act, the Crown vested a fee simple estate in Te Awa Tupua for the parts of the Whanganui River bed

98. *Whanganui Iwi (Whanganui River) Deed of Settlement Summary*, *supra* note 93.

99. *Summary of the historical background to the Whanganui River claims of Whanganui Iwi*, *supra* note 74.

100. *Whanganui Iwi (Whanganui River) Deed of Settlement Summary 5 Aug 2014: Redress*, N.Z. GOV'T, <https://www.govt.nz/treaty-settlement-documents/whanganui-iwi/whanganui-iwi-whanganui-river-deed-of-settlement-summary-5-aug-2014/> (last updated Oct. 31, 2016); Tūtohu Whakatupua 2012, para 1.2 (N.Z.) <https://www.govt.nz/dmsdocument/3706.pdf>.

101. *See generally* Ruruku Whakatupua – Te Mana Te Iwi O Whanganui 2014, paras 2.27 – 2.98 (N.Z.).

102. *Whanganui Iwi (Whanganui River) Deed of Settlement Summary 5 Aug 2014: Redress*, *supra* note 100 at Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui; Ruruku Whakatupua – Te Mana Te Iwi O Whanganui 2014, paras 3.20 – 3.25.

103. *See* Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (N.Z.).

104. *Id.* ss 3(a)–(c).

105. *Id.* s 5.

it owned, except for any legal road, railway infrastructure, any part of the bed that was owned under the authority of the Public Works Act of 1981 or “located in the marine and coastal area.”¹⁰⁶ As compensation for the use of the Whanganui River and to support the health and well-being of Te Awa Tupua, the Crown agreed to first pay \$30,000,000 New Zealand dollars and then make annual payments of \$200,000 New Zealand Dollars for 20 years¹⁰⁷ to Te Awa Tupua for its management.¹⁰⁸

The Māori, specifically the Whanganui Tribes, fought a long, but ultimately successful battle to regain rights to the Whanganui River, which is considered to be inseparable from themselves and part of their ancestral history.¹⁰⁹ After over 100 years of social awareness campaigns, petitioning, and filing complaints, the Whanganui River was finally given the respect the Māori had fought so hard to obtain.¹¹⁰ The Whanganui River is officially recognized as Te Awa Tupua, is being cared for by Te Pou Tupua, and has \$30,000,000, plus continuing payments, in a fund for its care.¹¹¹

III. THE MENOMINEE TRIBE OF WISCONSIN: A BRIEF HISTORY

A. The Menominee and the United States Federal Government

The Menominee Tribe of Wisconsin (“Menominee” or “Tribe”) is located in northern Wisconsin, near the Upper Peninsula of Michigan in the United States of America.¹¹² The Menominee are the oldest continuous residents of this area and are known for cultivating wild rice

106. *Id.* ss 40 – 41.

107. Kelly Buchanan, *New Zealand: Bill Establishing River as Having Own Legal Personality Passed*, LIBRARY OF CONGRESS (Mar. 22, 2017), <http://www.loc.gov/law/foreign-news/article/new-zealand-bill-establishing-river-as-having-own-legal-personality-passed/>.

108. Ruruku Whakatupua – Te Mana O Te Awa Tupua 2014, para 7.1 (N.Z.); Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, para 57(2) (N.Z.).

109. *See supra* Section II.B.

110. *See supra* Section II.B; *see supra* Part II.

111. *See supra* Section II.B.

112. *Menominee People*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Menominee-people>. (last visited Jan.14, 2018).

and oats.¹¹³ However, after four treaties and two federal acts, the Menominee Tribe now lives on land 1/39th the size of their pre-colonization land.¹¹⁴ The Menominee are currently fighting the installation of the Back Forty Mine on the Menominee River, which creates the border between Wisconsin and Michigan.¹¹⁵

It is not mere coincidence that the Menominee River and the Menominee people share a namesake. The Menominee origin story begins at the mouth of the Menominee River:¹¹⁶

After the plants and animals and other living things had all been made, a great bear with a copper tail arose from the ground beside the Menominee River. As the bear explored the land . . . the Great Spirit changed him into a person. This bear became the first Menominee. Walking along the river, the bear noticed an eagle flying in the sky. He called out to the eagle, saying “Come and join me and be my brother.” As the bird flew down, the Great Spirit changed him into a Menominee as well. The two brothers, bear and eagle, continued on their journey. In turn, they came upon the beaver, sturgeon, elk, crane, wolf, dog and deer. All of them were changed into human beings as well, becoming members of the Menominee tribe. The bear and eagle were the elder brothers and formed the tribe’s major groups, or clans. The earliest Menominee chiefs came from the Bear clan, while the great warriors came out of the Eagle clan.¹¹⁷

The Menominee believe that their entire existence began at the Menominee River, thus making this area one of significant importance to the Menominee people and culture.¹¹⁸ In addition to the area having ties to the Menominee’s origin, there are also Menominee “burial mounds,

113. BRIAN KOWALKOWSKI, FACTS AND FIGURES REFERENCE BOOK 1– 2 (2004), <http://www.menominee-nsn.gov/CulturePages/Documents/FactsFigureswithSupplement.pdf>.

114. Verna Fowler, *Creation Story*, in WISCONSIN INDIAN LITERATURE: ANTHOLOGY OF NATIVE VOICES 11 (Kathleen Tigerman ed., 2006); *Menominee Indian Tribe of Wis. v. Thompson*, 161 F.3d 449, 452–53 (7th Cir. 1998).

115. *No Back 40 Mine*, THE MENOMINEE TRIBE OF WIS., <http://www.noback40.org> (last visited Jan. 14, 2018).

116. *Id.*

117. Fowler, *supra* note 114, at 11.

118. *See No Back 40 Mine*, *supra* note 115.

places of worship, village sites . . . raised agricultural gardens,” and sacred sites around the Menominee River.¹¹⁹ These cultural sites would be impacted by the building of the Back Forty Mine.¹²⁰

The Menominee Nation and the U.S. government signed four treaties between 1831 and 1854.¹²¹ The first treaty was signed in 1831, in which the Menominee ceded the land to the southeast of Winnebago Lake, Fox River, and Green Bay to the U.S. Federal Government.¹²² In this Treaty, the Menominee also relinquished their rights to a large amount of acreage west of the Fox River.¹²³ As payment for the land, the federal government “agreed to protect, pay and provide various goods and services to the Menominee Tribe.”¹²⁴ Another provision in the Treaty of 1831 allowed the Menominee to retain their right to hunt and fish on some of the land that had been ceded; however, this right was only enjoyed up until the time that the current U.S. President surveyed and offered the land for sale or otherwise decided the Menominee should no longer have that right.¹²⁵ Not long after the Treaty of 1831 was signed, the land where the Menominee had fishing and hunting rights was sold to white settlers and the federal government determined the Menominee no longer had their fishing and hunting rights.¹²⁶

The next treaty between the Menominee and the federal government was the Treaty of 1836.¹²⁷ In the Treaty of 1836, the Menominee ceded more land west of the Fox River.¹²⁸ The Treaty of 1848 was the third treaty signed by the Menominee Tribe and the federal government.¹²⁹ The Treaty of 1848 was an exchange of all Menominee land in

119. *Id.*; *Menominee Nations Opposition to the Proposed Back Forty Mine*, THE MENOMINEE TRIBE OF WIS., <http://www.noback40.org/Documents/Back40Handout.pdf> (last visited Jan. 14, 2018) [hereinafter *Menominee Nations Opposition to the Proposed Back Forty Mine*].

120. *Menominee Nations Opposition to the Proposed Back Forty Mine*, *supra* note 119.

121. *Menominee Indian Tribe of Wis. v. Thompson*, 161 F.3d 449, 452–53.

122. *Id.* at 452.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 452, 458.

127. *Id.* at 452.

128. *Id.*

129. *Id.* at 453.

Wisconsin for a minimum of 600,000 acres in Minnesota and \$350,000.¹³⁰ This exchange did not come to fruition; after visiting the land in Minnesota, the Menominee Chiefs negotiated for new terms that allowed the Menominee to remain in Wisconsin.¹³¹ The final treaty between the Menominee and the federal government was signed in 1854 and is known as the Wolf River Treaty.¹³² The Wolf River Treaty exchanged the Menominee's 600,000 acres in Minnesota for 276,480 acres of the Menominee's original land in Wisconsin.¹³³ This land comprises the current Menominee reservation in Wisconsin.¹³⁴

In 1954, an era known as the Termination Era, the U.S. government tested the idea of integrating economically successful tribes into the U.S. economy; the Menominee were one of several tribes that this idea was tested on.¹³⁵ The U.S. government did this by terminating the federal tribe status for the Menominee Tribe and removing federal aid and services from the Tribe.¹³⁶ The federal withdrawal of the Menominee's tribal and reservation rights caused widespread problems for the Menominee Tribe.¹³⁷ These problems included a lack of medical care, lack of infrastructure, and a lack of money, the latter of which forced the Menominee to sell off some of their reservation land for vacation homes to be built on.¹³⁸ The Termination Era lasted about fifteen years and resulted in social and economic devastation for many tribes.¹³⁹ However, for the Menominee in particular, this devastation lasted for nearly twenty years, from 1953 until 1973.¹⁴⁰ The end of the Termination Era did not apply universally to all tribes, rather individual tribes had to ask

130. *Id.*

131. KOWALKOWSKI, *supra* note 113, at 3.

132. *Id.*; Menominee Indian Tribe of Wis. v. Thompson, 161 F.3d 449, 453.

133. KOWALKOWSKI, *supra* note 113, at 3.

134. *Id.*

135. William Greider, *House Vote Backs Aid For Tribe*, WASH. POST, TIME HERALD, Oct. 17, 1973, at A4. The Menominee had a successful logging operation in the early 1900s. KOWALKOWSKI, *supra* note 113, at 3.

136. Greider, *supra* note 135.

137. See Patricia L. Raymer, *Canceled Reservation: Termination Tribulations or Don't Cancel My Reservation*, WASH. POST, TIMES HERALD, Apr. 15, 1973, at G1.

138. *Id.*; Greider, *supra* note 135.

139. WILLIAM C. CANBY, JR., AMERICAN INDIAN LAW IN A NUTSHELL 61, 64 (5th ed. 2009).

140. *Id.* at 64

Congress to repeal the Act that terminated their federal Indian status.¹⁴¹ The Menominee were once again recognized as a sovereign Indian Tribe by the federal government after H.R.10717 passed and repealed the termination of their federal status.¹⁴² After the Termination Era, questions regarding hunting and fishing rights arose, which resulted in a Supreme Court case to determine which, if any, treaty rights remained after the Termination Act.¹⁴³ In *Menominee Tribe of Indians v. U.S.*, the Supreme Court held that the Termination Era legislation did not displace the Menominee's rights to hunting and fishing as provided under the Wolf River Treaty.¹⁴⁴

B. The Back Forty Mine

As previously mentioned, the Menominee Tribe is currently fighting to prevent the construction and opening of the Back Forty Mine on the Menominee River.¹⁴⁵ The Back Forty Mine would be an open-pit-sulfide mine and would operate on the Michigan side of the Menominee River.¹⁴⁶ The Back Forty Mine is “about 20 miles upstream of the city of

141. *Id.*

142. *See* Menominee Restoration Act, Pub. L. No. 93-197, 87 STAT. 770 (1973).

143. *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 411 (1968). Similarly, the Sixth Circuit Court of Appeals held that treaty rights that are given cannot be diminished by state law. *United States v. Michigan*, 653 F.2d 277, 278–79 (6th Cir. 1981). Issues regarding hunting and fishing rights for Michigan-based tribes were presented before the Court. *Id.* at 278–80. The Court held that the rights to fishing that were found in a treaty were:

federally created and federally protected rights. The protection of those rights is the solemn obligation of the federal government, and no principle of federalism requires the federal government to defer to the states in connection with the protection of those rights. The responsibility of the federal government to protect Indian treaty rights from encroachment by state and local governments is an ancient and well-established responsibility of the national government.
Id. at 278–79.

144. *Menominee Tribe of Indians*, 391 U.S. at 411–12.

145. *THE MENOMINEE TRIBE OF WIS.*, *supra* note 115.

146. Paul Srubas, *Proposed mine pits neighbor against neighbor*, GREEN BAY PRESS-GAZETTE (Aug. 24, 2017, 10:55 PM), <http://www.greenbaypressgazette.com/story/news/2017/08/24/proposed-mine->

Menominee and would be just 150 feet from the [river's] shore."¹⁴⁷ Thus far, the mining company, Aquila Resources ("Aquila"), has three of the four permits¹⁴⁸ it needs from the Michigan Department of Environmental Quality to open the mine: an air permit, a metallic mineral mining permit, and a National Pollutant Discharge Elimination System permit.¹⁴⁹ Aquila is only waiting on its wetlands permit, which is necessary because the Back Forty Mine will destroy some wetlands; however, Aquila has promised to pay to conserve wetlands further downstream.¹⁵⁰ After the mine is closed, the processing chemicals, including cyanide, and leftover rock will be stored.¹⁵¹ Problematically, the mixture of leftover chemicals and rocks, primarily the cyanide and sulfide, becomes a toxic acid when mixed with air and water.¹⁵²

The Menominee object to the building of the Back Forty Mine for primarily two reasons.¹⁵³ First, the mine will cover an area that includes

pits-neighbor-against-neighbor/550494001/ [hereinafter Srubas, *Proposed mine pits*].

147. *Id.*

148. Paul Srubas, *Aquila Resources gets fourth, final Back Forty mine permit, but with strings attached*, GREEN BAY PRESS-GAZETTE (June 5, 2018), <https://www.greenbaypressgazette.com/story/news/2018/06/04/back-forty-mine-aquila-final-permit-michigan-opponents-fight-menominee-tribe-river-sulfide-open-pit/671503002/> [hereinafter Srubas, *Aquila gets fourth permit*]. Since writing this note, Aquila has gotten approval for the fourth permit from the Michigan DEQ. *Id.* However, the final permit is being contested and there are both administrative and federal lawsuits being filed to contest it. *See generally* Menominee Indian Tribe of Wisconsin, *Menominee Tribe Challenges Michigan DEQ For Greenlighting Back Forty Mine*, INTERCONTINENTAL CRY (Aug. 7, 2018), <https://intercontinentalcry.org/menominee-tribe-challenges-michigan-deq-for-greenlighting-back-forty-mine/>; Patty Murray, *Federal Judge Hears Oral Arguments In Back Forty Mine Case*, WIS. PUB. RADIO (Aug. 2, 2018, 6:35 AM), <https://www.wpr.org/federal-judge-hears-oral-arguments-back-forty-mine-case>; Paul Srubas, *Group believes EPA and Corps of Engineers, not Michigan, should control mining permits*, GREEN BAY PRESS-GAZETTE (Nov. 15, 2018), <https://www.greenbaypressgazette.com/story/news/2018/11/15/sulfide-menominee-aquila-back-40-mining/2016230002/> [hereinafter Srubas, *EPA and Corps of Engineers should control permits*].

149. Srubas, *Proposed mine pits*, *supra* note 146.

150. *Id.*

151. *Id.*

152. *Id.*

153. *See* Press Release, Office of the Chair Menominee Tribe of Wis., Menominee Indian Tribe Calls Approval of Aquila Res. "Back Forty" Mine Permit Absolute failure to

twenty-four sites of cultural and historical significance to the Menominee people.¹⁵⁴ The mouth of the Menominee River is the site of origin of the Menominee clans and the area has long been populated by Menominee people.¹⁵⁵ Due, in part, to the culturally sensitive nature of the location of the Back Forty Mine, other Native American Associations have written in support of the Menominee's opposition to the Back Forty Mine.¹⁵⁶ For instance, the National Indian Education Association is concerned about the impact to Menominee children who are trying to learn about the origin of their tribe:

Native students with access to education grounded in their culture, language, history, and traditions are more likely to succeed in the classroom and beyond. For generations, Native peoples have retained a cultural and spiritual relationship with their ancestral lands. Culturally significant sites connect Native students to the history, culture, and traditions of their people. In this way, sacred sites are critical for the success of Native students.¹⁵⁷

An Aquila representative has spoken about the possible degradation or destruction of an area of significant cultural importance.¹⁵⁸ In an interview with a local newspaper, David Anderson, Aquila's Director of Environment and Regulatory Affairs, said Aquila has carefully mapped

protect water, env't, and Tribes Cultural Res. (Dec. 29, 2016), <http://www.menominee-nnsn.gov/GovernmentPages/Initiatives/Back40Mine/Documents/1228Statement.pdf>; Compl. for Declaratory and Injunctive Relief at 2, Menominee Indian Tribe of Wis. v. U.S. Environmental Protection Agency, No. 1:18-cv-00108 (E.D. Wis. Jan. 22, 2018).

154. Office of the Chair Menominee Tribe of Wis., *supra* note 153.

155. *See supra* Section III.A.

156. Midwest Alliance of Sovereign Tribes, Resolution No. 011-17: Opposition to the Proposed Back Forty Mine Project (2017), <http://www.noback40.org/Documents/MASTRResolution.pdf>. The Midwest Alliance of Tribes is one such organization. *See generally id.*

157. Letter from Yatibaey Evans, President, Nat'l Indian Educ. Ass'n, to Gary Besaw, Chairman, Menominee Indian Tribe of Wis. (Mar. 31, 2017), <http://www.noback40.org/Documents/NIEALetter.pdf>.

158. Srubas, *Proposed mine pits*, *supra* note 146. However, there is no information on Aquila's own website about what it is doing to address the claims of the Menominee that the mining operation will harm areas of cultural significance. *See Back Forty*, AQUILA RES., <https://aquilaresources.com/projects/back-forty-project/> (last visited Jan. 15, 2018).

around sites of cultural significance so that the sites will remain preserved.¹⁵⁹ However, the proposed mapping technique does not fully address the Menominee's key concerns of damage to sites of cultural and historical significance and the contamination of the Menominee River.¹⁶⁰ Pollution or destruction to the Menominee River would hurt the Tribe's wild rice production, fishing, and subsequent consumption of Lake Sturgeon, all of which is of cultural and religious importance to the Tribe.¹⁶¹

The Menominee's second objection to the building of the Back Forty Mine involves environmental concerns.¹⁶² For instance, there is a risk that the Menominee River will become contaminated from the toxic mix of chemicals produced by building and running the mine.¹⁶³ The Menominee River runs approximately 120 miles from Northern Wisconsin and Upper Michigan into the Green Bay drainage area of Lake Michigan.¹⁶⁴ The Menominee River is also one of the largest watersheds in the Lake Michigan drainage basin system.¹⁶⁵ The threat of pollution to the Menominee River poses a risk for all people who use the river and the subsequent Great Lakes for drinking water.¹⁶⁶ While Aquila maintains that the Back Forty Mine will operate in an environmentally

159. Srubas, *Proposed mine pits*, *supra* note 146.

160. See generally *Menominee Nations Opposition to the Proposed Back Forty Mine*, *supra* note 119.

161. Compl. for Declaratory and Injunctive Relief at 9–10, *Menominee Indian Tribe of Wis. v. U.S. Environmental Protection Agency*, No. 1:18-cv-00108 (E.D. Wis. Jan. 22, 2018).

162. Office of the Chair Menominee Tribe of Wis., *supra* note 153; Srubas, *Proposed mine pits*, *supra* note 146.

163. Office of the Chair Menominee Tribe of Wis., *supra* note 153; Srubas, *Proposed mine pits*, *supra* note 146.

164. *Menominee River [MI, WI], AM. RIVERS*, <https://www.americanrivers.org/endangered-rivers/menominee-river-mi-wi/> (last visited Feb. 27, 2018).

165. *Id.*

166. See Office of the Chair Menominee Tribe of Wis., *supra* note 153; Srubas, *Proposed mine pits*, *supra* note 146.

responsible way,¹⁶⁷ critics assert that there is no environmentally responsible way to mine that area.¹⁶⁸

C. The Legal Battle Between the Aquila and the Menominee

Aquila currently has three of the four permits¹⁶⁹ from the Michigan Department of Environmental Quality that it needs to build the Back Forty Mine.¹⁷⁰ “The Nonferrous Metallic Mineral Mining Permit and the Michigan Air Use Permit to Install for the project were approved by the [Michigan Department of Environmental Quality] on December 28, 2016. The National Pollutant Discharge Elimination System (NPDES) permit was approved on April 5th, 2017.”¹⁷¹ The Menominee have challenged the permits through the Michigan administrative law system.¹⁷² In February 2017, the Menominee Tribe filed a petition for a contested case hearing on the approval of the mining permits for the Back Forty Mine.¹⁷³

In addition to filing for a contested case hearing, the Menominee are working with Earth Justice, an environmental legal group.¹⁷⁴ Together,

167. AQUILA RES., *Aquila Resources Announces Positive Feasibility Study Results For Its Back Forty Project 1* (Aug. 1, 2018), <https://aquilaresources.com/wp-content/uploads/2018/08/Aquila-PR-Back-Forty-Feasibility-Study-Aug-1-2018.pdf>.

168. See generally Srubas, *Proposed mine pits*, *supra* note 146. Press Release, Office of the Chair Menominee Tribe of Wis., *Earth Day: Menominee Indian Tribe Applauds Conservation Grp. Naming Menominee River to Top 10 Most Endangered List* (Apr. 21, 2017), <http://www.noback40.org/Documents/earthday4212017.pdf>.

169. Srubas, *Proposed mine pits*, *supra* note 146. Since the writing of this note, Aquila has received all four permits, but there are still ongoing lawsuits. Srubas, *Aquila gets fourth permit*, *supra* note 148; INTERCONTINENTAL CRY, *supra* note 148; Murray, *supra* note 148; Srubas, *EPA and Corps of Engineers should control permits*, *supra* note 148.

170. AQUILA RES., *supra* note 158.

171. THE MENOMINEE TRIBE OF WIS., *supra* note 115.

172. Press Release, Office of the Chair Menominee Indian Tribe of Wis., *Menominee Indian Tribe of Wis. Challenges Mich. Dep’t of Env’tl. Quality’s (MDEQ) Approval of Aquila Res.’s Back Forty Mine Permit* (Feb. 27, 2017), <http://www.noback40.org/Documents/22817PressRelease.pdf>.

173. *Id.*

174. *Menominee Tribe Takes Action to Protect Its Namesake River*, EARTHJUSTICE (Nov. 6, 2017), <https://earthjustice.org/news/press/2017/menominee-tribe-takes-action-to-protect-its-namesake-river>.

Earth Justice and the Menominee Tribe submitted a 60-Day notice of intent to sue under the provisions in the Clean Water Act and a Complaint for Declaratory and Injunctive Relief.¹⁷⁵ The main issues in this case pose interesting legal ramifications. The National Historic Preservation Act requires the U.S. Federal Government to consult with Native American Tribes that have any religious or cultural ties to an area under consideration for a permit to dredge and fill river areas, even if that area is not on the Tribe's reservation.¹⁷⁶ Despite the Clean Water Act being a federal program, Michigan is one of two states that reviews and issues the dredge and fill permits in lieu of the federal government.¹⁷⁷ States that are administering the federal government's responsibilities are not required to follow the law that requires consultation with Tribes that have a cultural or religious interest in the area to be mined.¹⁷⁸ Michigan's own laws require "a permit applicant to consider impacts to 'cultural, historical, or archaeological resources.'"¹⁷⁹ Despite this perceived protection, the resources that are actually protected under Michigan law are much narrower than the resources protected by federal law.¹⁸⁰ For instance, Michigan law only includes areas that are presently *listed* as being historically significant, not areas that are *thought* to be historically significant.¹⁸¹ Arguably, the most problematic part of Michigan administering the permit in lieu of the federal government is that the Department of Environmental Quality is only required to consult with federally recognized tribes in Michigan.¹⁸² The Menominee Tribe is located in Wisconsin; thus, the Michigan Department of Environmental

175. *Id.*; see 60 Day Notice of Intent to Sue, Janette K. Brimmer & Stephanie Tsosie, Earthjustice, Counsel for the Menominee Tribe of Wisconsin (Nov. 6, 2017), <https://earthjustice.org/sites/default/files/files/60%20Day%20Notice%20Letter%20back%20Forty%20Mine%20Project.pdf>; see generally 33 U.S.C. § 1251 et seq.

176. Gussie Lord, *Federal Delegation to States of Clean Water Act Section 404 Permitting May Result in Reduced Consultation with Tribes Regarding Historic Preservation*, 12 NATIVE AM. RES. COMM. NEWSLETTER (A.B.A., Env't, Energy, and Res.), 13 (2016), <https://turtletalk.files.wordpress.com/2016/09/2016-08-aba-seer-native-american-resources-cmte-newsletter-vol12-no-1.pdf>.

177. *Id.*

178. *Id.* at 13–14.

179. *Id.* at 14.

180. *Id.*

181. *Id.*

182. *Id.*

Quality argues it does not need to consider the Menominee's concerns when deciding whether or not to grant the Back Forty Permit.¹⁸³ The current debate is whether the state that has been delegated federal authority must also consult with all affected Tribes, similar to the process the federal government would have to follow had the authority not been delegated.

In addition to the 60-day notice of intent to sue and the Complaint for Declaratory and Injunctive Relief, the Menominee have also sent letters to the Federal Environmental Protection Agency and the Federal Army Corps of Engineers asking these agencies to step in and exercise authority over the permitting of the Back Forty Mine.¹⁸⁴ Earth Justice and the Menominee assert that the federal government has the responsibility to determine if Aquila receives the permit for the Back Forty Mine.¹⁸⁵ The Back Forty construction and eventual mining will have an effect on waters outside of Michigan; hence, it is the federal government that should be deciding the permits—a decision this large, with this great of an impact should not be left up to a singular state.¹⁸⁶ If Earth Justice and the Menominee prevail, the federal government will have authority over granting the permit and will have to assess what impact the Back Forty Mine will have on Menominee sites of cultural and historical significance, as well as the risk of environmental degradation to the Menominee River.¹⁸⁷

The battle over the Back Forty has been going on for several years and is still ongoing.¹⁸⁸ One solution for obtaining protection for the Menominee River and its associated areas of cultural and historical

183. *Id.*

184. *See* EARTHJUSTICE, *supra* note 174.

185. *Id.*

186. *Id.*

187. Lord, *supra* note 176. In the lawsuit the Tribe has filed in the Eastern District of Wisconsin, the Tribe is seeking “a declaration that either; EPA and the Corps have failed in their mandatory duty to exercise jurisdiction over . . . permitting jurisdiction over the Back Forty Mine;” or that the EPA and Corps’ refusal to exercise jurisdiction is a final agency action, and thus, subject to arbitrary and capricious review. Compl. for Declaratory and Injunctive Relief at ¶ 5, Menominee Indian Tribe of Wis., No. 1:18-cv-00108. Additionally, the Menominee are seeking an order to the EPA and Corps to exercise jurisdiction over the permitting process as a form of injunctive relief. *Id.*

188. *See* THE MENOMINEE TRIBE OF WIS., *supra* note 115.

significance is to look to the process in New Zealand that obtained legal personhood status for the Whanganui River.¹⁸⁹

IV. COMPARING THE MĀORI AND THE MENOMINEE: AN ANALYSIS OF SOCIAL AND POLITICAL STRATEGIES

This section will investigate the similarities between the Māori and their ties to the Whanganui River, and the Menominee Tribe and their ties to the Menominee River. First, both Indigenous groups hold their respective Rivers in high cultural regard and have actively sought to protect their Rivers.¹⁹⁰ Second, both Indigenous groups have suffered from settler-colonial policies and treaties which caused them to lose exclusive control over their sacred land and rivers.¹⁹¹ It is through analyzing these similarities that this note will argue some of the same techniques used in New Zealand should be utilized by the Menominee in the United States. Finally, this section will end with briefly addressing the differences between the two Indigenous groups and their efforts to preserve their respective River, as well as the difficulties that being in a U.S. government framework presents.

First, the Whanganui River and the Menominee River are both extremely important to the Māori and the Menominee respectively. The Māori have a saying, “Ko au te awa. Ko te awa ko au” which means “I am the river. The river is me.”¹⁹² The Māori that live around the Whanganui River are often referred to as the “tribes of Whanganui” and derive “their name, their spirit and their strength from the great river.”¹⁹³ The Whanganui Tribes believe that the Whanganui River was the life force for one of their ancestors and, as such, the Whanganui River and the people are inseparable, a concept known as Te Awa Tupua.¹⁹⁴ The tribes of Whanganui would catch eels and other fish in the Whanganui River and they depended on the River for travel and as a gathering place

189. See *supra* Section II.B and Part III.

190. See generally *supra* Parts II, III.

191. See generally *supra* Parts II, III.

192. David Young, *Story: Whanganui tribes*, TE ARA - THE ENCYCLOPEDIA OF N.Z., <https://teara.govt.nz/en/whanganui-tribes> (last updated Mar. 22, 2017).

193. *Id.*

194. Record of Understanding in relation to Whanganui River Settlement 2011, *supra* note 70, ss 1.2 – 1.4.

to situate their villages.¹⁹⁵ Similarly, the Menominee's origin story is centered around their ancestors' interaction with the Menominee River.¹⁹⁶ The Menominee people also positioned themselves around the Menominee River and used it for fishing and travel.¹⁹⁷ It is not a coincidence that both the Whanganui River and the Menominee River share a namesake with the Indigenous group that cares for and protects them. The name of each River alone illustrates how important each River is to the history, culture, and religion of each Indigenous group.¹⁹⁸

Second, both the Māori and the Menominee have been involved with treaties that ceded their right to ancestral lands.¹⁹⁹ New Zealand was colonized by the British in 1840, which was marked with the signing of the Treaty of Waitangi.²⁰⁰ This Treaty resulted in decades of land loss and loss of control over the industrialization of the Whanganui River.²⁰¹ It was not until the 1970s that the Māori were able to get legislation passed that addressed their claims of unfair treatment under the Treaty of Waitangi.²⁰² The passage of the Treaty of Waitangi Act of 1975 signaled the beginning of the process that led to the Whanganui River obtaining legal personhood recognition.²⁰³ The purpose of that Act was to address Māori claims of unfair treatment under the Treaty of Waitangi.²⁰⁴ One of the Māori's main contentions was the dispossession of their rights to and control of the Whanganui River.²⁰⁵ The British colonization of the Māori, as evidenced in the Treaty of Waitangi and its application, deprived the Māori of the ability to care for their ancestral River as they had done since time immemorial.²⁰⁶ Likewise, the Menominee dealt with U.S.

195. Young, *supra* note 192.

196. *See supra* Section III.A.

197. *See supra* Section III.A.

198. *See generally* Young, *supra* at note 192; *see also* Record of Understanding in relation to Whanganui River Settlement 2011, *supra* note 70, ss 1.2 – 1.4.

199. *See supra* Sections II.A, III.A.

200. *See supra* Section II.A.

201. *See generally* Orange, *Dishonouring the treaty*, *supra* note 27; *see also* The Public Works Acts 1876, Part VIII, paras 199-200 (N.Z.); Māori Affairs Amendment Act 1967, pt II, s 15 (N.Z.).

202. *See Treaty Timeline: Treaty events since 1950*, *supra* note 47.

203. *See id.*

204. *See* Treaty of Waitangi Act 1975, Preamble (N.Z.).

205. *See supra* Section II.A.

206. *See supra* Section II.A.

settlers and colonization policies.²⁰⁷ The Menominee signed a series of treaties with the U.S. Federal Government, which resulted in a loss of land and a loss of control over their ancestral river, the Menominee River.²⁰⁸ Unlike the Māori, however, the Menominee are just beginning the legal fight to regain the ability to care for the Menominee River.²⁰⁹

The Menominee are currently experiencing some of the same issues the Māori dealt with in the 1960s and 1970s. In 1958, the Tangiaro Power Scheme (TPS) was approved to be built on the Whanganui River.²¹⁰ TPS caused the River to lose 50% of its normal amount of flow and diverted six of its headwaters into other lakes and rivers.²¹¹ The Māori opposed the building of the TPS because of the damage that could be caused and the resulting mixing of different tribal waters.²¹² The Māori believed it to be “a serious spiritual offence” if waters from different tribal jurisdictions mixed, which is exactly what happened after the TPS was built.²¹³ It took years after the TPS was installed and running for Māori concerns about Te Awa Tupua to be considered.²¹⁴ It was not until the protests and political lobbying of the 1970s that the Māori’s concerns about the Whanganui River were addressed.²¹⁵ In the 2017 Settlement, the Crown relied on a previously negotiated agreement made between the TPS electricity company and the Māori to determine

207. See *supra* Part III.

208. *Menominee Indian Tribe of Wis. v. Thompson*, 161 F.3d 449, 452–53.

209. See *Menominee Nations Opposition to the Proposed Back Forty Mine*, *supra* note 119. Prior to the fight against the Back Forty Mine, the Menominee fought against their termination status and for the right to fish and hunt as the Wolf River Treaty allowed; thus, while they are not unaccustomed to fighting the U.S. government to enforce their treaty rights, the fight against the Back Forty Mine is the first action focused solely on the health and well-being of the Menominee River, *Menominee Tribe of Indians*, 391 U.S. at 411.

210. David Young, *River of Great Waiting*, N.Z. GEO. (July – Sept. 1989), <https://www.nzgeo.com/stories/river-of-great-waiting/>.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Treaty Timeline: Treaty events since 1950*, *supra* note 47; Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 3, subs 1, para 69, s 5(c) (N.Z.); Ruruku Whakatupua – Te Mana Te Iwi O Whanganui 2014, s 1.11 (N.Z.). For a full history of the Tongariro Power Scheme see Ruruku Whakatupua – Te Mana O Te Iwi O Whanganui 2014, ss 2.81 – 2.98 (N.Z.).

the future of the TPS on the Whanganui River.²¹⁶ The Menominee could also try to utilize this strategy and arrange a private agreement between Aquila and the Tribe. However, it is important to note that the agreement between the Māori and the TPS operators did not occur until March 2011, at which point negotiations for a settlement bill had already begun.²¹⁷ Thus, an agreement between the Menominee and Aquila is unlikely to occur if there is not pending legislation to cede control and care of the Menominee River to the Menominee people.

Further, the Māori leveraged the cultural importance and visibility of the Whanganui River in its protests in the 1960s and 1970s.²¹⁸ The Māori marched 622 miles with 5,000 people to deliver a petition with 60,000 signatures to the Parliament government.²¹⁹ This was a significant show of support for the Māori and their right to equitable and fair treatment under the Treaty of Waitangi.²²⁰ This march and several other protests took place on New Zealand's national holiday celebrating the Treaty of Waitangi, which was the document being protested.²²¹ Further, the national media in New Zealand covered the march, which garnered nationwide attention.²²² In contrast, the Menominee have also held a march, the "Water Walk," to bring attention to their concerns regarding the Back Forty Mine, but those actions have gotten little to no media attention.²²³ The Water Walk did not have 5,000 people marching in protest, rather there were approximately 40 participants.²²⁴ The Māori protests also coincided with a national holiday celebrating the very

216. See Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 3, subs 1, para 69, s 5(c) (N.Z.).

217. Ruruku Whakatupua – Te Mana Te Iwi O Whanganui 2014, s 1.12 (N.Z.).

218. See *Whina Cooper leads land march to Parliament*, *supra* note 51.

219. *Id.*

220. *Id.*

221. Orange, *honouring the treaty*, *supra* note 41.

222. *Whina Cooper leads land march to Parliament*, *supra* note 51.

223. Flyer, Menominee Nation, We Walk for the Sacred Water: Where our Wild Rice Grows (Sept. 21, 2016), <https://turtletalk.files.wordpress.com/2016/09/menominee-river-water-walk-sept-21.pdf>. To illustrate, even as I was researching this paper, I struggled to find any mainstream media reports on the Menominee Water Walk and I was actively looking for the information.

224. Dolly Potts, *Menominee River Water Walk*, SUSTAINABLE DEV. INST. (Sept. 30, 2016), <http://sustainabledevelopmentinstitute.org/2016/09/menominee-river-water-walk/>.

document that was being protested, which helped to bring national attention and media recognition to the Māori's plight concerning the use and misuse of the document.²²⁵ In a U.S. context, this would be similar to the Menominee joining with other Tribes and protesting the U.S. Declaration of Independence on July 4th, the U.S. Independence Day. It is reasonable to presume that if there was a large protest about the Declaration of Independence in the U.S. capital, there would be a lot of media attention. Unfortunately for the Menominee, most people are not familiar with the cultural significance of the Menominee River, nor are they familiar with the many treaties between the U.S. and the Menominee.²²⁶ The difference between when and how each Tribe protested to protect their River highlights some of the reasons the Māori were successful, while the Menominee have been less so.

Further, New Zealand has a large population of Māori, about 15% of the total population, and most Indigenous people in New Zealand fall into this classification.²²⁷ In contrast, the Menominee are not as widespread in the U.S. and they are only one Tribe out of many in the U.S.²²⁸ This automatically gives the Menominee less access to people and resources than the Māori had. In the Māori's protest, the Māori marched for 622 miles to reach Wellington and submit their petition to the Crown.²²⁹ In contrast, the Menominee were marching for awareness, not to deliver a petition and they only walked for one day.²³⁰ These were two different types of protests, so it is no surprise the outcome was not the same. In addition to the protests, the Māori also had a political group, the Mana Motuhake, that was lobbying and petitioning to amend the Treaty of Waitangi.²³¹ It was this combination of political and social pressure that finally led to an acknowledgment of the problems within the Treaty

225. Orange, *honouring the treaty*, *supra* note 41.

226. *See supra* Part III.

227. *Major ethnic groups in New Zealand*, STATS NZ (Jan. 28, 2015, 4:45 PM), <https://www.stats.govt.nz/infographics/major-ethnic-groups-in-new-zealand>.

228. Karen R. Humes et al., *Overview of Race and Hispanic or Latino Origin: 2010*, U.S. CENSUS BUREAU (Mar. 2011), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

229. *Whina Cooper leads land march to Parliament*, *supra* note 51.

230. Potts, *supra* at note 224.

231. Orange, *honouring the treaty*, *supra* note 41; *Treaty Timeline: Treaty events since 1950*, *supra* note 47.

of Waitangi and how the Treaty was being applied to disadvantage the Māori.²³² Thus far, the Menominee have filed lawsuits, but they do not have the same political and social influence that the Māori had in the 1970s.²³³ If the Menominee are not successful in court, perhaps addressing the problem via political lobbying and large social movements would be beneficial, much in the same way it was beneficial for the Māori to utilize those methods.²³⁴

Despite the aforementioned similarities, the political structure of the U.S. presents a possibly insurmountable challenge. In New Zealand, the British had colonized the country and signed one main treaty with the Māori in the 1800s to exert European authority over the country.²³⁵ In contrast, the Menominee signed several different treaties with the U.S. Federal Government and later legislation was passed to terminate their status as a federal Indian tribe.²³⁶ The multiple treaties and potential for Congress to change the Menominee's tribal classification makes it more difficult to protest and petition for a fair honoring of the treaties when there is not just one document to protest against.²³⁷

Perhaps the most significant difference is that the colonizer still holds the political power in the U.S., whereas when New Zealand and the Māori entered into the Settlement in 2017, England was no longer in a position of political power, and New Zealand was operating as a sovereign.²³⁸ In the 2017 Settlement, the Crown acknowledged and apologized to the Māori for taking away their rights to the Whanganui River and their ability to care for Te Awa Tupua.²³⁹ In contrast, despite repeated requests for an apology, the U.S. has done no more than insert a non-legally binding statement into a 2009 defense appropriations bill.²⁴⁰

232. *Treaty Timeline: Treaty events since 1950*, *supra* note 47.

233. EARTHJUSTICE, *supra* note 174; *see* sources cited *supra* note 148.

234. *See* EARTHJUSTICE, *supra* note 174.

235. *See* Phillips, *supra* note 12.

236. *See supra* Section III.A.

237. *See generally* Section III.A.

238. Wilson, *supra* note 69.

239. Ruruku Whakatupua – Te Mana O Te Iwi O Whanganui 2014, ss 3.20 – 3.25 (N.Z.).

240. Rob Capriccioso, *A sorry saga: Obama signs Native American apology resolution; fails to draw attention to it*, INDIAN L. RESOURCE CTR. (Jan. 13, 2010), <http://indianlaw.org/node/529>.

The apology that former President Obama issued apologized on behalf of the citizens of the U.S., not on behalf of the U.S. government.²⁴¹ In contrast, the Crown itself apologized to the Māori for the wrongs it committed, not general wrongs committed by citizens.²⁴² The difference between the way the New Zealand government handled their apology and the way the U.S. government handled their statement of apology illustrates the difference between the two governments and how they handle issues that arise with Indigenous groups. The Māori and the Crown worked out a Settlement to come to a mutual agreement, whereas U.S. federal agencies are refusing to even take responsibility for granting permits to mine on the Menominee River.²⁴³

V. CONCLUSION

In conclusion, despite the similarities between the Māori and the Menominee and their respective fights for their namesake Rivers, it is unlikely that the Menominee will be able to utilize any of the strategies used by the Māori before mining begins on the Back Forty Mine.²⁴⁴ If not for the time constraints created by the building of the Back Forty Mine, the Menominee could try to leverage more social and political support for their fight against the Back Forty Mine; however, because of the time limitations, their court case seems like the best path forward.²⁴⁵ Both the Māori and the Menominee entered into treaties with a colonizing government that were later used to deprive each Indigenous group of their right to their ancestral River.²⁴⁶ The New Zealand government acknowledged their wrongdoing and, after an arduous legal battle, granted Te Awa Tupua legal personhood status as a way to protect its unique importance to the Māori.²⁴⁷ The Menominee might not be able to

241. *Id.*

242. Ruruku Whakatupua – Te Mana O Te Iwi O Whanganui 2014, ss 3.20 – 3.25 (N.Z.).

243. *See generally supra* Section III.B; Compl. for Declaratory and Injunctive Relief at ¶ 5, Menominee Indian Tribe of Wis. v. U.S. Environmental Protection Agency, No. 1:18-cv-00108 (E.D. Wis. Jan. 22, 2018).

244. *See supra* Part IV.

245. *See supra* Part IV.

246. *See supra* Sections II.A, III.A.

247. *See supra* Section II.B.

get legal personhood status for the Menominee River, but perhaps they can be granted guardianship rights²⁴⁸ as an acknowledgment of the past harms committed under the Menominee-U.S. Treaty agreements. The Māori did not achieve the Settlement in a vacuum, rather there were decades of hard work raising social and political awareness about the Whanganui River and its importance to the Māori people, particularly those known as the Whanganui Tribes.²⁴⁹ Therefore, with more focus on social movements and political lobbying, perhaps the Menominee will eventually regain their ability to care for the Menominee River and preserve it as part of their culture, history, and religion.

248. Guardianship rights are an entirely different argument and one that has specifically not been addressed in this paper. The Māori, via the position of Te Pou Tupua, will be acting as a guardian of Te Awa Tupua, but this position came secondary to the recognition of the Māori's right to preserve Te Awa Tupua and Te Awa Tupua's legal personhood status. Tūtohu Whakatupua 2012, ss 2.18 – 2.22 (N.Z.), <https://www.govt.nz/dmsdocument/3706.pdf>. The legal parameters to give the Menominee Tribe control over the Menominee River should be addressed prior to a guardianship arrangement.

249. *See supra* Part II and Section II.B.