

# **RIGHTS OF NATURE, RECONCILIATORY JUSTICE, AND NATIONAL PARKS: EVALUATING THE TE UREWERA MODEL FOR REDWOOD NATIONAL AND STATE PARKS**

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## **ABSTRACT**

Rights of nature initiatives, which have been on the rise across the world since the 1970s, seek to advance environmental protection and conservation by recognizing legal personhood for natural features and ecosystems. Though the term *rights of nature* may on its face seem purely ecocentric, rights of nature initiatives have also been used to advance the rights of Indigenous peoples by asserting Indigenous communities' connections to ancestral homelands, recognizing Indigenous ways of relating to the natural world, and acknowledging the impact of colonialism on Indigenous communities. Māori communities in Aotearoa New Zealand are at the forefront of this movement, working with the New Zealand Crown to establish rights of nature for multiple ecosystems. This Article considers the legacy of displacement of Indigenous peoples from national parks in the United States and New Zealand and analyzes the Te Urewera Act, which established legal personhood for the lands composing Te Urewera National Park. This Article then considers how the Yurok Tribe in California could use a similar model for Redwood National Park, which could both establish rights of nature for the park and acknowledge historical grievances against the United States and State of California.

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## INTRODUCTION

In the United States, the creation of state and national parks “historically involved, and continues to involve, violent practices of land dispossession, enclosure and privatization, and the marginalization of Native American People.”<sup>1</sup> Lands taken from Indigenous peoples through genocide, forced removal, and assimilation later became those used for national parks throughout the United States.<sup>2</sup> Although the values underpinning the establishment of national parks do not align exactly with those underpinning the resource extraction that catalyzed colonialism, these values still descend directly from settler-colonial understandings of property ownership. Though many Americans view the national parks as positive examples of conservation, the parks continue to perpetuate a view of nature as set apart from humans—a view that reinforces the continued erasure of Indigenous history and contributes to continued colonial land policy.<sup>3</sup>

This Article suggests that the rights of nature movement—a growing international legal movement that seeks to protect the environment by establishing legal rights for natural features and ecosystems—combined with reconciliatory justice mechanisms may be an effective vehicle for interrogating colonial legacies, asserting the rights of Indigenous communities, and developing sustainable and creative systems to manage national parks. The national park system, which already enjoys a level of environmental protection and engenders public support for care and preservation, may prove fertile ground for an initial national-level rights of nature and reconciliatory justice initiative in the United States. This Article further argues that, in order to meaningfully interrogate the history of colonialism underpinning the national park system and American public land policy as a whole, any national park rights of nature initiative must be Indigenous-led. To this end, this Article examines Aotearoa New Zealand’s Te Urewera Act—a Māori-led rights of nature and reconciliatory justice initiative for lands previously designated as a New Zealand national park. This Article then applies a similar model to

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<sup>1</sup> Pierre Walter, *Settler Colonialism and the Violent Geographies of Tourism in the California Redwoods*, 25 *TOURISM GEOGRAPHIES* 243, 245 (2023).

<sup>2</sup> *Id.*; Jeanette Wolfley, *Reclaiming a Presence in Ancestral Lands: The Return of Native Peoples to the National Parks*, 56 *NAT. RES. J.* 55, 59-60 (2016).

<sup>3</sup> Rebecca Solnit, *John Muir in Native America*, *SIERRA CLUB* (Mar. 2, 2021), <https://www.sierraclub.org/sierra/2021-2-march-april/feature/john-muir-native-america> [<https://perma.cc/TDW3-99HF>]; see Walter, *supra* note 1, at 245.

Redwood National Park, considering a previous rights of nature initiative undertaken by the Yurok Tribe—a tribe with ancestral territory inside Redwood National Park.

Part I of this Article first examines the colonial roots of the national park systems in the United States and New Zealand, followed by a discussion of the specific history of Redwood National and State Parks in the United States and Te Urewera National Park in Aotearoa New Zealand. This Part then turns to a discussion of the rights of nature movement, before concluding with a discussion of reconciliatory justice frameworks.

Part II first analyzes the rights of nature and the reconciliatory justice framework used in Aotearoa New Zealand's Te Urewera Act and the corresponding Tūhoe Claims Settlement Act. This Part then discusses how the Te Urewera Act operates in practice, including examining a 2023 case, *Tuna v. Te Urewera Board*, which centers around disagreements over the interpretation of the Te Urewera Act's provisions between Tūhoe community members and the Te Urewera Board. Next, this Part turns to a discussion of the Yurok Tribe's ecological management practices in and around Redwood State and National Parks, including examining the Rights of the *Heyhl-keek 'We-roy* Ordinance—the Yurok Tribe's rights of nature initiative for the Klamath River.

Finally, Part III applies the Te Urewera model to Redwood State and National Parks, arguing that a rights of nature and reconciliatory justice initiative led by the Yurok Tribe would be well-suited for the park system while also noting potential concerns that may arise.

## I. BACKGROUND

Today, the national park systems in the United States and New Zealand operate as both a direct descendant of colonial violence and a continuing colonial project.<sup>4</sup> It is imperative that the general colonial history of the national park systems in the United States and New Zealand are explored. To this end, this Part first discusses how the United States government and the State of California engaged in genocidal tactics to

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<sup>4</sup> See generally Wolfley, *supra* note 2 (explaining that the national park service benefitted from the removal of tribes); see generally Margaret Mutu, 'To Honour the Treaty, We Must First Settle Colonisation' (Moana Jackson 2015): *The Long Road from Colonial Devastation to Balance, Peace and Harmony*, 49 J. ROYAL SOC'Y N.Z. (HE ĀPITI SUPPLEMENT) (2019) (discussing the history of colonial violence in New Zealand); see generally Jacinta Ruru, *Legislative Provision for Tino Rangatiratanga: A National Park Case Study*, 8 Y.B. N.Z. JURIS. SPECIAL ISSUE – TE PERUNGA 316 (2005) (explaining that Māori need governance rights in national parks).

dispossess the Yurok Tribe and other California Native tribes of their ancestral homelands to establish Redwood National and State Parks. This Part then turns to an examination of the similar history of colonization in Aotearoa New Zealand, which led to the establishment of Te Urewera National Park on the ancestral territory of the Tūhoe iwi.

## A. THE COLONIAL LEGACY OF THE NATIONAL PARKS

### i. *The United States' National Parks*

Congress established the first national park, Yellowstone, in 1872 by reserving lands near the Yellowstone River and placing them under the exclusive control of the Secretary of the Interior.<sup>5</sup> This occurred in the context of federal land policies like the Homestead Act which emphasized the right of each American family to “have its share of the public domain free of monopolization by the rich.”<sup>6</sup> Congress established national parks to extend this right to scenic areas by preserving “spectacular sites for the average citizen by holding them as public places to be used and enjoyed by everyone.”<sup>7</sup> “Everyone” in this context meant white American citizens, and excluded the Indigenous people on whose ancestral lands the parks were established—indeed, Native Americans were not American citizens until 1924, over fifty years after the establishment of Yellowstone National Park.<sup>8</sup>

The Yellowstone National Park Act makes no mention of Indigenous peoples’ connection or rights to the parklands, despite the fact that multiple Indigenous groups inhabited the lands and considered them as central to their creation stories and livelihoods.<sup>9</sup> The exclusion of Indigenous peoples from the law creating national parks was furthered by the erasure of Indigenous peoples in popular historical narrative about the

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<sup>5</sup> Yellowstone National Park Act, 16 U.S.C. § 21.

<sup>6</sup> JOSEPH L. SAX, *MOUNTAINS WITHOUT HANDRAILS: REFLECTIONS ON THE NATIONAL PARKS* 8 (2d ed. 2018).

<sup>7</sup> *Id.* at 9.

<sup>8</sup> See Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253; see generally Michelle Nijhuis, *The Conservation Movement's Complicated History*, THE ATLANTIC (Apr. 12, 2021), <https://www.theatlantic.com/ideas/archive/2021/04/conservation-movements-complicated-history/618556/> [<https://perma.cc/3MPT-TJFX>] (discussing the racism of prominent conservationists who influenced the establishment of national parks).

<sup>9</sup> See Yellowstone National Park Act, 16 U.S.C. § 21; see *Historic Tribes*, NAT’L PARK SERV.: YELLOWSTONE (Dec. 9, 2025), <https://www.nps.gov/yell/learn/historyculture/historic-tribes.htm> [<https://perma.cc/K3N4-H4P4>].

parks. For example, supporters of the Yellowstone National Park espoused a fiction that Indigenous peoples purposefully stayed away from the Yellowstone area out of fear of the geysers, despite clear evidence to the contrary.<sup>10</sup> After the formation of the parks, Indigenous families were removed from and denied access to the parklands.<sup>11</sup>

This eradication of Indigenous peoples from national parklands stems from settler-colonial views of nature as separate from, and in many ways, in conflict with human activity, and ignores the reality that national parklands were not simply wild, untouched areas, but were “shaped by thousands of years of native use and habitation.”<sup>12</sup> Congress established Yellowstone National Park as a “pleasuring ground for the benefit and enjoyment of the people,” and directed the Secretary of the Interior to manage the park to retain its “natural condition.”<sup>13</sup> Although Congress does not define “natural condition” in the act, the understanding of wilderness, and subsequent management of the park, indicates that this term follows along the lines of the settler-colonial ideas that view nature as separate from people.<sup>14</sup> This is supported by the provision of the act that calls for anyone who settles or occupies the park to be removed as a trespasser, laying the foundation for the perception of the park as “a place where human beings were only visitors.”<sup>15</sup>

Subsequent national parks in the United States followed the same model as Yellowstone National Park, removing Indigenous peoples from the land to create the illusion of natural areas untouched by humans.<sup>16</sup> Management of the national parks historically excluded Indigenous peoples and Indigenous ecological practices.<sup>17</sup>

However, there has recently been a shift to re-integrate Indigenous management into the national park system.<sup>18</sup> In 2021, the US Department of the Interior and the Department of Agriculture issued a joint secretarial order establishing tribal co-stewardship and co-management of federal

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<sup>10</sup> ROBERT B. KEITER, TO CONSERVE UNIMPAIRED: THE EVOLUTION OF THE NATIONAL PARK IDEA 123 (2013); *Historic Tribes*, *supra* note 9.

<sup>11</sup> KEITER, *supra* note 10, at 122.

<sup>12</sup> *Id.*; Wolfley, *supra* note 2, at 55.

<sup>13</sup> Yellowstone National Park Act, 16 U.S.C. §§ 21-22.

<sup>14</sup> KEITER, *supra* note 10, at 122.

<sup>15</sup> *See* Solnit, *supra* note 3; *see* Yellowstone National Park Act, 16 U.S.C. § 22.

<sup>16</sup> *See* Solnit, *supra* note 3.

<sup>17</sup> *Id.*

<sup>18</sup> *See id.*

lands as a federal priority.<sup>19</sup> As of September 2024, 109 of the 431 national parks had co-stewardship agreements with tribes.<sup>20</sup> Additionally, the National Park Service has formal co-management agreements with tribes affiliated with four national parks: Grand Portage National Monument, Glacier Bay National Park and Preserve, Canyon de Chelly, and Big Cypress National Preserve.<sup>21</sup> Co-stewardship agreements encompass a broad variety of collaborative management relationships with tribes and Indigenous communities, whereas co-management relationships are established by law.<sup>22</sup> Though co-stewardship and co-management agreements represent a positive shift toward a recognition of tribal sovereignty and traditional ecological knowledge, these agreements are not a complete delegation of land management authority to tribes, and are still subject to the National Park Services priorities, which may shift dramatically from one administration to the next.<sup>23</sup> Some Indigenous community members argue that the national park land should be formally turned over to federally recognized tribes, arguing that this would protect Indigenous interests, and the parks themselves, from the pendulum of partisan national priorities.<sup>24</sup>

## ii. *New Zealand's National Parks*

New Zealand later adopted the United States' national park model.<sup>25</sup> New Zealand shares a similar colonial history to the United

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<sup>19</sup> U.S. DEP'T OF INTERIOR & U.S. DEP'T OF AGRIC., No. 3403, JOINT SECRETARIAL ORDER ON FULFILLING THE TRUST RESPONSIBILITY TO INDIAN TRIBES IN THE STEWARDSHIP OF FEDERAL LANDS AND WATERS (2021).

<sup>20</sup> *Fact Sheet: Recent National Park Service Work with Indian Country*, NAT'L PARK SERV. (Nov. 18, 2024), <https://www.nps.gov/articles/nov2024-indiancountryfactsheet.htm> [<https://perma.cc/QD9U-S9NQ>].

<sup>21</sup> NAT'L PARK SERV., ADVANCING CO-STEWARDSHIP IN THE NATIONAL PARK SERVICE 4 (2024).

<sup>22</sup> *Id.*; SALLY JEWEL, U.S. DEP'T OF INTERIOR, No. 3342, IDENTIFYING OPPORTUNITIES FOR COOPERATIVE AND COLLABORATIVE PARTNERSHIPS WITH FEDERALLY RECOGNIZED INDIAN TRIBES IN THE MANAGEMENT OF FEDERAL LANDS AND RESOURCES 4 (2016).

<sup>23</sup> See Monte Mills & Martin Nie, *FAQs*, UNIV. OF WASH. GALLAGHER L. LIBR.: SOVEREIGN-TO-SOVEREIGN COOP. AGREEMENTS (July 24, 2025, at 07:01 PDT), <https://lib.law.uw.edu/cooperative/FAQs> [<https://perma.cc/V9NN-TEAM>].

<sup>24</sup> David Treuer, *Return the National Parks to the Tribes*, THE ATLANTIC (Apr. 12, 2021), <https://www.theatlantic.com/magazine/archive/2021/05/return-the-national-parks-to-the-tribes/618395/> [<https://perma.cc/8932-8J8G>].

<sup>25</sup> Jacinta Arianna Ruru, *Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand's National Parks* 62 (2012) (Ph.D. dissertation, University of Victoria) (on file with the University of Victoria).

States.<sup>26</sup> British colonists arrived in New Zealand in the late eighteenth century and sought to dispossess the Indigenous Māori people of their land and resources based on the Doctrine of Discovery.<sup>27</sup> Despite signing the Treaty of Waitangi, which confirmed Māori sovereignty over their lands, the British broke this treaty and confiscated Māori lands through slaughter, rape, fraud, and destruction of Māori crops, homes, and sacred sites.<sup>28</sup> Like in the United States, the forced removal of Māori people from their homelands paved the way for the establishment of national parks in areas that often held great significance for Māori people with little to no Māori input.<sup>29</sup>

New Zealand's first national park, Tongariro National Park, was established in 1894.<sup>30</sup> Interestingly, the Ngati Tuwharetoa Māori tribe originally conceived the idea for this national park.<sup>31</sup> Fearing that the Tongariro mountain, which holds great cultural significance for the Ngati Tuwharetoa tribe, would be sold in parcels to settlers, the chief of the tribe decided to gift the summit of the mountain to the Crown to create a national park that both Māori people and settlers could use.<sup>32</sup> However, the eventual creation of Tongariro National Park was not in line with what the Ngati Tuwharetoa had consented to when they gifted this summit, and the Crown forcibly took more land from the tribe to eventually establish the park.<sup>33</sup> Like national park legislation in the United States which expressly ignored the importance of national parklands to Indigenous peoples, the Tongariro National Park Act explicitly declared that the lands comprising the national park had "no use or benefit to the Native owners."<sup>34</sup>

The establishment of subsequent national parks lacked even the veil of consent that accompanied the establishment of Tongariro National

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<sup>26</sup> *Id.* at 55.

<sup>27</sup> *Id.* at 2-3; see Mutu, *supra* note 4, at 5-6 (2019).

<sup>28</sup> Mutu, *supra* note 4, at 6-8.

<sup>29</sup> See Ruru, *supra* note 25, at 63; see also Ruru, *supra* note 4, at 318 (explaining the significance of natural features in certain national parks to Māori tribes).

<sup>30</sup> Ruru, *supra* note 25.

<sup>31</sup> Jacinta Ruru, *Indigenous Peoples' Ownership and Management of Mountains: The Aotearoa/New Zealand Experience*, 3 INDIGENOUS L.J. 111, 122 (2004).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 122-23, 126.

<sup>34</sup> See Tongariro National Park Act 1894 (N.Z.).

Park.<sup>35</sup> Future national parks were taken forcibly from Māori tribes through warfare or through illegal purchases contested by the tribes.<sup>36</sup> After the Crown established national parks, it prohibited Māori from managing the national park land, despite the guarantees in the Treaty of Waitangi that Māori would have the right to assert sovereignty over their homelands.<sup>37</sup> Like in the United States, these parks were meant to be places for temporary visitation to observe nature's wonders, and prohibited individuals from living in the parks or limited public access under discretion of park boards appointed by the Crown.<sup>38</sup>

### iii. Redwood National and State Parks

Redwood National and State Parks are a complex of one national park and three California state parks located along the Pacific coast in northern California.<sup>39</sup> The land that is now Redwood National and State Parks is the homeland of many different Indigenous groups, including that of the Yurok Tribe, whose ancestral homeland along the Klamath River includes the upper part of the current parks complex.<sup>40</sup> Redwood National

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<sup>35</sup> See, e.g., Ruru, *supra* note 31, at 123-124 (discussing establishment of Egmont National Park and Mount Cook National Park); Tūhoe Claims Settlement Act 2014, pt 1, s 8 (N.Z.) (discussing establishment of Te Urewera National Park).

<sup>36</sup> See Ruru, *supra* note 31, at 123-24 (discussing the Crown's confiscation of the land that became Egmont National Park and the lack of evidence of Māori consent to this taking); see Tūhoe Claims Settlement Act 2014, pt 1, s 8 (N.Z.) (discussing the Crown's illegal purchase of parts of Te Urewera National Park).

<sup>37</sup> Ruru, *supra* note 31, at 125.

<sup>38</sup> See Tongariro National Park Act 1894, s 3 (N.Z.); see Egmont National Park Act 1924, s 13 (N.Z.) (describing the Board's authority to condition public access to the Egmont National Park); see Public Reserves, Domains, and National Parks Act 1928, s 80 (N.Z.) (describing the Board's authority to exclude and condition public access to New Zealand's national parks); see National Parks Act 1952, s 38 (N.Z.) (describing the Board's authority to control public access to national parks, including limits on camping); see also *Brief History of the National Parks*, LIBR. CONG.: MAPPING THE NAT'L PARKS, <https://www.loc.gov/collections/national-parks-maps/articles-and-essays/brief-history-of-the-national-parks> [<https://perma.cc/E6SD-BSYZ>] (last visited Mar. 5, 2026) (crediting the growth of American national parks to an appreciation for wilderness and a desire to escape the effects of industrialization).

<sup>39</sup> *Park Facts*, NAT'L PARK SERV.: REDWOOD (Dec. 23, 2025), <https://www.nps.gov/redw/learn/park-facts.htm> [<https://perma.cc/7TR3-XTF3>]; *Maps*, NAT'L PARK SERV.: REDWOOD (Jan. 28, 2025), <https://www.nps.gov/redw/planyourvisit/maps.htm> [<https://perma.cc/H9RD-8JY6>].

<sup>40</sup> *Local Area History*, NAT'L PARK SERV.: REDWOOD (Oct. 29, 2024), <https://www.nps.gov/redw/learn/historyculture/local-area-history.htm> [<https://perma.cc/C588-Q33J>]; see Walter, *supra* note 1, at 254; see *Yurok Tribe History*, THE YUROK TRIBE, <https://www.yuroktribe.org/our-history> [<https://perma.cc/B28P-86GL>] (last visited Mar. 23, 2025); see *Geospatial Information Technology*, THE YUROK TRIBE, <https://www.yuroktribe.org/is-git> [<https://perma.cc/HG88-3ZXS>] (last visited Mar. 23, 2025).

and State Parks are best-known for their eponymous feature, the awe-inspiring redwood trees—known as the world’s tallest trees.<sup>41</sup> In addition to the majestic redwood trees, the park complex features multiple ecosystems, including three rivers—the Smith River, Klamath River, and Redwood Creek—coast and intertidal zones, and prairies.<sup>42</sup> For the Yurok Tribe, who have been stewards of this land since time immemorial, these natural features and ecosystems are relatives to whom the Yurok people have a responsibility of care.<sup>43</sup>

Before Euro-American settlers arrived in the redwood forests, the Yurok people cared for their homelands through sophisticated land management practices which emphasized the interconnected nature of the ecosystems in the forests.<sup>44</sup> This included practices like controlled burns, which regenerated certain important plants, created hunting grounds for elk and deer, controlled pests and disease, and preserved grassland, woodland, and shrubland terrain.<sup>45</sup> For all of these practices, Yurok people drew on a vast body of traditional ecological knowledge developed through generations of living in the redwood forests.<sup>46</sup>

As with the establishment of other national parks, the establishment of Redwood National and State Parks is part of the legacy of violent genocide and colonialism perpetrated against California’s Indigenous peoples.<sup>47</sup> The genocidal policies of both the federal government and the state of California were particularly horrific, leading to a staggering loss of life for California Indigenous peoples over a short period of time.<sup>48</sup> Pre-settlement, California Indigenous peoples numbered around 150,000.<sup>49</sup> Over the course of just twenty years, a combination of violence by individual settlers, massacres by the US Army, and organized extermination and disenfranchisement policies by state and federal

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<sup>41</sup> *Beyond the Giants: Explore Redwood’s Many Wonders*, NAT’L PARK SERV.: REDWOOD (Apr. 7, 2025), <https://www.nps.gov/redw/index.htm> [<https://perma.cc/K455-FTQX>].

<sup>42</sup> *Natural Features & Ecosystems*, NAT’L PARK SERV.: REDWOOD (Nov. 23, 2022), <https://www.nps.gov/redw/learn/nature/naturalfeaturesandecosystems.htm> [<https://perma.cc/7QVB-8694>].

<sup>43</sup> Beth Rose Middleton Manning & Kaitlin Reed, *Returning the Yurok Forest to the Yurok Tribe: California’s First Tribal Carbon Credit Project*, 39 STAN. ENV’T L.J. 71, 72, 85-87 (2019); see *Yurok Tribe History*, *supra* note 40.

<sup>44</sup> Middleton Manning & Reed, *supra* note 43, at 87-89.

<sup>45</sup> *Id.* at 88.

<sup>46</sup> *Id.* at 87.

<sup>47</sup> Walter, *supra* note 1, at 254.

<sup>48</sup> See *id.*

<sup>49</sup> Benjamin Madley, *Understanding Genocide in California Under United States Rule, 1846-1873*, 47 W. HIST. Q. 449, 449 (2016).

officials led to a decrease in population of California Indigenous people by more than two-thirds.<sup>50</sup>

Acquisition of land and natural resources was a major driver of the genocide of the Yurok and other California Indigenous peoples that lived in the redwood forests.<sup>51</sup> The gold rush spurred the settlement of the area, with around 300,000 miners and homesteaders entering California in the mid-nineteenth century to extract gold, timber, and other resources located on Indigenous land.<sup>52</sup> Violence against California Indigenous peoples occurred first at the hands of homesteaders moving into the area, but it soon became state-sponsored, with the US Army engaging in multiple mass killings of Indigenous peoples.<sup>53</sup> California state officials also contributed greatly to the violence, with California Governor Peter Burnett declaring a “war of extermination” against California Indigenous peoples to continue “until the Indian race becomes extinct” in 1851.<sup>54</sup> California legislators authorized state militia expeditions targeted at Indigenous peoples, killing at least 1,342 California Indigenous people between 1850 and 1861.<sup>55</sup>

The federal government further severed California Indigenous peoples’ connections to their homelands by establishing reservations that constituted a fraction of their original land bases, or by forcibly removing tribes to new territories.<sup>56</sup> In 1855, President Pierce established the Klamath River Reservation and confined the Yurok Tribe to this reservation.<sup>57</sup> This reservation was a narrow strip that ran along the Klamath River and consisted of only a small fraction of the Yurok’s

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<sup>50</sup> See *id.* at 453-55.

<sup>51</sup> Middleton Manning & Reed, *supra* note 43, at 89.

<sup>52</sup> See, e.g., Walter, *supra* note 1, at 255; see also Seafha C. Ramos, *Understanding Yurok Traditional Ecological Knowledge and Wildlife Management*, 86 J. WILDLIFE MGMT. 1, 9 (2021) (describing how European settlers reached northern California during the gold rush and began settling in Yurok country in 1849).

<sup>53</sup> Madley, *supra* note 49, at 453-54.

<sup>54</sup> *Id.* at 455.

<sup>55</sup> *Id.*

<sup>56</sup> See *id.* at 454-56; see also *Digital Atlas of California Native Americans*, SAVE CLEAN WATER PROGRAM, <https://scwp-lacounty.hub.arcgis.com/documents/6bfb8de97936405db472e505ba8a3348/explore> [<https://perma.cc/6NAF-8UUA>] (last visited Apr. 17, 2026) (providing maps that illustrate that California tribes had historical cultural bases across the state and the established reservations constitute a tiny fraction of those lands).

<sup>57</sup> Middleton Manning & Reed, *supra* note 43, at 89; see *Formation of Reservations*, THE YUROK TRIBE, <https://www.yuroktribe.org/formation-of-reservations> [<https://perma.cc/YAL4-RKQ3>] (last visited Mar. 23, 2025).

ancestral land.<sup>58</sup> Many Yurok people were relocated from their traditional villages and forced to learn farming.<sup>59</sup> Conditions on reservations often led to deaths from disease or a lack of food.<sup>60</sup>

The reservation land and resources were not protected from further encroachment by Euro-American settlers.<sup>61</sup> Congressional acts like the Free Timber Act and the Timber and Stone Act in 1878 allowed settlers to claim lands for timber harvesting and mining in the redwood forests.<sup>62</sup> The Dawes Act of 1887 further stripped the Yurok's already-diminished land base.<sup>63</sup> This act divided reservations into parcels and allotted either 160 acres of farmland or 320 acres of grazing land to the head of each Indigenous family on the reservation.<sup>64</sup> After these parcels had been allotted, the excess land was sold to settlers.<sup>65</sup> This act had a devastating effect on Indigenous nations throughout the United States, with over 90 million acres of tribal land taken through the allotment process.<sup>66</sup> For the Yurok Tribe, allotment resulted in the loss of much of their reservation, with the most productive lands going to settlers.<sup>67</sup> This has left the reservation fragmented between Yurok and non-Yurok ownership, making coordinated management of the Yurok land base difficult.<sup>68</sup>

The multi-pronged genocidal policies of federal and state officials had a profound impact on the Yurok and other California Indigenous groups and resulted in widespread dispossession of their homelands. Additionally, colonization had a significant impact on the ecosystems of the redwood forests.<sup>69</sup> Extractive practices, like commercial logging and mining, significantly damaged and transformed the redwood forests.<sup>70</sup>

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<sup>58</sup> Middleton Manning & Reed, *supra* note 43, at 89; *see also* *Geospatial Information Technology*, *supra* note 40 (indicating that a majority of Yurok villages are located on Trinity River and not Klamath River).

<sup>59</sup> *Formation of Reservations*, *supra* note 57.

<sup>60</sup> Madley, *supra* note 49, at 457.

<sup>61</sup> *See* Middleton Manning & Reed, *supra* note 43, at 91.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 90.

<sup>64</sup> *The Dawes Act*, NAT'L PARK SERV. (July 9, 2021), <https://www.nps.gov/articles/000/dawes-act.htm> [<https://perma.cc/YRW7-8726>].

<sup>65</sup> Middleton Manning & Reed, *supra* note 43, at 90.

<sup>66</sup> *The Dawes Act*, *supra* note 64.

<sup>67</sup> Middleton Manning & Reed, *supra* note 43, at 91.

<sup>68</sup> *Id.*

<sup>69</sup> Walter, *supra* note 1, at 255.

<sup>70</sup> *See* Katherine G. Morrissey, *Rich Crevices of Inquiry: Mining and Environmental History*, in *A COMPANION TO AMERICAN ENVIRONMENTAL HISTORY* 394, 395 (Douglas Cazaux Sackman ed., 2010); *Restoration at Redwood*, NAT'L PARK SERV.: REDWOOD (Feb. 14, 2025), <https://www.nps.gov/redw/learn/nature/restoration-main.htm> [<https://perma.cc/X6VV-VSFT>].

Commercial logging of the redwoods began in the 1820s, and by 1963, only 300,000 of the original two-million-acre forest remained uncut.<sup>71</sup> Although logging began slowly in the nineteenth century, industrialization and increased demand for timber in the twentieth century caused the unsustainable extraction of redwood, which had ripple effects throughout the redwood forest ecosystem.<sup>72</sup> Mining spurred by the gold rush also had significant impacts on California ecosystems, including causing flooding, soil erosion, and destruction and redistribution of plant and animal species.<sup>73</sup> This destruction profoundly affected Indigenous peoples cultures and livelihoods, further exacerbating the effects of colonization.

The destruction of the redwood forests drove the establishment of the Redwood National Park in 1968.<sup>74</sup> As with other national parks, this represented a new type of colonialism—one where the Yurok and other Indigenous peoples were not included in decision-making for ecosystems integral to their history and culture. Conservationist groups that pushed for the establishment of Redwood National Park were made up of many wealthy outdoorsmen who “sought to preserve the California redwoods as a sanctuary for the fair-skinned elite.”<sup>75</sup> For some of these influential conservationists, attitudes towards Indigenous peoples moved beyond indifference to plain racism.<sup>76</sup> For example, Madison Grant, one of the founders of the Save the Redwoods League—one of the most influential organizations behind the establishment of Redwood National Park—was a strong proponent of eugenics and believed that “Nordic Americans” were the true “native Americans” by right of conquest.<sup>77</sup> Within the act establishing Redwood National Park, there is no mention of the Yurok or any other Indigenous group who called the park home.<sup>78</sup> Therefore,

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<sup>71</sup> Dale A. Hudson, *Sierra Club v. Department of Interior: The Fight to Preserve the Redwood National Park*, 7 *ECOLOGY L.Q.* 781, 789, 791 (1978).

<sup>72</sup> See John O. Sawyer et al., *History of Redwood and Redwood Forests*, in *THE REDWOOD FOREST: HISTORY, ECOLOGY, AND CONSERVATION OF THE COAST REDWOODS* 7, 8, 27-30 (Reed F. Noss ed., 2000).

<sup>73</sup> Morrissey, *supra* note 70.

<sup>74</sup> Thomas J. Crabtree, *The Redwoods: To Preserve and Protect*, 5 *ENV'T L.* 283, 285 (1975).

<sup>75</sup> Michelle Nijhuis, *The Conservation Movement's Complicated History*, *THE ATLANTIC* (Apr. 12, 2021), <https://www.theatlantic.com/ideas/archive/2021/04/conservation-movements-complicated-history/618556/> [<https://perma.cc/3MPT-TJFX>].

<sup>76</sup> See generally Jim Wheeler, *Madison Grant and the Dark Side of the Conservation Movement*, 45 *PUB. HISTORIAN* 75 (2023) (discussing influential conservationist Madison Grant's and his contemporaries' racist attitudes toward Indigenous peoples, including calling them “mongrels”).

<sup>77</sup> *Id.* at 75-77.

<sup>78</sup> See generally *Redwood National Park Act*, Pub. L.95-250 (1978) (showing the exclusion of Indigenous groups within the Act).

although the establishment of Redwood National Park sought to stop extractive colonial practices in the redwood forests, it reinforced a view of the forests as a place apart from the Indigenous peoples who had lived there since time immemorial and viewed the forests as their relatives.

The Yurok Tribe has been fighting for many decades to regain their homelands and repair the wounds of colonization for both themselves and the natural world around them.<sup>79</sup> These efforts will be discussed in more detail later in this Article.

#### iv. *Te Urewera National Park*

The New Zealand Crown established Te Urewera National Park in 1954.<sup>80</sup> This park was located on the ancestral land of the Tūhoe, a Māori iwi indigenous to the Bay of Plenty in Aotearoa New Zealand.<sup>81</sup> The land encompassed in Te Urewera National Park was land that was extremely important to Tūhoe culture, livelihoods, and history.<sup>82</sup> As one Tūhoe tribal member describes it:

Te Urewera is our home, our church, our cathedral, it is our sacred shrine in order to restore our mental, physiological and physical recreation sustenance...it is our identity, it is OUR body, it is our mother...The congregation of mountainous peaks and ridges, rivers, creeks, that stretches the boundaries of our tribe include our fisheries areas, hunting grounds, papa kāing, marae, cultivation areas, ancient battle fields, burial places. And there is not a hill or gully, ridge or creek,...a stone or might rimu tree or small seedling that does not have a name and has been consecrated into a haka, waiata tawhito, pātere, kōrero taunahanaha which draws its sources from the philosophical, historical contemporary oral narratives of Tuhoe.<sup>83</sup>

The Tūhoe did not have contact with British settlers until the 1860s due to their remote location far from trade centers.<sup>84</sup> Additionally, they did not sign the Treaty of Waitangi because they wanted to retain

<sup>79</sup> See Middleton Manning & Reed, *supra* note 43, at 96-98.

<sup>80</sup> Catherine J. Iorns Magallanes, *Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand*, 10 VICTORIA U. WELLINGTON LEGAL RSCH. PAPERS, no. 16, 2020, at 1, 12.

<sup>81</sup> See *id.*; see Rangi McGarvey, *Story: Ngāi Tūhoe*, TE ARA (Mar. 1, 2017), <https://teara.govt.nz/en/ngai-tuhoe> [<https://perma.cc/8EL5-7UC8>]. “Iwi” is a Māori word referring to a distinct community, similar to the English word “tribe” or “nation.” *Iwi*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?keywords=iwi> [<https://perma.cc/AW7D-Q4C4>] (last visited Mar. 23, 2025).

<sup>82</sup> See Ruru, *supra* note 4, at 318.

<sup>83</sup> *Id.*

<sup>84</sup> McGarvey, *supra* note 81.

sovereignty and control over their lands.<sup>85</sup> The first contact between the Crown and the Tūhoe occurred in the 1860s as the Crown waged wars against the neighboring Māori iwi.<sup>86</sup> Although the Tūhoe remained generally uninvolved in the warfare, the Crown illegally confiscated around 125,000 acres of Tūhoe land in 1866.<sup>87</sup> The Tūhoe petitioned the Crown's Compensation Court, a body established to investigate and return unjustly-confiscated land to Māori who had not been in rebellion against the Crown, to return their land.<sup>88</sup> However, the Crown Commissioner instead allocated this land to other iwi instead of the Tūhoe.<sup>89</sup>

After this initial confiscation, the Crown continued to erode the Tūhoe land base through waging war against the Tūhoe,<sup>90</sup> pressuring the Tūhoe to sell land through threats,<sup>91</sup> illegally purchasing Tūhoe land,<sup>92</sup> and imposing surveying and roading costs on the Tūhoe.<sup>93</sup> The Tūhoe initially resisted the Crown's illegal confiscation of their land through both direct warfare and peaceful protest, but surrendered in 1866 after the Crown engaged in scorched earth tactics that destroyed many Tūhoe food stores, agricultural areas, and livestock.<sup>94</sup> The Tūhoe attempted to negotiate a peace agreement with the Crown, but the Crown breached this agreement and continued to wage war in the Te Urewera area, leading to widespread loss of life and starvation.<sup>95</sup>

The Crown and the Tūhoe eventually signed a peace compact in 1871, but the Crown continued to take Tūhoe land through other means.<sup>96</sup> This included granting other iwi Tūhoe lands, illegally purchasing Tūhoe lands from other iwi, and consolidating Tūhoe lands in a manner similar to the allotment practices used by the United States.<sup>97</sup> The Crown used lands taken from this consolidation scheme, combined with lands it had

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<sup>85</sup> Iorns Magallanes, *supra* note 80, at 12.

<sup>86</sup> *Our History*, TŪHOE, <https://www.ngaituhoe.iwi.nz/our-history> [https://perma.cc/T472-TB9W] (last visited Mar. 23, 2025).

<sup>87</sup> *Id.*; see Tūhoe Claims Settlement Act 2014, pt 1, s 9(2) (N.Z.).

<sup>88</sup> *Our History*, *supra* note 86.

<sup>89</sup> *Id.*; Tūhoe Claims Settlement Act 2014, pt 1, s 9(3) (N.Z.).

<sup>90</sup> Tūhoe Claims Settlement Act 2014, pt 1, s 8(3) (N.Z.).

<sup>91</sup> Tūhoe Claims Settlement Act 2014, pt 1, s 8(5) (N.Z.).

<sup>92</sup> Tūhoe Claims Settlement Act 2014, pt 1, s 8(7) (N.Z.).

<sup>93</sup> Tūhoe Claims Settlement Act 2014, pt 1, s 8(7) (N.Z.).

<sup>94</sup> *Our History*, *supra* note 86.

<sup>95</sup> *Id.*; Tūhoe Claims Settlement Act 2014, pt 1, s 9(9-21) (N.Z.).

<sup>96</sup> See *Our History*, *supra* note 86 and discussion *supra* Part II.A.iii; see Tūhoe Claims Settlement Act 2014, pt 1, s 9(3) (N.Z.).

<sup>97</sup> See *Our History*, *supra* note 86; see generally Tūhoe Claims Settlement Act 2014, pt 1, s 9(9-21) (N.Z.) (discussing the myriad Crown policies that eroded the Tūhoe land base).

confiscated from the Tūhoe for illegally imposed survey and road costs, to establish Te Urewera National Park in 1954.<sup>98</sup> As with national parks in the United States, the Crown established this park without recognition of the Tūhoe's interest in the park, leading to restrictions on the Tūhoe's use of their traditional land.<sup>99</sup> Some Tūhoe did remain in pockets of land within the Te Urewera area, but the majority of Tūhoe were restricted from accessing the lands.<sup>100</sup>

This sustained erosion of the Tūhoe land base, furthered by the establishment of a national park on their ancestral homelands, had lasting impacts on the Tūhoe. As the Crown recognized in 2014, the majority of Tūhoe lived outside of Te Urewera, and those who remained suffered "socio-economic deprivation of a severe nature" due to restrictions placed on their land use and livelihoods.<sup>101</sup> As a whole, the Crown's actions have profoundly impacted the Tūhoe's lives for generations.<sup>102</sup>

The Tūhoe fought for decades in the New Zealand legal system to regain Te Urewera.<sup>103</sup> Finally, in 2014, the Crown and the Tūhoe settled the Tūhoe claim to Te Urewera through an innovative legal mechanism, the Te Urewera Act.<sup>104</sup> This act, discussed in more detail later in this Article, combines a reconciliatory justice model with rights of nature to vest property rights directly in Te Urewera itself, and works to reestablish the Tūhoe connection to their ancestral homeland.<sup>105</sup>

## B. RIGHTS OF NATURE

The basic principle of the rights of nature ideology is that plants, animals, and natural features have intrinsic value apart from their necessity for human life or use by humans.<sup>106</sup> This concept has ancient roots in many

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<sup>98</sup> *Our History*, *supra* note 86.

<sup>99</sup> *See* Tūhoe Claims Settlement Act 2014, pt 1, s 8(10) (N.Z.).

<sup>100</sup> *See Our History*, *supra* note 86.

<sup>101</sup> Tūhoe Claims Settlement Act 2014, pt 1, s 8(11) (N.Z.).

<sup>102</sup> Tūhoe Claims Settlement Act 2014, pt 1, s 10(3) (N.Z.).

<sup>103</sup> *See* Natalie Middleton, *Meet Te Urewera, the New Zealand Rainforest That Has Legal Personhood*, ORION (Feb. 14, 2024), <https://orionmagazine.org/article/te-urewera-rainforest-new-zealand-legal-entity/> [<https://perma.cc/KC3G-D29M>].

<sup>104</sup> Te Urewera Act 2014, pt 1, s 4 (N.Z.).

<sup>105</sup> *Id.*; *see* Tūhoe Claims Settlement Act 2014, pt 1, s 36 (N.Z.) (acknowledging the connection between the Tūhoe and Te Urewera).

<sup>106</sup> Erin Ryan, Holly Curry & Hayes Rule, *Environmental Rights for the 21<sup>st</sup> Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement*, 42 CARDOZO L. REV. 2447, 2502 (2021).

early human cultures.<sup>107</sup> Although Western cultures generally replaced this ecocentric view of nature with the view of nature as a commodity, it remains central to many Indigenous worldviews today.<sup>108</sup>

Although rights of nature have long been a part of many Indigenous groups' customary law,<sup>109</sup> this ideology did not present itself in the Western legal system until 1972. That year, Christopher Stone published "Should Trees Have Standing?" which argued that legal rights should be conferred on trees and other natural features in cases where they were affected by development projects.<sup>110</sup> That same year, this argument informed Justice Douglas's dissent in *Sierra Club v. Morton*.<sup>111</sup> In this case, the Sierra Club sued Disney to stop the construction of a ski resort in the Mineral King area of Sequoia National Forest, arguing that the resort would destroy or adversely impact the natural objects of the park and impair enjoyment for future generations.<sup>112</sup> The Supreme Court affirmed the lower court's dismissal of the suit, finding that the Sierra Club could not allege that any of their members would be specifically affected by the resort's construction and thus lacked standing to bring the suit.<sup>113</sup> In his dissent, Justice Douglas argued that the natural objects of Mineral King should have standing to sue, with members of the public, like the Sierra Club, speaking on their behalf.<sup>114</sup>

Despite Justice Douglas's strong reference to rights of nature in his dissent, the legal movement for rights of nature languished and did not gain traction until the early 2000s.<sup>115</sup> Many of these first examples of legally recognized rights of nature were implemented by Indigenous communities.<sup>116</sup>

Rights of nature have been codified through a variety of different legal mechanisms and differ substantially across the globe.<sup>117</sup> In possibly

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<sup>107</sup> *Id.*

<sup>108</sup> *See id.* at 2502-03.

<sup>109</sup> *See, e.g.,* Alexandra Huneus, *The Legal Struggle for Rights of Nature in the United States*, 2022 WIS. L. REV. 133, 139-40 (2022) (explaining rights of nature in Diné (Navajo) customary law).

<sup>110</sup> *See generally* Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972) (proposing that the natural environment be given legal rights).

<sup>111</sup> *See* Ryan, Curry & Rule, *supra* note 106, at 2503-04.

<sup>112</sup> *Sierra Club v. Morton*, 405 U.S. 727, 729-30, 734 (1972).

<sup>113</sup> *Id.* at 735, 741.

<sup>114</sup> *Id.* at 742-45 (Douglas, J., dissenting).

<sup>115</sup> Ryan, Curry & Rule, *supra* note 106, at 2505.

<sup>116</sup> *Id.*; *see* Martha Louise Slaymaker, *Should Nature Have Standing?*, 31 IND. J. GLOB. LEGAL STUD. 203, 204-05 (2024) (surveying early rights of nature developments).

<sup>117</sup> Ryan, Curry & Rule, *supra* note 106, at 2506.

the world's first written rights of nature provisions, the Navajo Nation codified rights of the natural world through a tribal ordinance in 2002.<sup>118</sup> In 2008, Ecuador added rights of nature to its constitution, drawing from Indigenous conceptions of Mother Earth.<sup>119</sup> In 2014, New Zealand granted legal personhood to Te Urewera through an act that was an extension of a treaty settlement process, which will be discussed in more depth in the following sections of this Article.<sup>120</sup> In 2018, as a result of a lawsuit, Colombia's Supreme Court recognized the rights of the Amazon River ecosystem.<sup>121</sup> Additionally, Colombia's *Jurisdicción Especial para la Paz*, a transitional justice tribunal, has issued several resolutions acknowledging territories as victims of armed conflict.<sup>122</sup> These rights of nature have varying levels of enforceability, a result stemming from the various mechanisms through which they were codified. Such mechanisms range from local or tribal ordinances, which may only apply to relatively small communities, to broad constitutional grants that are enforceable at a national level.

Along with a great variety in how rights of nature are codified into law, there is significant variation in what is protected under these rights.<sup>123</sup> Some rights of nature initiatives apply to specific ecosystems or natural features.<sup>124</sup> In the United States, the White Earth Nation (a band of Ojibwe in Minnesota) enacted a resolution granting rights to wild rice.<sup>125</sup> Other initiatives apply to specific territories, which may encompass various ecosystems and natural features.<sup>126</sup> The Colombian *Jurisdicción Especial para la Paz* resolutions recognizing territories of Indigenous groups and Black communities as victims of conflict are examples of this.<sup>127</sup> Finally,

<sup>118</sup> Huneeus, *supra* note 109, at 139-41.

<sup>119</sup> CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 71-72; María Valeria Berros, *The Constitution of the Republic of Ecuador: Pachamama Has Rights*, ENV'T & SOC'Y PORTAL, ARCADIA (2015), <https://www.environmentandsociety.org/arcadia/constitution-republic-ecuador-pachamama-has-rights> [https://perma.cc/VY4K-9WDP].

<sup>120</sup> Te Urewera Act 2014, pt 1, s 11 (N.Z.).

<sup>121</sup> Nicholas Bryner, *Colombian Supreme Court Recognizes Rights of the Amazon River Ecosystem*, IUCN (Apr. 20, 2018), <https://iucn.org/news/world-commission-environmental-law/201804/colombian-supreme-court-recognizes-rights-amazon-river-ecosystem> [https://perma.cc/H4PR-HKVS].

<sup>122</sup> Alexandra Huneeus & Pablo Rueda Sáiz, *Territory as a Victim of Armed Conflict*, 15 INT'L J. TRANSITIONAL JUST. 210, 210 (2021).

<sup>123</sup> Ryan, Curry & Rule, *supra* note 106, at 2506-07.

<sup>124</sup> *Id.* at 2507.

<sup>125</sup> Resolution Establishing Rights of Manoomin, Res. No. 2018-05 (2018) (White Earth Band of Chippewa Indians Tribal Council).

<sup>126</sup> Huneeus & Rueda Sáiz, *supra* note 122, at 220-21.

<sup>127</sup> *See id.*

some initiatives, like the rights of nature in the Ecuadorian Constitution, recognize broad protections for all of nature, rather than focusing on a specific ecosystem or natural feature.<sup>128</sup>

Lastly, there is considerable variation in how rights of nature are managed and protected in practice.<sup>129</sup> Variables in this regard include what specific rights are granted, who is authorized to speak for the rights holder, how rights are asserted, and what specific cultural and historical values, if any, are acknowledged and associated with these rights.<sup>130</sup>

### C. RECONCILIATORY JUSTICE

Reconciliatory justice seeks to “reframe conflict and grievances so that parties are no longer preoccupied with that which divides them.”<sup>131</sup> To achieve this aim, reconciliatory justice seeks to provide a forum for discussion of an array of different harms and impacts.<sup>132</sup> Although acknowledgement of past harms is part of reconciliatory justice, it is also explicitly future-focused and seeks to move both harmed and responsible parties forward, with reconciliation between parties as the ultimate goal.<sup>133</sup> In practice, reconciliatory justice has been used to address systemic injustices, especially regarding Indigenous peoples. Examples of reconciliatory justice practices include settlements through the Waitangi Treaty Tribunal, discussed in more detail later in this Article.<sup>134</sup>

The reconciliatory justice framework developed in New Zealand has eight core principles that proceed sequentially.<sup>135</sup> These are recognition, responsibility, remorse, restitution, reparation, redesign, refrain, and reciprocity.<sup>136</sup> The first element—recognition—focuses on developing a narrative of harm and impacts from the perspective of the

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<sup>128</sup> Ryan, Curry & Rule, *supra* note 106, at 2507.

<sup>129</sup> *See id.* at 2509-10, 2512-13.

<sup>130</sup> *See id.*; *see, e.g.,* Dana Zartner, *Watching Whanganui & the Lessons of Lake Erie: Effective Realization of Rights of Nature Laws*, 22 VT. J. ENV'T L. 1, 37-39 (2021) (comparing different cultural values within the Te Awa Tupua and the Lake Erie Bill of Rights).

<sup>131</sup> Torivio A. Fodder, *Lesson from Aotearoa – New Zealand: Reconciliatory Justice and Federal Indian Law*, 22 WAIKATO L. REV. 51, 61 (2014) (quoting Robert Andrew Joseph, *A Jade Door: Reconciliatory Justice as a Way Forward, Citing New Zealand Experience*, in FROM TRUTH TO RECONCILIATION: TRANSFORMING THE LEGACY OF RESIDENTIAL SCHOOLS 205, 212 (Marlene Brant Castellano, Linda Archibald & Mike DeGagné ed., Aboriginal Healing Foundation, 2008)).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 61-62.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 61-66.

victims through testimony.<sup>137</sup> This testimony then creates a historical public record.<sup>138</sup>

The second element—responsibility—includes formal, public acknowledgement of responsibility for both historical and present harms.<sup>139</sup> Like the first element, there is an emphasis on the public nature of responsibility, leading to public understanding of the harms and impacts that occurred.<sup>140</sup> This is especially important in addressing systemic harms stemming from colonialism, as colonialism involves creating a dominant narrative that justifies colonial projects and relegates the experiences of those colonized to an inferior spot in history.<sup>141</sup>

The third element—remorse—involves a sincere apology from the responsible party or institution.<sup>142</sup> Like the first two elements, this should be a public apology, therefore encouraging public discourse about historical injustices.<sup>143</sup> This draws from restorative justice practices, which emphasize the need for genuine apology and remorse.<sup>144</sup>

The fourth and fifth elements—restitution and reparation—start the journey towards repairing the relationship between harmed and responsible parties.<sup>145</sup> There are cases where restitution may not fully and exactly return things to how they were before the harm occurred, but restitution should represent a sincere and good faith effort to repair the harmed party.<sup>146</sup> This then creates good faith between parties that can lead to a restored relationship.<sup>147</sup> Whereas restitution focuses more narrowly on repairing specific past injustices themselves, reparation focuses broadly on the total legacy of injustice and atoning for all subsequent impacts of these past injustices.<sup>148</sup> This is especially important in cases where harms are not easily compensable, so full restitution is impossible.<sup>149</sup> Reparations should

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<sup>137</sup> *Id.* at 61-62.

<sup>138</sup> *Id.* at 62.

<sup>139</sup> *Id.*

<sup>140</sup> *See id.*

<sup>141</sup> *See id.*

<sup>142</sup> *Id.* at 63.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *See id.* at 63-64.

<sup>146</sup> *See id.* at 64.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

be determined in conjunction with the harmed individuals and should be proportionate to the harm they suffered.<sup>150</sup>

The sixth element—redesign—looks to the future and focuses on redesigning social and political institutions that have been proponents of harm.<sup>151</sup> The goal of this step is to ensure that these institutions “refrain from repeating injustices of the past.”<sup>152</sup> This element ties into the last two elements—refrain and reciprocity—which are closely related.<sup>153</sup> The first of these final elements requires the responsible party or institution to take “affirmative measures to ensure that the wrongs of the past are not repeated,” including efforts to anticipate and address future harms.<sup>154</sup> The last element obligates the harmed party to assist in creating a foundation for a future relationship through forgiveness.<sup>155</sup> Within the reconciliatory justice framework, there is acknowledgement that reconciliation is a continuing process,<sup>156</sup> which is particularly important to these last two elements.

## II. ANALYSIS

Indigenous-led and Indigenous-focused rights of nature initiatives combined with reconciliatory justice models can offer alternatives to traditional Western environmental legal systems. These systems can provide multifaceted approaches to environmental management that acknowledge colonial harms, prioritize healthy ecosystems, and restore and uphold Indigenous human rights. This section will examine New Zealand’s first rights of nature and reconciliatory justice initiative, Te Urewera.

### A. RIGHTS OF NATURE AND RECONCILIATORY JUSTICE IN NEW ZEALAND

New Zealand’s rights of nature initiatives have focused on specific ecosystems and natural features.<sup>157</sup> The New Zealand government has

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<sup>150</sup> *See id.*

<sup>151</sup> *Id.* at 65.

<sup>152</sup> *Id.*

<sup>153</sup> *See id.* at 66.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 61.

<sup>157</sup> Ryan, Curry & Rule, *supra* note 106, at 2517.

worked with Māori communities to grant rights of nature for three ecosystems—Te Urewera (formerly Te Urewera National Park), the Whanganui River, and Taranaki Maunga (formerly known as Mount Taranaki) and its surrounding mountain peaks.<sup>158</sup> New Zealand's rights of nature initiatives have distinct human rights and reconciliatory justice components to them, as they were all enacted through settlements addressing losses Māori communities experienced due to colonialism.<sup>159</sup>

*i. Mechanisms Establishing Rights of Nature: The Waitangi Tribunal*

The Treaty of Waitangi (New Zealand's founding document signed between the Crown and Māori communities<sup>160</sup>) plays a central role in the establishment of these rights of nature initiatives.<sup>161</sup> All three of New Zealand's rights of nature initiatives have involved inquiries brought before the Waitangi Tribunal.<sup>162</sup> This tribunal was established in 1975 to address breaches of the Treaty of Waitangi made by the Crown.<sup>163</sup> The tribunal issues reports interpreting treaty duties, determining breaches, and recommending actions for the Crown to provide reparations for breaches.<sup>164</sup>

*ii. Rights of Nature for Te Urewera*

The first rights of nature initiative in New Zealand took place in 2014, when the Tūhoe iwi and the Crown agreed to establish legal personhood for Te Urewera through the Te Urewera Act.<sup>165</sup> Through the Waitangi Tribunal settlement process, the Tūhoe brought grievances

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<sup>158</sup> *Id.* at 2517-18; *Taranaki Maunga to Get Legal Personhood – What Does This Mean?*, 1 NEWS, <https://www.1news.co.nz/2023/04/12/taranaki-maunga-to-get-legal-personhood-what-does-this-mean/> [https://perma.cc/Y2AD-8J23] (last visited Mar. 23, 2025).

<sup>159</sup> See Iorns Magallanes, *supra* note 80, at 2.

<sup>160</sup> *The Treaty in Brief*, N.Z. HIST. (May 17, 2017), <https://nzhistory.govt.nz/politics/treaty/the-treaty-in-brief> [https://perma.cc/CU56-HUC5].

<sup>161</sup> See Catherine J. Iorns Magallanes, *Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology that Protects the Environment*, 21 WIDENER L. REV. 273, 306-09 (2015).

<sup>162</sup> Maisy Bentley, *Human Nature: Understanding the Constitutional and Indigenous Context of Granting Legal Personhood to Taranaki Mounga*, OXFORD HUM. RTS. HUB (Feb. 5, 2025), <https://ohrh.law.ox.ac.uk/human-nature-understanding-the-constitutional-and-indigenous-context-of-granting-legal-personhood-to-taranaki-mounga/> [https://perma.cc/X6N3-EPXY].

<sup>163</sup> Iorns Magallanes, *supra* note 161, at 291.

<sup>164</sup> *Id.*

<sup>165</sup> Ryan, Curry & Rule, *supra* note 106, at 2517.

against the Crown seeking to regain ownership and control of Te Urewera.<sup>166</sup>

This settlement process resulted in a joint rights of nature and reconciliatory justice model through the Tūhoe Claims Settlement Act and the Te Urewera Act.<sup>167</sup> The Tūhoe Claims Settlement Act focuses more generally on acknowledging the historical wrongdoings of the Crown and providing redress in the form of fee simple title and compensation, whereas the Te Urewera Act establishes legal personhood for Te Urewera as a form of specific redress.<sup>168</sup> Although these are two separate acts, both evolved from the same process and are attempts at historical reconciliation and redress for the same historical wrongdoings.<sup>169</sup> Therefore, it is essential to consider the Tūhoe Claims Settlement Act when evaluating the rights of nature mechanisms established in the Te Urewera Act.

### 1. Tūhoe Claims Settlement Act:

The Tūhoe Claims Settlement Act closely follows a reconciliatory justice model. It begins by recognizing the harms inflicted on the Tūhoe by British colonization through a historical account of the relationship between the Tūhoe and the Crown and acknowledging the Crown's wrongdoings.<sup>170</sup> This is followed by an apology from the Crown for these wrongdoings.<sup>171</sup> The historical summary acknowledges a broad array of harms done to the Tūhoe by the Crown, including both direct physical violence through warfare and structural violence through the Crown's policies.<sup>172</sup> This includes referencing how 85 percent of the Tūhoe community was forced out of their homelands by Crown tactics, despite concerted efforts by the Tūhoe to protect their homelands from encroachment.<sup>173</sup>

The acknowledgements section of the act recognizes both the legal failings of the Crown and the impact the Crown's actions had on the Tūhoe community.<sup>174</sup> Although the Tūhoe did not sign the Treaty of Waitangi,

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<sup>166</sup> Iorns Magallanes, *supra* note 80, at 12.

<sup>167</sup> *See id.* at 12-13.

<sup>168</sup> Compare Tūhoe Claims Settlement Act 2014 (N.Z.) (providing general financial redress to the Tūhoe) with Te Urewera Act 2014 (N.Z.) (establishing legal personhood for Te Urewera).

<sup>169</sup> *See* Iorns Magallanes, *supra* note 80, at 12-13.

<sup>170</sup> Tūhoe Claims Settlement Act 2014, pt 1, ss 8, 9 (N.Z.).

<sup>171</sup> *Id.* s 10.

<sup>172</sup> *See id.* s 8.

<sup>173</sup> *See id.*

<sup>174</sup> *See id.* s 9(1).

the act finds that the Crown's obligations under the Treaty extend to the Tūhoe,<sup>175</sup> and explicitly identifies breaches of the treaty as a source of the Crown's legal failings stem from breaches of the Treaty.<sup>176</sup> The act also implicitly points to violations of broader human rights principles through the act's discussion of the short-term and long-term impacts of the Crown's actions on the Tūhoe community.<sup>177</sup>

The act acknowledges short-term human rights violations, including the immediate loss of life from Crown attacks,<sup>178</sup> unjust arrests and confinements,<sup>179</sup> and the loss of land and property due to Crown policies throughout the nineteenth and twentieth centuries.<sup>180</sup> The act identifies long-term human rights impacts, including lasting economic hardship that forced many Tūhoe people to leave their homelands,<sup>181</sup> negative impacts on the Tūhoe's ability to practice their culture,<sup>182</sup> negative impacts on the Tūhoe's social structure,<sup>183</sup> and harm to individual well-being, including long-lasting grief and loss.<sup>184</sup>

This section of the act also acknowledges that the Crown's actions led to an erosion of the Tūhoe's *mana motuhake* and an undermining of their ability to self-govern.<sup>185</sup> *Mana motuhake* is one of several terms in te reo Māori (Māori language) that denote concepts of sovereignty and self-determination.<sup>186</sup> The English concept of sovereignty, of a community being under the control of one ruler, does not have an equivalent in te reo Māori.<sup>187</sup> The phrase *tino rangatiratanga* is a term used in the Treaty of Waitangi that many Māori activists today point to as meaning Māori self-determination and authority over their land and people.<sup>188</sup> However,

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<sup>175</sup> *Id.*

<sup>176</sup> *See id.* s 9.

<sup>177</sup> *See generally id.* (discussing various ways of repairing negative impacts on the Tuhoe community).

<sup>178</sup> *Id.* ss 9(2), 9(5), 9(6).

<sup>179</sup> *Id.* ss 9(5), 9(6), 9(29).

<sup>180</sup> *See id.* s 9(10)-(11), 9(13), 9(18)-(21), 9(26)-(28), 9(32), 9(34).

<sup>181</sup> *See id.* s 9(9), 9(33)(d)-(f), 9(38)-(39).

<sup>182</sup> *See id.* s 9(15).

<sup>183</sup> *See id.* s 9(5).

<sup>184</sup> *Id.* s 9(1), 9(5).

<sup>185</sup> *Id.* s 9(8), 9(37)(d).

<sup>186</sup> *Sovereignty*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&key words=sovereignty> [https://perma.cc/ZY2F-WFAN] (last visited Mar. 23, 2025).

<sup>187</sup> Charles Hawksley & Richard Howson, *Tino Rangatiratanga and Mana Motuhake: Nation, State and Self-Determination in Aotearoa New Zealand*, 7 ALTERNATIVE: AN INT'L J. INDIGENOUS PEOPLES 246, 250 (2011).

<sup>188</sup> *See id.* at 249-51.

during settlement negotiations, the Tūhoe community specifically used *mana motuhake* to refer to their sovereignty.<sup>189</sup> Some members of Tūhoe community understand this term to imply more of a spiritual connection with land than *tino rangatiratanga*.<sup>190</sup> Māori activist Ropata Paora describes *mana motuhake* as “an authority that derives from the land and is of the land, and *tino rangatiratanga* is what you do on the land or what you do within your society.”<sup>191</sup> This focus on authority drawn from specific land then leads to a stronger, more place-specific version of sovereignty, giving rise to the idea of the Tūhoe controlling their own autonomous area like “a nation within a nation.”<sup>192</sup> Because this concept of sovereignty derives from the relationship between the Tūhoe and their homelands, the acknowledgment section also explicitly recognizes that the Tūhoe have a special relationship with Te Urewera National Park.<sup>193</sup>

The act then addresses the second and third elements of reconciliatory justice—apology and remorse. In the apology section, the Crown notes that its purpose is to “honestly confront the past and seeks to atone for its wrongs.”<sup>194</sup> The Crown apologizes not just to the current generation of Tūhoe people, but also to their *tipuna* (ancestors) and their descendants, and notes the intergenerational impact of the Crown’s actions on the Tūhoe community.<sup>195</sup> The Crown apologizes for injustices, including violence, the denial of Tūhoe *mana motuhake*, and the exclusion of Tūhoe people from Te Urewera National Park.<sup>196</sup> The apology finishes by looking to the future with a hope that the apology and redress through the settlement will create a new relationship between the Crown and the Tūhoe.<sup>197</sup> The conclusion of the apology section thus moves to the fourth and fifth elements of reconciliatory justice—restitution and restoration—and looks to establish a repaired relationship between the Crown and the Tūhoe.

The restitution under the act includes provisions returning land to the Tūhoe community.<sup>198</sup> This includes transferring multiple properties in

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<sup>189</sup> See *id.* at 253-55.

<sup>190</sup> See *id.* at 253-54.

<sup>191</sup> *Id.* at 254.

<sup>192</sup> See *id.* at 253-54.

<sup>193</sup> See Tūhoe Claims Settlement Act 2014, pt 1, s 9(36) (N.Z.).

<sup>194</sup> *Id.* s 10(7).

<sup>195</sup> *Id.* s 10(1), 10(3).

<sup>196</sup> *Id.* s 10(2)-(5).

<sup>197</sup> *Id.* s 10(7)-(8).

<sup>198</sup> See generally *id.* pts 2-3 (providing for the return of certain parcels of land to the Tūhoe community as part of cultural and commercial redress).

fee simple to Tūhoe Te Uru Taumatua (the Tūhoe Trust)<sup>199</sup>—one to be administered as a reserve<sup>200</sup> and one to be leased back to the Crown.<sup>201</sup> Additionally, the act establishes that Tūhoe Te Uru Taumatua has the right of first refusal over lands within a specified area held by the Crown, by an administrative body that derives its title from the Crown, or by the New Zealand Railways Corporation.<sup>202</sup> Along these lines, the act also provides that the Crown, an administrative body, or the Railways Corporation may transfer land to Te Urewera in accordance with provisions in the Te Urewera Act.<sup>203</sup> Lastly, the act also changes the official names of land and features back to the original te reo Māori names.<sup>204</sup>

## 2. Te Urewera Act

The return of Te Urewera to the Tūhoe was one of the main priorities of the Tūhoe negotiators during the treaty settlement process.<sup>205</sup> The Tūhoe negotiators initially wanted title to the land returned to their community, but when the Crown refused to give outright ownership of Te Urewera to the Tūhoe community, the Tūhoe negotiators proposed a unique solution—granting legal rights of nature for Te Urewera itself, with neither the Crown nor the Tūhoe having owning the land.<sup>206</sup> The Crown was receptive to this idea, and the result was the Te Urewera Act—New Zealand’s first rights of nature initiative.<sup>207</sup>

The Te Urewera Act disestablishes Te Urewera National Park and grants legal personhood to the lands formerly within this park.<sup>208</sup> To establish this new legal personality, the act removes the land from Crown ownership and vests it in Te Urewera itself.<sup>209</sup> This act is an extension of reconciliation efforts between the Crown and the Tūhoe, as it is intended to “contribute to resolving the grief of the Tūhoe,”<sup>210</sup> and thus functions

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<sup>199</sup> *Id.* pt 2, ss 12, 23-26.

<sup>200</sup> *Id.* s 26.

<sup>201</sup> *Id.* pt 3, s 56.

<sup>202</sup> *Id.* ss 59-60.

<sup>203</sup> *Id.* s 76.

<sup>204</sup> *Id.* pt 2, s 47; see *Treaty of Waitangi Claims Settlement Place Names*, TOITŪ TE WHENUA: LAND INFO. N.Z., <https://www.linz.govt.nz/our-work/new-zealand-geographic-board/treaty-waitangi-claims-settlement-place-names> [https://perma.cc/ZT45-GYKA] (last visited Apr. 17, 2026).

<sup>205</sup> DAMAGES: *Children of the Mist*, at 00:08:57 (Spotify, Mar. 24, 2022).

<sup>206</sup> *Id.*

<sup>207</sup> See *id.*

<sup>208</sup> Te Urewera Act 2014, pt 1, ss 11-12 (N.Z.).

<sup>209</sup> *Id.* s 12.

<sup>210</sup> *Id.* s 3(10).

as a unique legal instrument that establishes rights for a natural feature while also addressing and reconciling past harm to humans. The act begins by describing the inherent values of Te Urewera:

- (1) Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty.
- (2) Te Urewera is a place of spiritual value, with its own mana<sup>211</sup> and mauri.<sup>212</sup>
- (3) Te Urewera has an identity in and of itself, inspiring people to commit to its care.<sup>213</sup>

Immediately after describing the inherent value of Te Urewera itself, the act describes the connection between Te Urewera and the Tūhoe people, explaining that Te Urewera is the Tūhoe's "place of origin and return, their homeland,"<sup>214</sup> and that Te Urewera "expresses and gives meaning to Tūhoe culture, language, customs, and identity."<sup>215</sup> This section of the act also describes the Tūhoe's claim to Te Urewera, acknowledging that the Tūhoe have authority over Te Urewera by *ahikāroa*—title to land through long, undisturbed occupation.<sup>216</sup> It also acknowledges the Tūhoe as *tangata whenua* (Indigenous peoples) and *kaitiaki* (caretakers) of Te Urewera.<sup>217</sup>

The Act also recognizes the relationship between the Tūhoe people and Te Urewera in its stated purpose. The general stated purpose is

<sup>211</sup> "Mana" is a supernatural force in a person, place or object, which is similar to the English concepts of power, charisma, or authority. *Mana*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=mana> [https://perma.cc/V693-QC3Y] (last visited Mar. 23, 2025).

<sup>212</sup> "Mauri" is the life force and essential quality and vitality of a being or entity. *Mauri*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=mauri> [https://perma.cc/2QK6-SKK2] (last visited Mar. 23, 2025).

<sup>213</sup> Te Urewera Act 2014, pt 1, s 3(3) (N.Z.).

<sup>214</sup> *Id.* s 3(5).

<sup>215</sup> *Id.* s 3(6).

<sup>216</sup> See *id.*; see *Ahikāroa*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=ahikaroa> [https://perma.cc/DAX7-4ATP] (last visited Mar. 23, 2025).

<sup>217</sup> See Te Urewera Act 2014, pt 1, s 3(6); see *Tangata Whenua*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=tangata+whenua> [https://perma.cc/KY55-XAL2] (last visited Mar. 23, 2025); see *Kaitiaki*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=kaitiaki> [https://perma.cc/7X78-T8GF] (last visited Mar. 23, 2025).

to establish a legal identity and protected status for Te Urewera which acknowledges its intrinsic worth and its natural and cultural values.<sup>218</sup> Within this, the act places special importance on strengthening and maintaining the Tūhoe's connection to Te Urewera.<sup>219</sup> Therefore, the act grounds the establishment of legal personhood for Te Urewera in its importance to the Tūhoe people, acknowledging that the land and the people are in many ways inseparable from one another due to a shared history.

Tūhoe cultural values also color how Te Urewera's legal personhood is interpreted and implemented under the Te Urewera Act. The act lays out seven principles for implementation, including valuing and respecting *tūhoetanga* (Tūhoe identity) and preserving the cultural and historical heritage of Te Urewera.<sup>220</sup> The act also states that the provisions of the act must be interpreted in a way that "furthers the agreements expressed in the deed of settlement."<sup>221</sup> This means that the rights of nature established in the Te Urewera Act take on a reconciliatory character, as they must align with the purpose of redressing historical wrongs established in the Tūhoe Claims Settlement Act.

### 3. Who Speaks for Te Urewera?—The Te Urewera Board

One of the key questions that rights of nature initiatives grapple with is who speaks for nature. The Te Urewera Act answers this by creating a board to exercise the rights and duties of Te Urewera.<sup>222</sup> The board originally consisted of eight members: four members appointed by Te Uru Taumatua—the Tūhoe's governing board<sup>223</sup>—and four members appointed by the Crown.<sup>224</sup> In 2017, the board expanded to nine members, with six appointed by Te Uru Taumatua and three appointed by the Crown.<sup>225</sup> Board members serve three-year terms and may serve up to

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<sup>218</sup> Te Urewera Act 2014, pt 1, s 4 (N.Z.).

<sup>219</sup> *Id.* s 4(a).

<sup>220</sup> *Id.* s 5(1).

<sup>221</sup> *Id.* s 6.

<sup>222</sup> *Id.* s 11.

<sup>223</sup> *Id.* pt 2 s 21(1); see *Te Uru Taumatua*, TŪHOE, <https://www.ngaituhoe.iwi.nz/tut> [<https://perma.cc/AG4K-MC2F>] (last visited Mar. 23, 2025) (explaining that Te Uru Tamatua is the governing board of the Tūhoe nation).

<sup>224</sup> Te Urewera Act 2014, pt 2, s 21(1) (N.Z.).

<sup>225</sup> *Id.* s 21(2).

three consecutive terms, as well as an unlimited number of nonconsecutive terms.<sup>226</sup>

The makeup of the board, consisting of both Tūhoe and non-Tūhoe members, reflects the value of Te Urewera to all New Zealanders, Tūhoe and non-Tūhoe alike.<sup>227</sup> The Crown appointees have represented a variety of different interests relating to Te Urewera, including sustainable tourism and conservation.<sup>228</sup> The board's composition continues to emphasize engagement with Te Urewera in a way that prioritizes Tūhoe voices, values, and needs, as evidenced by the fact that the chair of the board must always be one of the Tūhoe appointees.<sup>229</sup> Relatedly, the increase in Tūhoe members after the first three years was meant to encourage increased Tūhoe involvement as Tūhoe management capacity increased post-settlement.<sup>230</sup> As Tāmāti Kruger, the first chair of the board and the Tūhoe chief negotiator for the Tūhoe Claims Settlement Act,<sup>231</sup> acknowledged in a 2024 press release, a key goal of the Tūhoe is to reconnect to Te Urewera and rebuild their “capability, knowledge, and responsibility.”<sup>232</sup>

The board oversees management of Te Urewera and advocates for the interests of Te Urewera.<sup>233</sup> The board's responsibilities are generally administrative in nature, including creating an annual management plan, designating specially protected areas within Te Urewera, and issuing permits for certain types of activities, such as recreational hunting, within Te Urewera.<sup>234</sup> Within these functions, the Te Urewera Act places particular emphasis on acting in accordance with Tūhoe values and management concepts.<sup>235</sup> This furthers the goal of “reimagining Te Urewera as if it had not been disconnected as a national park: how Tūhoe

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<sup>226</sup> *Id.* s 27.

<sup>227</sup> *See id.* pt 1, s 3(8); *see Board Appointed for New Era for Te Urewera*, BEEHIVE (July 24, 2014), <https://www.beehive.govt.nz/release/board-appointed-new-era-te-urewera> [<https://perma.cc/MZQ4-J73Z>].

<sup>228</sup> *See Board Appointed for New Era for Te Urewera*, *supra* note 227.

<sup>229</sup> Te Urewera Act 2014, pt 2, s 24(1) (N.Z.); Middleton, *supra* note 103.

<sup>230</sup> Jorns Magallanes, *supra* note 161, at 322-23.

<sup>231</sup> *Board Appointed for New Era for Te Urewera*, *supra* note 227.

<sup>232</sup> Media Release, Te Urewera Board and Tūhoe Look to Future After Court Resolution, Te Urewera Bd. (June 13, 2024) (available at <https://www.ngaituhoe.iwi.nz/vdb/document/993>) [<https://perma.cc/9GXL-NPE6>].

<sup>233</sup> *See* Te Urewera Act 2014, pt 2, s 18 (N.Z.).

<sup>234</sup> *See id.* ss 18, 58.

<sup>235</sup> *See id.* s 18(2)-(3).

and manuhiri [guests]<sup>236</sup> would live in, make livelihoods with, and care for the land in alignment with Te Urewera's own intrinsic values and traditional culture."<sup>237</sup>

In making decisions, the board aims to engage in collaborative and unanimous decision-making.<sup>238</sup> Under the Te Urewera Act, the board must strive to reach a unanimous decision for certain activities, such as the adoption of annual operational plans and the annual statements of priorities.<sup>239</sup> If unanimous decision making isn't practicable, the board then turns to consensus decision-making.<sup>240</sup> Decision by voting is the last resort.<sup>241</sup> This style of decision-making marks a departure from hierarchical systems and gives more room for multiple values and points of view to be considered in decision-making. This means that a single voice does not speak for Te Urewera—instead it is a multi-partial, collaborative voice which in many ways reflects the interconnected ecosystem of Te Urewera.

#### 4. Te Urewera Rights of Nature in Practice

Since the passage of the Te Urewera Act, the Te Urewera Board has worked closely with Te Uru Taumatua to increase Tūhoe connection to Te Urewera while also promoting non-Tūhoe tourism in Te Urewera.<sup>242</sup> One of the first priorities of the board was to create a management plan for Te Urewera that would inform future operations.<sup>243</sup> In 2017, the board fulfilled this task by adopting *Te Kawa o Te Urewera* (Te Kawa)—an innovative management plan that focuses on protocols based on Tūhoe traditions and history rather than on classic natural resource regulations.<sup>244</sup>

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<sup>236</sup> *Manuhiri*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&key words=manuhiri> [<https://perma.cc/8Q43-KRHN>] (last visited Feb. 14, 2025).

<sup>237</sup> Te Urewera Bd., *supra* note 232.

<sup>238</sup> Te Urewera Act 2014, pt 2, s 31 (N.Z.).

<sup>239</sup> *See id.* s 33(1).

<sup>240</sup> *Id.* s 33(2).

<sup>241</sup> *See id.* s 36.

<sup>242</sup> *See Te Urewera*, DEP'T OF CONSERVATION, <https://www.doc.govt.nz/parks-and-recreation/places-to-go/east-coast/places/te-urewera/?tab-id=50561> [<https://perma.cc/2KBD-2HHD>] (last visited Feb. 23, 2025).

<sup>243</sup> Smith & Finlayson, *supra* note 227.

<sup>244</sup> George Driver, *Revolutionary Plan for Te Urewera*, WILDERNESS MAG. (Nov. 2017), <https://www.wildernessmag.co.nz/revolutionary-plan-te-urewera/> [<https://perma.cc/FY4K-2BGY>].

Te Kawa expands on the goals of the Te Urewera Act and the Tūhoe Claims Settlement Act by establishing management principles based on Tūhoe culture and history, rather than on Western property law and natural resource management principles.<sup>245</sup> Te Kawa is very different from management plans created by the New Zealand Department of Conservation (DOC) for other national parks and reserves, which lay out detailed regulations and authorizations for activities within protected areas.<sup>246</sup> Instead, Te Kawa expressly rejects Western property law and focuses on broader principles of relationality and kinship between humans and nature.<sup>247</sup> One of the key purposes behind Te Kawa and the work of the Te Urewera Board is to change conceptions of Te Urewera, and by extension, conceptions of nature generally, to form better relationships between humans and the natural world.<sup>248</sup> As Kruger noted while speaking about the difference in management practices between the DOC and the Te Urewera Board:

Instead of seeing nature as a set of discrete resources to be managed and used, we're asking people to see Te Urewera as a living system that other depend on for survival, culture, recreation and inspiration. It's about relating to Te Urewera as its own identity in a physical, environmental, cultural and spiritual sense.<sup>249</sup>

Today, Tūhoe members provide daily care for Te Urewera through Te Uru Taumatua, including through working as “bush crews” living in remote valleys of Te Urewera.<sup>250</sup> These members use the concept of *kaitiakitanga*, roughly translated to “guardianship,” to guide daily management activities, which include monitoring the health of Te

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<sup>245</sup> See TE KAWA O TE UREWERA 24 (2017), [https://issuu.com/teurutaumatua/docs/te\\_kawa\\_o\\_te\\_urewera\\_-\\_english](https://issuu.com/teurutaumatua/docs/te_kawa_o_te_urewera_-_english) [<https://perma.cc/84GM-MY6X>]; see Te Urewera Bd., *Te Kawa o Te Urewera Draft Released*, SCOOP (May 19, 2017, at 16:53 CST), <https://www.scoop.co.nz/stories/AK1705/S00487/te-kawa-o-te-urewera-draft-released.htm> [<https://perma.cc/SCW8-JXZQ>].

<sup>246</sup> See, e.g., DEP'T OF CONSERVATION, ABEL TASMAN FORESHORE SCENIC RESERVE MANAGEMENT PLAN 140 (2012), <https://www.doc.govt.nz/globalassets/documents/about-doc/role/policies-and-plans/abel-tasman-foreshore-management-plan/abel-tasman-foreshore-scenic-reserve-management-plan.pdf> [<https://perma.cc/Y4E7-TDRU>].

<sup>247</sup> TE KAWA O TE UREWERA, *supra* note 245.

<sup>248</sup> See *id.*

<sup>249</sup> See Jacqui Gibson, *The Māori Tribe Protecting New Zealand's Sacred Rainforest*, BBC NEWS (June 9, 2020), <https://www.bbc.com/travel/article/20200608-the-mori-tribe-protecting-new-zealands-sacred-rainforest> [<https://perma.cc/GEV6-BCJF>].

<sup>250</sup> Middleton, *supra* note 103; see Gibson, *supra* note 249; see Sharon Brett Kelly, *Destruction of Huts Adds to 'Historical Trauma' for Te Urewera Tūhoe*, THE N.Z. HERALD (Nov. 22, 2022, at 14:16 CST), <https://www.nzherald.co.nz/nz/destruction-of-huts-adds-to-historical-trauma-for-te-urewera-tuhoe/LBYAR65V7RAYTJYMUVWJL2PDVQ/> [<https://perma.cc/9YQ8-XFBA>].

Urewera, planting native trees, and controlling pests.<sup>251</sup> Although many of these activities are similar to tasks carried out by DOC park rangers in Crown-controlled national parks and reserves, there is a difference in the cultural values prioritized in management. Te Kawa prioritizes a holistic approach to management rather than a species-by-species approach, emphasizing the interconnected nature of all living beings in Te Urewera.<sup>252</sup> Former park rangers have noted that these priorities have had a positive impact on Te Urewera, replacing short-sighted DOC policies that prioritized cheaper costs rather than long-term conservation with decisions that consider the preservation of Te Urewera for future generations.<sup>253</sup> Some examples of this include utilizing new eco-friendly wood resin sealants to replace asphalt on roads in Te Urewera and using trapping instead of aerial pesticides to control pests.<sup>254</sup>

In addition to enhancing culturally-relevant conservation strategies, the board's management of Te Urewera has had a positive impact on reconnecting the Tūhoe community to Te Urewera and emphasizing Tūhoe history to non-Tūhoe visitors. The new Tūhoe-led management of Te Urewera has created jobs for Tūhoe citizens.<sup>255</sup> Additionally, multiple Tūhoe-owned and run businesses have opened in Te Urewera.<sup>256</sup> These include restaurants, a honey farm, and multiple tourism operations.<sup>257</sup>

The Te Urewera tourism industry now focuses on expressing Tūhoe culture and history. These tourism opportunities further the mission of the board by pushing non-Tūhoe people to reconceptualize their relationship with the natural world.<sup>258</sup> As Kruger explains it, “maybe it’s not about getting the best photo of yourself near a waterfall or the ultimate deal on a hunting trip. Maybe it’s about meeting the locals, staying with us, learning some of our history and hearing some of the stories and values that make up our lifestyle ... it will move you beyond a way of thinking that says: ‘I’ve paid my fee, I want a service,’ to a mindset that says: ‘I

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<sup>251</sup> Gibson, *supra* note 249.

<sup>252</sup> TE KAWA O TE UREWERA, *supra* note 245, at 30.

<sup>253</sup> Middleton, *supra* note 103.

<sup>254</sup> TE URU TAUMATUA, HE KORONA WHAKATAENA 21 (2023-2024), [https://issuu.com/teurutaumatua/docs/he\\_korona\\_whakatena\\_2023-2024\\_issuu\\_copy](https://issuu.com/teurutaumatua/docs/he_korona_whakatena_2023-2024_issuu_copy) [<https://perma.cc/A5YG-KYWX>]; Middleton, *supra* note 103.

<sup>255</sup> See Gibson, *supra* note 249.

<sup>256</sup> See *id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

love this place, I feel a connection to it. Now what can I do to care for it?”<sup>259</sup>

The impact that the Te Urewera Act has had on changing conceptions of nature extends beyond the bounds of Te Urewera. The act clearly influenced the development of two subsequent rights of nature initiatives in New Zealand, establishing rights of nature for the Whanganui River and Taranaki Maunga.<sup>260</sup> These rights of nature initiatives have further influenced rights of nature initiatives outside of New Zealand.<sup>261</sup> For example, Yurok general counsel Amy Cordalis made specific reference to rights of nature in New Zealand when interviewed about the Yurok Tribe’s rights of nature initiative for the Klamath River, discussed later in this Article.<sup>262</sup> Therefore, it is clear that the Te Urewera Act has made positive strides in acknowledging the history of colonialism in New Zealand, enhancing Indigenous connections to ancestral homeland, and changing extractive colonial conceptions of the natural world.

However, the implementation of the Te Urewera Act has not been without its challenges. The Te Urewera Board has cited difficulties in managing the park in connection with the DOC, and there has been at least one major disagreement between the Te Urewera Board and members of the Tūhoe community.<sup>263</sup> A strained relationship between the Te Urewera Board, Te Uru Taumatua, and the DOC has impacted basic functioning of the board, including their ability to agree on and implement an annual management plan for the 2021–22 and 2022–23 years.<sup>264</sup> Tamati Kruger, the board’s chair, has expressed that DOC has a “mistaken view of its authority” and has engaged in “passive aggressive” behavior when working with the Te Urewera Board.<sup>265</sup>

In 2022, the Te Urewera Board decided to destroy a series of DOC huts used by hunters and visitors in Te Urewera, some which had fallen into disrepair.<sup>266</sup> The board viewed these huts as “a continuing symbol of the disconnection of Tūhoe from Te Urewera when it was made into a

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<sup>259</sup> *Id.*

<sup>260</sup> See Ryan, Curry & Rule, *supra* note 106, at 2517-18; see *Taranaki Maunga to Get Legal Personhood – What Does This Mean?*, *supra* note 158.

<sup>261</sup> *Tribe Gives Personhood to Klamath River*, NPR (Sept. 29, 2019, at 08:02 ET), <https://www.npr.org/2019/09/29/765480451/tribe-gives-personhood-to-klamath-river> [<https://perma.cc/2FDU-V66T>].

<sup>262</sup> *Id.*

<sup>263</sup> See Brett Kelly, *supra* note 250.

<sup>264</sup> *Tuna v. Te Urewera Bd.* [2023] NZHC 3680 at [15]-[16] (N.Z.).

<sup>265</sup> *Id.* [16].

<sup>266</sup> Brett Kelly, *supra* note 250.

national park in the 1950s.”<sup>267</sup> Many Tūhoe community members disagreed with the board, noting that the huts had been used by Tūhoe for many years and were important to Tūhoe access to the park.<sup>268</sup> One Tūhoe member, Wharenui Clyde Tuna, took legal action against the board, claiming that their destruction of the huts violated several provisions of the Te Urewera Act.<sup>269</sup> Due to tensions between the board and the DOC, the board had destroyed the huts without a yearly management plan in place and Tuna argued that this violated the Te Urewera Act.<sup>270</sup> Tuna also argued that the destruction violated two management principles required by the act: (1) that the board’s actions must serve to preserve indigenous ecological systems and biodiversity; and (2) that the board’s actions value and respect tūhoetanga.<sup>271</sup> In advancing the first of these management principle claims, Tuna relied on testimony that the destruction of the huts interfered with the management of pests and invasive species in Te Urewera.<sup>272</sup>

Tūhoetanga is not defined in the act itself because it is difficult to precisely define in English. It is a term that speaks to the “deep-seated connection between Tūhoe and Te Urewera.”<sup>273</sup> In advancing this second management principle claim, Tuna brought forth testimony from himself and other Tūhoe members explaining how the huts helped them physically connect with Te Urewera, leading to a deeper sense of tūhoetanga.<sup>274</sup>

The board did not specifically respond to any of Tuna’s contentions. Instead, it claimed that the management principles in Te Urewera were meant to be “high level statements of principle” rather than “a set of stringent standards,” and asserted that the DOC huts were a “longstanding symbol of colonial oppression.”<sup>275</sup> The court found that the board had acted unlawfully by demolishing the huts in the absence of an annual operational plan.<sup>276</sup> For the management principle claims, the court noted that deference should be given to the board on interpretation of these

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<sup>267</sup> Te Urewera Board and Tūhoe Look to Future After Court Resolution, *supra* note 232; see Brett Kelly, *supra* note 250.

<sup>268</sup> Brett Kelly, *supra* note 250.

<sup>269</sup> Tuna v. Te Urewera Bd. [2023] NZHC 3680 at [14]-[28] (N.Z.).

<sup>270</sup> See *id.* [16]-[17].

<sup>271</sup> *Id.* [24], [50].

<sup>272</sup> See *id.* [51], [56]-[59].

<sup>273</sup> *Id.* [63].

<sup>274</sup> *Id.* [64]-[65].

<sup>275</sup> *Id.* [74].

<sup>276</sup> *Id.* [28].

principles, but ultimately found in favor of Tuna because the board had failed to provide substantive answers to his contentions.<sup>277</sup>

The outcome of this case raises several serious concerns. First, it brings to light continued colonial dynamics between the Tūhoe and the Crown. Kruger's statements indicate that the DOC and the Te Urewera Board continue to clash over management of Te Urewera, with some board members feeling that DOC continues to assert authority over the board. Additionally, it illustrates that the Crown still has a level of final control over Te Urewera management through the legal system. Although the court noted a necessary deference to the board in interpreting culturally-specific management principles, it still ultimately took on the role of final decision-maker on these principles, rather than agreeing with the board's more flexible interpretation of standards under the Te Urewera Act. If the Crown courts still have the ability to ultimately reject the board's interpretation of the Te Urewera Act, this calls into serious question whether the Te Urewera Act simply hides colonial property regimes under a new name, rather than truly creating a new model for the care of Te Urewera that acknowledges Tūhoe sovereignty.

Of course, Indigenous communities are not immune from intra-community conflicts and it is naïve to think that a board made up of nine members will always be able to take into account all of the diverse views and needs of their communities. It is important for Tūhoe members to have a venue where they can bring concerns about the board's management practices. Unlike many tribes in the United States, Māori tribes do not have their own internal tribal court systems, so Crown courts are necessarily the venue for many intra-community legal conflicts.<sup>278</sup>

This case illustrates that disputes may occur within the community around the management of Te Urewera and highlights a gap in enforcement mechanisms that don't involve replicating colonial power dynamics to some extent. Currently, this is the only reported case where a Crown court interpreted the Te Urewera Board's actions in the context of

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<sup>277</sup> See *id.* [73], [81], [88]-[89].

<sup>278</sup> See *Structure of the Court System*, COURTS OF N.Z., <https://www.courtsofnz.govt.nz/about-the-judiciary/structure-of-the-court-system> [<https://perma.cc/LAZ4-6K3W>] (last visited Feb. 14, 2026). The Māori Land Court, which has jurisdiction over regulation of and disputes involving land belonging to Māori individuals and communities, is viewed by some as a somewhat separate Indigenous legal system, staffed primarily by Māori individuals and recognizing Māori customs. However, this court has also played a role in actively dispossessing Māori of their lands and is still ultimately a creature of the Crown court system, rather than an independent tribal court. See MĀORI LAND CT. & MINISTRY OF JUST., 150 YEARS OF THE MĀORI LAND COURT 10-11, 99 (2015).

the Te Urewera Act, so it remains to be seen how future courts will interpret the act in the wake of *Tuna v. Te Urewera Board*.

## B. RIGHTS OF NATURE IN THE UNITED STATES—THE YUOK TRIBE

Like the Tūhoe iwi, the Yurok Tribe has been working to regain their ancestral territory and enhance their capacity to care for this land in a way that aligns with their culture and traditional ecological knowledge. The tribe has done this through legal mechanisms, such as their constitution and tribal ordinances, direct purchase of land, and implementing various ecological management initiatives both internally and in cooperation with other tribes, the state of California, and federal agencies. Like the Tūhoe, the Yurok Tribe has also used rights of nature as a mechanism for protecting an important ecosystem—the Klamath River.<sup>279</sup> This next section will explore these initiatives before offering suggestions for how a rights of nature and reconciliatory justice initiative similar to the Te Urewera model could be applied to the Redwood State and National Parks to further Yurok management of the redwood forests and acknowledge the history of colonialism that this park system is built on.

### i. *The Yurok Constitution*

In 1993, the Yurok Tribe adopted a constitution to assert their inherent sovereignty and form the Yurok Tribal Government.<sup>280</sup> This constitution focuses heavily on the Yurok's relationship with their homelands and serves as a powerful statement of their intent to strengthen their connection to these homelands through both culturally informed ecological management and reacquisition of land lost to colonialism.

The constitution begins by explaining the relationship between the Yurok and the plants, animals, and natural features in their homelands.<sup>281</sup> The preamble speaks to the Yurok's stewardship of the natural world around them, stating that:

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<sup>279</sup> Rights of the Heyhl-keek 'We-roy Ordinance, Ord. 85 § 4001 ch. 21.60.100-130 (2024) (Yurok Tribal Code).

<sup>280</sup> See Middleton Manning & Reed, *supra* note 43, at 96; see YUOK TRIBE CONST., <https://yurok.tribal.codes/Constitution> [<https://perma.cc/69ML-94R6>].

<sup>281</sup> YUOK TRIBE CONST. pmb., <https://yurok.tribal.codes/Constitution/Preamble> [<https://perma.cc/8RD6-WERE>].

In times past and now Yurok people bless the deep river, the tall redwood trees, the rocks, the mounds, and the trails. We pray for the health of all the animals, and prudently harvest and manage the great salmon runs and herds of deer and elk. We never waste and use every bit of the salmon, deer, elk, sturgeon, eels, seaweed, mussels, candlefish, otters, sea lions, seals, whales, and other ocean and river animals. We also have practiced our stewardship of the land in the prairies and forests through controlled burns that improve wildlife habitat and enhance the health and growth of the tan oak acorns, hazelnuts, pepperwood nuts, berries, grasses and bushes, all of which are used and provide materials for baskets, fabrics, and utensils.<sup>282</sup>

The constitution's preamble goes on to list how specific features of the natural world are intimately connected with the Yurok culture, including the importance of the Klamath River for travel, the use of redwood wood for canoes, and the importance of sacred sites for Yurok spirituality.<sup>283</sup> The preamble then goes on to acknowledge that this ecological balance was "shattered by the invasion of the non-Indians" and gives an account of the myriad ways that colonization affected the Yurok Tribe.<sup>284</sup> The preamble then makes a powerful statement acknowledging the Tribe's inherent sovereignty and connection to their homelands: "while much land has been lost, the spirit of the Creator and our inherent tribal sovereignty still thrives in the hearts and minds of our people as well as in the strong currents, deep canyons, thick forests, and high mountains of our ancestral lands."<sup>285</sup>

Lastly, the preamble lays out the constitution's purposes. These include two purposes that are distinctly related to strengthening the tribe's connection to the natural world: first, to "reclaim the tribal land base within the Yurok Reservation and enlarge the Reservation boundaries to the maximum extent possible within the ancestral lands of our tribe and/or within any compensatory land area;"<sup>286</sup> and second, to "restore, enhance, and manage the tribal fishery, tribal water rights, tribal forests, and all other natural resources."<sup>287</sup>

The first article of the constitution also speaks to the importance of the Yurok's homeland to the tribe. This article describes the tribe's ancestral lands and asserts that the tribe's jurisdiction extends throughout this ancestral territory, rather than being narrowly restricted to the present

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<sup>282</sup> *Id.*

<sup>283</sup> *See id.*

<sup>284</sup> *See id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

reservation lands.<sup>288</sup> This jurisdictional assertion clearly shows the tribe's continued relationship with their ancestral homelands, despite decades of colonial policies that sought to sever this relationship and restrict access to these lands. The Yurok Constitution thus represents an important document that both acknowledges the deep importance of these homelands to the tribe and commits to further this connection in the future.

## ii. *Yurok Ecological Management Projects*

In line with the principles of their constitution, the Yurok Tribe has engaged in multiple important ecological management projects both internally and in cooperation with other tribes and state and federal agencies. These projects include the Yurok Condor Restoration Program,<sup>289</sup> participation in the Cultural Fire Management Council,<sup>290</sup> and efforts to restore the Klamath River,<sup>291</sup> each discussed briefly in this Part. All of these initiatives demonstrate the Yurok Tribe's deep commitment to restoring balance to their homelands and working to heal the wounds inflicted on their people and ancestral territory by colonial practices.

### 1. Yurok Condor Restoration Program

California condors, called *prey-go-neesh* in the Yurok language, are sacred beings in the Yurok culture.<sup>292</sup> Condors are an important part of the Yurok creation story and they are foundational to important Yurok ceremonies.<sup>293</sup> The California condor population drastically declined by the mid-twentieth century, with only twenty-three living condors left by 1982.<sup>294</sup> By 1987, all surviving wild condors were placed in a captive

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<sup>288</sup> YUROK TRIBE CONST. art. I, <https://yurok.tribal.codes/Constitution/I-1> [<https://perma.cc/A577-PRFP>].

<sup>289</sup> *Yurok Condor Restoration Program*, THE YUROK TRIBE, <https://www.yuroktribe.org/yurok-condor-restoration-program> [<https://perma.cc/SDX2-YHXY>] (last visited Mar. 23, 2025).

<sup>290</sup> See Melodie Meyer, *Good Fire: A Yurok Tribe Response to Climate Change*, NAT. RES. & ENV'T, Fall 2022, at 31.

<sup>291</sup> Anita Hofschneider & Jake Bittle, *How the Klamath Dams Came Down*, GRIST (Mar. 19, 2025), <https://grist.org/project/indigenous/klamath-river-dam-removal-tribe-pacificorp-salmon/> [<https://perma.cc/PB7E-V5UK>].

<sup>292</sup> *Yurok Condor Restoration Program*, *supra* note 289.

<sup>293</sup> *Id.*

<sup>294</sup> *For the First Time in a Century, California Condors Will Take Flight in the Pacific Northwest*, U.S. FISH & WILDLIFE SERV. (Mar. 23, 2021), <https://www.fws.gov/press-release/2021-03/first-time-century-california-condors-will-take-flight-pacific-northwest> [<https://perma.cc/BJ6R-WSGM>].

breeding program.<sup>295</sup> In 2003, the Yurok Tribe, viewing restoration of the condor as an important part of the tribe's obligation to restore ecological balance, led the charge to rehabilitate and reintroduce the California condor population in the Pacific Northwest.<sup>296</sup>

To achieve this goal, the tribe created the Yurok Wildlife Program in partnership with the US Fish and Wildlife Service in 2008 with a focus on condor reintroduction.<sup>297</sup> The Yurok Wildlife Program completed several assessments that evaluated habitats for suitability for condor reintroduction, engaged in community outreach to educate the public about condor stewardship, and partnered with Redwood National Park in condor rehabilitation initiatives.<sup>298</sup> These initiatives paid off, and the Yurok Tribe partnered with agencies and other wildlife organizations to establish a condor release site in Redwood National Park.<sup>299</sup> In 2022, five condors were released in Redwood National Park, and the Yurok Tribe continues their reintroduction efforts.<sup>300</sup> This successful initiative, which helped return an important species to the Yurok ancestral homeland, shows the Yurok Tribe's ecological management capacity.

## 2. Cultural Fire Management Council

The Yurok Tribe's participation in the Cultural Fire Management Council is another example of the tribe's deep commitment to protecting and connecting with their ancestral homelands, as well as reviving traditional ecological practices that were banned by the state and federal governments for many years.<sup>301</sup> The Cultural Fire Management Council is a Yurok-run nonprofit that facilitates controlled burns on the Yurok Reservation and ancestral homelands.<sup>302</sup> This organization was established

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<sup>295</sup> *Id.*

<sup>296</sup> *Condor Reintroduction*, NAT'L PARK SERV., <https://www.nps.gov/redw/learn/nature/condors.htm> [<https://perma.cc/NCV2-AQVT>] (last visited Mar. 23, 2025); see *Yurok Condor Restoration Program*, *supra* note 289.

<sup>297</sup> *Yurok Condor Restoration Program*, *supra* note 289.

<sup>298</sup> *Id.*

<sup>299</sup> *Condor Reintroduction*, *supra* note 296.

<sup>300</sup> *Id.*

<sup>301</sup> See generally Meyer, *supra* note 290, at 31 (stating that the CFMC will support the Yurok Tribe's traditional hunting and gathering activities, and a return to traditional tribal land management strategies following the suppression of cultural burning by white settlers).

<sup>302</sup> CULTURAL FIRE MGMT. COUNCIL, <https://www.culturalfire.org/> [<https://perma.cc/Z7X2-NEH6>] (last visited Mar. 23, 2025).

in 2015, and that same year a small cultural burn was approved on Yurok land.<sup>303</sup>

Cultural controlled burns have long been used as a form of ecological management by Yurok people.<sup>304</sup> Historically, these burnings helped increase biodiversity, reduce pests, and reduce the risk of larger, more dangerous fires by decreasing fire fuels like dead wood.<sup>305</sup> Controlled burning was banned by the United States government in 1850 and by the state of California in the 1920s.<sup>306</sup> For decades, the US Forest Service's approach to fire management focused on immediately suppressing any natural fires, likely focusing on preventing short-term property damage rather than prioritizing the long-term benefits that fires can bring to ecosystems.<sup>307</sup> Although state and national environmental agencies have started implementing controlled burns, the long-term suppression of this practice has led to less fire-resilient forests, leading to longer and more destructive wildfire seasons in California.<sup>308</sup>

The Cultural Fire Management Council seeks to enhance the resiliency of Yurok ancestral homeland while reviving an important ecological management tool.<sup>309</sup> To further this goal, the Council heads multiple initiatives aimed at building community capacity and understanding of cultural controlled burns.<sup>310</sup> These initiatives include a variety of programs that work to facilitate controlled burns on both private and public land, educate Yurok tribal members and other tribes on cultural burning, and monitor the effects of controlled burns on native plants.<sup>311</sup>

Much of the recent focus on controlled burning emphasizes its utility for combating the effects of climate change, something that the Cultural Fire Management Council explicitly acknowledges in their program goals.<sup>312</sup> The state of California also acknowledged this utility by calling for California's Department of Forestry and Fire Protection to fund

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<sup>303</sup> Meyer, *supra* note 290, at 32.

<sup>304</sup> *Id.* at 31.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> Madison Gaffney, *Only Bilateral Agreements Can Stop Wildfires: Why Diplomacy Through the U.S.-Canada Air Quality Agreement (AQA) Is a Solution for the Wildfire Related Transboundary Pollution*, 24 VT. J. ENV'T L. 1, 10 (2022).

<sup>308</sup> See Meyer, *supra* note 290, at 31.

<sup>309</sup> See *id.* at 31.

<sup>310</sup> See *id.*; see *Projects*, CULTURAL FIRE MGMT. COUNCIL, <https://www.culturalfire.org/projects> [<https://perma.cc/9B2T-UJD3>] (last visited Mar. 23, 2025).

<sup>311</sup> See *Projects*, *supra* note 310.

<sup>312</sup> See *id.*

tribal governments for cultural burning practices in its Climate Adaptation Plan.<sup>313</sup>

### 3. Klamath River Initiatives

The Yurok Tribe also engages in multiple important initiatives focusing on restoring the health of the Klamath River.<sup>314</sup> The Klamath River, called *Heyhl-keek* ‘We-roy in Yurok, is central to Yurok livelihood and cultural expression.<sup>315</sup> The Yurok have traveled and fished the river since time immemorial.<sup>316</sup> The river is an important ecosystem for various species of salmon, which play an important role in the culture, economy, and health of the Yurok Tribe.<sup>317</sup> The Yurok and other tribes along the Klamath River rely on commercial salmon fisheries to support their economy and historically relied on salmon as an important healthy food source for their people.<sup>318</sup> As with other animals, the Yurok view salmon as relatives and salmon play an important role in Yurok ceremonies.<sup>319</sup> Brook Thompson, a Yurok Tribal citizen, describes the intergenerational ties between her people, the river, and the salmon: “My people have lived on the Klamath for thousands of years, and I know that the salmon today are descendants of those my ancestors managed. These salmon are a direct tie to my ancestors—the physical representation of their love for me. The salmon are my relatives.”<sup>320</sup>

The damming of the Klamath River, combined with climate change and poor water management by the states of California and Oregon, has had disastrous effects on the health of the river, the salmon, and the Yurok people.<sup>321</sup> The first dam on the Klamath River became

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<sup>313</sup> Meyer, *supra* note 290, at 32.

<sup>314</sup> See generally Hofschneider & Bittle, *supra* note 291 (explaining the Yurok Tribe’s long struggle to remove dams on the Klamath River, including litigation, lobbying, and negotiations with power companies).

<sup>315</sup> Rights of the Heyhl-keek ‘We-roy Ordinance, Ord. 85 § 4001 ch. 21.60 (2024) (Yurok Tribal Code); see Brook Thompson, *The Familial Bond Between the Klamath River and the Yurok People*, HIGH COUNTRY NEWS (Aug. 24, 2021), <https://www.hcn.org/issues/53-9/indigenous-affairs-klamath-basin-the-familial-bond-between-the-klamath-river-and-the-yurok-people/> [<https://perma.cc/LQD4-PV9D>].

<sup>316</sup> See Michael C. Blumm & Dara Illowsky, *The World’s Largest Dam Removal Project: The Klamath River Dams*, 101 OR. L. REV. 1, 10 (2022).

<sup>317</sup> *Id.*; Thompson, *supra* note 315.

<sup>318</sup> Blumm & Illowsky, *supra* note 316, at 10-11.

<sup>319</sup> Thompson, *supra* note 315.

<sup>320</sup> *Id.*

<sup>321</sup> Blumm & Illowsky, *supra* note 316, at 10-12; *Tribe Gives Personhood to Klamath River*, *supra* note 261.

operational in 1918, followed by three more in 1925, 1958, and 1962.<sup>322</sup> These dams blocked the passage of salmon returning from the ocean after spawning, decreased downstream water quality, and lowered the water level, leading to mass deaths of salmon from diseases like gill rot.<sup>323</sup> This in turn negatively affected the Yurok Tribe's economy, health, and cultural expression.<sup>324</sup>

The Yurok Tribe and other tribes along the Klamath River began pushing for the removal of the dams in the early 2000s.<sup>325</sup> The Yurok Tribe employed an extensive and multi-pronged approach to the dam removal fight.<sup>326</sup> This included years of lobbying and negotiating with the owners of the dams, other tribes along the Klamath River, congressional representatives, and federal and state officials.<sup>327</sup> This also included a rights of nature initiative granting legal personhood to the Klamath River.<sup>328</sup>

### iii. *Yurok Rights of Nature—Rights of the Heyhl-keek 'We-roy Ordinance*

Almost two decades into the fight to remove the dams and restore the health of the Klamath River, the Yurok Tribe decided to employ an innovative new tactic by granting the Klamath River legal personhood in 2019 through a tribal council resolution.<sup>329</sup> The catalyst for this resolution was the continued decline in the health of the salmon and the river, despite the Yurok's decades of efforts to work within existing legal systems to enact change.<sup>330</sup> Although rights of nature were not an entirely new concept in the United States at this time, the resolution made the Klamath River the first river in North America to be granted legal personhood.<sup>331</sup> The resolution represents a creative new approach that attempts to

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<sup>322</sup> Blumm & Illowsky, *supra* note 316, at 14.

<sup>323</sup> Hofschneider & Bittle, *supra* note 291; *see* Blumm & Illowsky, *supra* note 316, at 14.

<sup>324</sup> Thompson, *supra* note 315.

<sup>325</sup> *See* Hofschneider & Bittle, *supra* note 291.

<sup>326</sup> *See id.*

<sup>327</sup> *Id.*

<sup>328</sup> *See* Rights of the Heyhl-keek 'We-roy Ordinance, Ord. 85 § 4001 ch. 21.60 (2024) (Yurok Tribal Code).

<sup>329</sup> Resolution Establishing the Rights of the Klamath River, Res. No. 19-40 (2019) (Yurok Tribal Council), <https://ecojurisprudence.org/wp-content/uploads/2025/08/Yurok-Klamath-2025-Chapter-21.60-1.pdf> [https://perma.cc/GQ9B-P9US].

<sup>330</sup> *Tribe Gives Personhood to Klamath River*, *supra* note 261.

<sup>331</sup> *Id.*; *see supra* Part II.B (discussing briefly the history of rights of nature in the United States).

strengthen protections for the river, while also emphasizing the tribe's sovereignty and deep connection to their ancestral lands.

The resolution begins by referencing the Yurok Tribe's history of stewardship of their ancestral territory, quoting directly from the Yurok Constitution preamble.<sup>332</sup> It then goes on to reference the relationship between the Yurok and the Klamath River since time immemorial, and states that "all species connected to the Klamath River are environmentally and culturally significant and should be protected in their traditional forms, natural diversity, and original integrity" and notes that these species "are vital to the cultural, legal, subsistence, and economic interests of the Yurok Tribe."<sup>333</sup>

Next, the resolution focuses on the legal basis and obligations supporting the resolution. Here, the resolution draws support from the Yurok Tribe's inherent sovereignty and international legal norms.<sup>334</sup> It specifically references two articles in the United Nations Declaration of the Rights of Indigenous Peoples: Article 26(1), which expresses the right of Indigenous peoples to their ancestral territories and resources; and Article 29, which expresses the rights of Indigenous peoples to conserve and protect their environment, and states' duties to take effective measures to monitor, maintain, and restore the health of Indigenous peoples.<sup>335</sup> The resolution also draws from Yurok customary law, explaining that the Yurok have an obligation to protect the Klamath River ecosystem.<sup>336</sup>

Lastly, the resolution states the specific rights of the Klamath River: the rights "to exist, flourish, and naturally evolve; to have a clean and healthy environment free from pollutants; to have a stable climate free from human-caused climate change impacts; and to be free from contamination by genetically engineered organisms."<sup>337</sup> It also calls for the adoption of an ordinance detailing the rights of the Klamath River and providing the necessary legal basis for standing in causes of action against "entities inflicting harm in violation of the Klamath River, its ecosystem, and species right."<sup>338</sup>

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<sup>332</sup> Resolution Establishing the Rights of the Klamath River, Res. No. 19-40 (2019) (Yurok Tribal Council), <https://ecojurisprudence.org/wp-content/uploads/2025/08/Yurok-Klamath-2025-Chapter-21.60-1.pdf> [https://perma.cc/GQ9B-P9US].

<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

A little over a year after the resolution was adopted, the Yurok and other tribal nations finally reached an agreement with PacifiCorp, the current owner of the Klamath River dams, to begin removal of the dams.<sup>339</sup> In February 2024, a year after the official dam removal began, the Yurok Tribe's corresponding ordinance to the tribal council resolution—the Rights of the Heyhl-keek 'We-roy Ordinance—was formally adopted into the Yurok Tribal Code.<sup>340</sup> Many of the provisions from the resolution are preserved in this ordinance, but the ordinance puts a stronger emphasis on the relationship between Yurok sovereignty and the rights of the Klamath River by stating that the first purpose of the ordinance is “to exercise the inherent sovereignty of the Yurok Tribe to protect the health and well-being of the Yurok people and the Heyhl-keek 'We-roy.”<sup>341</sup>

The ordinance also goes into significant detail on the specific rights of the Klamath River and the jurisdiction of the Yurok Tribe to enforce these rights. Article II divides these rights into five categories: natural rights, cultural rights, restoration rights, property rights, and standing rights and right not to be sued.<sup>342</sup> The natural rights include the right to naturally exist, the right to naturally flourish, the right to naturally evolve, and the right to naturally regenerate.<sup>343</sup> Specific examples of what these rights include are listed in the ordinance, such as the right to a “clean and healthy environment free from pollutants,” the right to “a climate free from human-caused climate change impacts,” and the right to have “ceremonies performed to balance the world and to benefit the health of Heyhl-keek 'We-roy.”<sup>344</sup> Several of these rights relate specifically to the history of environmental destruction of the Klamath River through damming and poor water management, such as the right to “instream flows at naturally occurring levels” and the right to “be free from structures or actions that inhibit or interrupt its ability to flow freely.”<sup>345</sup>

The cultural rights that the ordinance establishes are separated into three categories: rights as a cultural riverscape, rights to the Yurok Tribe, and rights to the Yurok members.<sup>346</sup> The first of these rights relates to the

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<sup>339</sup> Hofschneider & Bittle, *supra* note 291.

<sup>340</sup> See Rights of the Heyhl-keek 'We-roy Ordinance, Ord. 85 § 4001 ch. 21.60 (2024) (Yurok Tribal Code).

<sup>341</sup> *Id.* § 21.60.030(a).

<sup>342</sup> *Id.* § 21.60.100-40.

<sup>343</sup> *Id.* § 21.60.100.

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.* § 21.60.110.

protection of the river as a cultural resource and property.<sup>347</sup> To give expression to these rights, the ordinance provides a non-exhaustive list of ways the Klamath River participates in Yurok culture, including its role in Yurok ceremonies, and its support of important cultural species and important cultural resource sites.<sup>348</sup> The second category of rights, rights to the Yurok Tribe, details the river's right to be protected by the tribe through tribal laws and through tribal intervention in matters concerning the river.<sup>349</sup> The last category, the rights to the Yurok members, details the rights of the river to "live in relationship" with Yurok tribal members.<sup>350</sup> This section also clarifies that Yurok cultural practices that have a de minimis impact on the river are exempt from enforcement under the ordinance, stating that "it is not the intent of this chapter to prohibit the use of Heyhl-keek 'We-roy's waters or plants and animal species. It is the intent of this chapter to prevent excessive use that has a direct or indirect harm to Heyhl-keek 'We-roy's rights.'"<sup>351</sup> This section and this provision in particular, are important as they emphasize the interconnected nature of the river with the tribe, reflecting Yurok cultural view of relationality between humans and non-human beings.

The restoration rights of the river are divided into the right to be restored from identifiable human-caused damage and the right to be restored from unidentifiable human-caused damage.<sup>352</sup> Within each of these categories, the ordinance calls for active repairs to restore the health of the Klamath River from these harms, including a call to address greenhouse gas emissions and climate change,<sup>353</sup> opening a door for this ordinance to be used as a legal mechanism to push for additional steps to address climate change.

The property rights of the river focus on the right to own cultural, ecological, and hydrological data and the right to trust funds under the Heyhl-keek 'We-roy Trust.<sup>354</sup> This represents a significant departure from rights of nature initiatives like Te Urewera, where an important function of establishing legal personhood was vesting unalienable property rights in the natural feature itself. This difference is likely due to the differing

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<sup>347</sup> See *id.* § 21.60.110(a).

<sup>348</sup> *Id.*

<sup>349</sup> *Id.* § 21.60.110(b).

<sup>350</sup> *Id.* at § 21.60.110(c).

<sup>351</sup> *Id.*

<sup>352</sup> *Id.* § 21.60.120.

<sup>353</sup> *Id.*

<sup>354</sup> See *id.* § 21.60.130.

legal landscapes and circumstances surrounding Te Urewera and the Klamath River. The Te Urewera Act was a joint effort by the two groups that claimed legal title and sovereignty over Te Urewera—the Tūhoe iwi and the Crown. The Klamath River flows through many jurisdictions—two states, federal public and trust land, and multiple tribal territories—but the Rights of Heyhl-keek ‘We-roy Ordinance was undertaken by the Yurok Tribe alone, who have limited jurisdiction over the river. Therefore, although the Yurok Tribe could theoretically create a rights of nature initiative that establishes unalienable property rights for the portion of the river that lies within their territory, it would make little sense to do so considering the inherent interconnected nature of the river throughout many different jurisdictions.

The last of the river’s legal rights are standing rights and the right not to be sued.<sup>355</sup> This section of the ordinance asserts that the Klamath River has legal standing to adjudicate rights in proceedings when it has suffered an injury and establishes the right of the river to be represented by the Yurok Tribe in legal and advocacy proceedings.<sup>356</sup> Acknowledging the complicated jurisdictional landscape that the Klamath River flows through and the importance of the river to other tribes, the ordinance states that “it is not the intent of this chapter to limit other native nations or other entities in their representation of the Heyhl-keek ‘We-roy in Tribal, state, federal, and international forums.”<sup>357</sup> The ordinance also calls for collaboration between the Yurok Tribe, other governments, and private entities in protecting the Klamath River.<sup>358</sup> The breadth of the rights established in Article II show a deep commitment to the holistic health of the river, encompassing a wide range of ecological, cultural, and legal needs of the river.

Article IV lays out the enforcement provisions for violations of the rights established in Article II.<sup>359</sup> This section declares that the ordinance extends to any person, entity, or government that violates the rights of the river and establishes Yurok Tribal Court jurisdiction over these offenses.<sup>360</sup> The jurisdictional statement in the ordinance is broad, asserting tribal jurisdiction not only over harm that occurs within the

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<sup>355</sup> *Id.* § 21.60.140.

<sup>356</sup> *Id.*

<sup>357</sup> *Id.* § 21.60.140(a)(1).

<sup>358</sup> *Id.* § 21.60.140(a)(3).

<sup>359</sup> *See generally id.* § 21.60.170-220 (enforcing the legal rights of the Heyhl-keek ‘We-roy: natural rights, cultural rights, restoration rights, property rights, standing rights, and rights not to be sued).

<sup>360</sup> *Id.* § 21.60.170-80.

boundaries of the Yurok Reservation, but anywhere within the Yurok ancestral territory and the Klamath River basin.<sup>361</sup> Lastly, the ordinance establishes remedies in the form of compensatory damages, injunctions, punitive damages, nominal damages, and “reasonable enforcement, administrative, cleanup, mitigation, and litigation costs, including attorney fees.”<sup>362</sup>

Overall, this ordinance follows the purposes of the Yurok Constitution and shows a strong attempt by the Yurok Tribe to reclaim connection and sovereignty over their ancestral homeland through a rights of nature initiative. So far, litigation under the ordinance remains untested, likely due to the success of the dam removal initiative shortly before the formal adoption of the ordinance. However, this initiative can be seen as one part of larger Yurok advocacy that led to the eventual removal of the dams and further restoration efforts for the Klamath River.<sup>363</sup> Since the adoption of the ordinance, the Yurok Tribe has worked to further protect the Klamath River and develop ecological management capacity through multiple restoration initiatives, including through a large, holistic revegetation project that seeks to restore the native flora along the Klamath River’s reservoir.<sup>364</sup>

#### iv. *Yurok Land Purchases*

In addition to asserting sovereignty and connection with their homelands through ecological management practices and a rights of nature initiative, the Yurok Tribe has also taken steps to increase their tribal land base through direct purchases of land around their reservation.<sup>365</sup> By 2022, the tribe had regained approximately 70,000 acres of land in their ancestral territory.<sup>366</sup> This included the purchase of around 50,000 acres in

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<sup>361</sup> *Id.* § 21.60.180.

<sup>362</sup> *See id.* § 21.60.210.

<sup>363</sup> *See* Michael C. Blumm, Daniel J. Rohlf & Adam Eno, *A Half-Century of Pacific Salmon Saving Efforts: A Primer on Law, Policy, and Biology*, 64 NAT. RES. J. 137, 147 (2024).

<sup>364</sup> *Yurok Tribe Leads Massive Revegetation Project*, THE YUROK TRIBE (Mar. 29, 2024), <https://www.yuroktribe.org/post/yurok-tribe-leads-massive-revegetation-project> [<https://perma.cc/57FP-W2WX>].

<sup>365</sup> *The Yurok Tribe Is Working Hard to Restore the Forests, Prairies & Streams on the Yurok Reservation*, THE YUROK TRIBE (Sept. 14, 2022) [hereinafter *Yurok Tribe is Working Hard*], <https://www.yuroktribe.org/post/the-yurok-tribe-is-working-hard-to-restore-the-forests-prairies-streams-on-the-yurok-reservation> [<https://perma.cc/L876-HPL8>]; Middleton Manning & Reed, *supra* note 43, at 96-109.

<sup>366</sup> *Yurok Tribe Is Working Hard*, *supra* note 365.

partnership with Western Rivers Conservancy through the innovative use of California's carbon credit program.<sup>367</sup>

These lands purchased in partnership with Western Rivers Conservancy include the Yurok Community Forest and the Blue Creek watershed—two areas of incredible cultural significance to the Yurok Tribe. The Blue Creek area is described as containing “the path to our spiritual center, a sacred place where our medicine makers have travelled since time immemorial to bring the world back into balance.”<sup>368</sup> Along with being culturally important to the Yurok Tribe, these lands have important ecological significance.<sup>369</sup> Blue Creek is incredibly important to the health of the Klamath River ecosystem, particularly the health of the salmon.<sup>370</sup> It functions as the most important cold-water tributary to the Klamath River and serves as an essential cold-water refuge and spawning habitat for Chinook, coho, and steelhead salmon.<sup>371</sup> The Yurok Tribe and Western Rivers Conservancy's joint management plan for this area emphasizes restoring and protecting this vital ecosystem while also supporting Tribal economic development and cultural expression through creating jobs for Yurok tribal members and enhancing culturally-important natural resources.<sup>372</sup> The Yurok Tribe has attempted to amend their reservation boundary to encompass these newly acquired lands through the Yurok Lands Act, which was introduced before Congress in 2022.<sup>373</sup> This act would also transfer a little over 1,000 acres of US Forest Service land to the Yurok Tribe and mandate strong federal consultation with the tribe.<sup>374</sup>

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<sup>367</sup> *Klamath River Blue Creek*, W. RIVERS CONSERVANCY, <https://www.westernrivers.org/projects/ca/klamath-river-blue-creek> [https://perma.cc/6G5J-6Y2X] (last visited Mar. 23, 2025); Middleton Manning & Reed, *supra* note 43, at 96-109.

<sup>368</sup> Middleton Manning & Reed, *supra* note 43, at 110.

<sup>369</sup> *Klamath River Blue Creek*, *supra* note 367.

<sup>370</sup> *Id.*

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> *Congressman Huffman Introduces Yurok Lands Act*, THE YUROK TRIBE (Apr. 28, 2022), <https://www.yuroktribe.org/post/congressman-huffman-introduces-yurok-lands-act> [https://perma.cc/89D9-BZ5V]; *H.R. 7581-Yurok Lands Act of 2022*, CONGRESS.GOV, <https://www.congress.gov/bills/117th-congress/house-bill/7581/text/ih> [https://perma.cc/EJE9-EDJF] (last visited Mar. 23, 2025).

<sup>374</sup> *Congressman Huffman Introduces Yurok Lands Act*, *supra* note 373.

## 1. 'O Rew Redwood Gateway

One of the most recent Yurok ecological management initiatives relates directly to Redwood National Park.<sup>375</sup> In March 2024, Save the Redwoods League signed an agreement providing for the transfer of a 125-acre property adjacent to Redwood National and State Parks back to the Yurok Tribe.<sup>376</sup> This land, called 'O Rew in Yurok, is a culturally-important location in the center of the Yurok ancestral territory.<sup>377</sup> Save the Redwoods League bought the site, which had operated as a lumber mill for more than fifty years, in 2013 for conservation purposes.<sup>378</sup> The Save the Redwoods League originally planned to transfer it to the National Park Service, before entering into conversations around returning the land to the Yurok Tribe.<sup>379</sup>

In 2021, Save the Redwoods League partnered with the Yurok Tribe, the National Park Service, the California State Parks, and other organizations to begin restoration of the territory, led by experts from the Yurok Tribe.<sup>380</sup> From this collaboration, the idea to transfer 'O Rew back to the Yurok emerged.<sup>381</sup> The 2024 agreement provided for a formal conveyance of 'O Rew to the tribe in 2026, and for co-management of the site between the Yurok Tribe, the National Park Service, and the California State Parks.<sup>382</sup> This site will serve as a southern gateway to Redwood National and State Parks.<sup>383</sup> After the transfer, the Yurok Tribe will construct a visitor center highlighting Yurok history and a traditional Yurok village.<sup>384</sup>

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<sup>375</sup> *Save the Redwoods League, the Yurok Tribe, and Park Partners Sign Historic Agreement to Return Tribal Land*, THE YUROK TRIBE (Mar. 19, 2024) [hereinafter *Save the Redwoods League*], <https://www.yuroktribe.org/post/save-the-redwoods-league-the-yurok-tribe-and-park-partners-sign-historic-agreement-to-return-triba> [https://perma.cc/J9HC-KGVD].

<sup>376</sup> *Id.*

<sup>377</sup> *Id.*

<sup>378</sup> *Id.*

<sup>379</sup> Jonathan Vigliotti & Sarah Welch, *More Than a Century After Their Land Was Ravaged by the California Gold Rush, Yurok Tribe to Reclaim Territory*, CBS NEWS (Dec. 16, 2024, at 19:40 EST), <https://www.cbsnews.com/news/redwood-national-park-land-returned-yurok-tribe/> [https://perma.cc/ZM5U-PS3M].

<sup>380</sup> 'O Rew Redwoods Gateway, SAVE THE REDWOODS (Mar. 19, 2024), <https://www.savetheredwoods.org/project/o-rew-redwoods-gateway/> [https://perma.cc/5NV3-ZBDB].

<sup>381</sup> *Id.*

<sup>382</sup> *Save the Redwoods League*, *supra* note 375.

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

All of these actions—from internal ecological management operations to direct purchases of ancestral land for restoration purposes—show that the Yurok Tribe has a deep commitment to restoring the balance of their homelands. These initiatives also show that the tribe has a strong capacity to achieve these goals by combining their wealth of traditional ecological knowledge with innovative legal and ecological management practices. The strength of the Yurok Tribe's ecological management practices and the tribe's sovereignty have recently been acknowledged by the National Park Service through the 'O Rew agreement. This Article concludes by suggesting that the United States government should further recognize the Yurok Tribe's sovereignty over their ancestral territory in the Redwood National and State Parks through a Yurok-led rights of nature and reconciliatory justice model similar to that used for Te Urewera.

### **III. RECONCILIATORY JUSTICE AND RIGHTS OF NATURE FOR REDWOOD NATIONAL AND STATE PARKS**

A joint reconciliatory justice and rights of nature initiative that grants legal personhood to the Yurok ancestral homelands within Redwood National and State Parks would be well-suited for several reasons. First, national parks in general represent a compelling starting point for a national rights of nature initiative because they already have a level of conservation-oriented protection by virtue of their designation. This is not to say that there are not disputes over national park land and resources, but a rights of nature initiative would likely fare much better on national park land than on other public lands that do not have the same level of protection. Additionally, like Te Urewera in New Zealand, national parks in the United States feature outstanding scenic value that inspire people to commit to their care, which would make rights of nature initiatives aimed at protecting parks more palatable for many United States citizens.

The colonial history of the national parks is becoming more recognized both by mainstream American media and literature and by the National Park Service itself through co-management agreements with Indigenous nations. This reckoning situates the parks well for reconciliatory justice models that could acknowledge the history of colonial genocide of Indigenous peoples and start the process of returning management of ancestral homelands to Indigenous control. The establishment of Redwood National and State Parks is clearly part of the

dark legacy of genocide in California, and it would benefit from a reconciliatory justice process. The colonial land policies underpinning the United States national park system are an insidious and slippery type of colonialism. Indigenous peoples inhabited and cared for these lands prior to colonization, but the parks create a dominant narrative that these lands were untouched by humans. This narrative contributes to an erasure of Indigenous history and perpetuates the idea that primary purpose of parklands is the recreational enjoyment by the non-Indigenous American public, which is often at odds with Indigenous land management and cultural practices.<sup>385</sup>

As mentioned above, the Yurok Tribe has demonstrated exemplary ecological management capacity and a strong commitment to restoring the ecological balance in their ancestral homeland. They also have indicated an interest in using rights of nature to protect their ancestral homelands through the Rights of the Heyhl-keek 'We-roy Ordinance. Lastly, they have already established a co-management regime in Redwood National and State Parks through the recent 'O Rew agreement. All of these factors make the Yurok Tribe ideally situated to be part of a reconciliatory justice and rights of nature initiative applied to their ancestral homelands in Redwood National and State Parks. However, as someone who is not a member of the Yurok Tribe, I recognize that my understanding of the needs, experiences, and priorities of the Yurok community inherently falls short. A rights of nature initiative for Redwood National Park may not align with what the Yurok Tribe envisions for their ancestral homeland and I do not mean to suggest that my proposed model is the right choice for the Yurok community. Rather, the following Part draws lessons from the Te Urewera Act and considers how a similar initiative may be applied to Redwood National and State Parks, while also acknowledging potential drawbacks to rights of nature initiatives that the Yurok Tribe may choose to take into account while considering a rights of nature initiative.

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<sup>385</sup> Disputes over rock climbing on Devils Tower is an illustrative example of the tension between outdoor recreation and Indigenous beliefs. See *Indian Religious Freedom at Devil's Tower National Monument*, INDIAN L. RES. CTR., [https://indianlaw.org/projects/past\\_projects/cheyenne\\_river](https://indianlaw.org/projects/past_projects/cheyenne_river) [<https://perma.cc/7W2X-CXTA>] (last visited Feb. 15, 2026). For a general discussion of the tensions between Indigenous peoples and the outdoor recreation industry, see generally JOSEPH WHITSON, *MARKETING THE WILDERNESS* (2025) (analyzing how the relationship between public land policy and the outdoor recreation industry in the United States works to disenfranchise and exclude Indigenous peoples from public lands).

#### A. APPLYING THE TE UREWERA MODEL TO REDWOOD NATIONAL AND STATE PARKS

The Te Urewera model can present lessons and recommendations for a possible reconciliatory justice and rights of nature initiative for Redwood National and State Parks. First, like the Te Urewera model, it is important that the initiative be led by Indigenous peoples and based in Indigenous practices, otherwise it runs the risk of being co-opted. In this case, the Yurok Tribe has a clear connection to the lands that make up Redwood National and State Parks and has led a previous rights of nature initiative that involved an ecosystem that passes through the parks—the Klamath River. However, there are multiple other Indigenous groups that have ancestral ties to the redwood forests. It is important that these connections be acknowledged as well, and that a rights of nature initiative for Redwood National and State Parks be brought with full consent of all tribes with ancestral territory located within the parks' boundaries. A board model, similar to the Te Urewera Board, could be a way to account for multiple tribal interests in the redwood forests, with board member slots allocated for each individual tribe.

Of course, with multiple interests comes the risk of disagreement over management principles. *Tuna v. Te Urewera Board* indicates some possible shortcomings of the Te Urewera model when it comes to interpreting rights of nature provisions in the face of intra-community disputes. No community is completely homogenous, and disagreements are bound to arise at some level. The Te Urewera Act attempts to guide management priorities by establishing a set of principles rooted in Tūhoe culture and land management practices. These management principles are important as they reframe ecological management in a way that prioritizes traditional Indigenous ecological knowledge and emphasizes the interconnected nature of the land to the people, but, as *Tuna* demonstrates, these principles may have differing meanings among community members. This is especially evident with terms like tūhoetanga, which speaks broadly to the expression of Tūhoe identity and necessarily has a different meaning to different Tūhoe individuals.

This is not to say that terms like tūhoetanga should not be included as principles for ecological management in rights of nature initiatives—on the contrary, multi-faceted, culturally-specific terms like this can create flexibility, allowing management priorities to change as the community changes while still grounding these priorities in cultural principles. Flexible terms like these may take on added importance for a legislatively-

created rights of nature initiative in the United States because of our principles of statutory interpretation. When interpreting terms in an act or regulation, courts in the United States generally look to the common meaning of the term at the time the act was drafted. Though a static interpretation of certain management principles may be beneficial to tribes, including broad, multi-faceted terms related to cultural identity may ensure that a rights of nature initiative has enough flexibility to meet the needs and priorities of future generations.

A rights of nature initiative for Redwood State and National Parks should not try to limit all disputes by drafting narrow, concretely defined terms, but should instead focus on creating a dispute-resolution mechanism that aligns with tribal values and customs that community members can turn to when issues arise. One solution would be to place enforcement in the jurisdiction of tribal courts. This would help remove enforcement from colonial establishments like the National Park Service and the United States court system. This would create a similar enforcement mechanism to that found in the Rights of the Heyhl-keek 'We-roy Ordinance, which establishes jurisdiction in the Yurok Tribal Court. However, if jurisdiction was exclusive to the Yurok Tribal Court, this could give rise to issues between the redwood forest tribes. Therefore, it might be beneficial for the tribes to create an entirely new type of court, made up of members from the different tribes.

A model for Redwood National Park similar to the Te Urewera model would include a formal apology and historical account of the displacement and genocide of the Yurok Tribe. It would then follow with formal restitution. This process would likely include the United States government, the National Park Service, and the State of California. Like with the Te Urewera model, the granting of legal personhood for Redwood National and State Parks would be a form of restitution and a way of re-establishing Yurok sovereignty and relationship with their homelands.

A joint reconciliatory and rights of nature initiative for the Redwood National Park based on the Te Urewera model would include a list of guiding management principles determined by the Yurok Tribe. These may be modeled off of the Rights of the Heyhl-keek 'We-roy Ordinance, with categories of specific rights outlined by the tribe and drawing from their cultural values and traditional ecological knowledge. The tribe could then take control of day-to-day management of the Redwood National and State Parks. Considering that the Yurok Tribe has extensive ecological management capacity, they may want the National Park Service to take a more limited role than the DOC has on the Te

Urewera Board. However, there should still be funding assistance from the National Park Service as the Yurok Tribe further develops capacity to take on more extensive management of the parks.

*i. Potential Drawbacks of a Rights of Nature Provision for Redwood*

Though a tribally-led rights of nature initiative for Redwood National and State Parks may provide important benefits for the Yurok and the ecological management of the parklands, it may also have some potential drawbacks. First, a rights of nature initiative based on the Te Urewera model would likely foreclose future transfer of title of parklands to the Yurok or another tribe because it would make the land inalienable and vested in itself. Some may view this outcome as a win because it could shift the understanding of landownership from an anthropocentric Western view to a more ecocentric view based in Indigenous traditions that prioritizes the health of the land over resource extraction. However, the Yurok and other tribes may prefer transfer of title of the parklands for several reasons. First, holding title to the parklands would allow tribes greater flexibility in how they use these lands, leading to a greater exercise of tribal sovereignty than available for lands under a rights of nature regime similar to Te Urewera. Second, tribes may prefer the legal predictability of holding title to land. Because the concept of inalienable title vested in the land itself is a new concept in the western legal system, it is not entirely clear how courts will interpret property rights and disputes rising on these lands. A rights of nature initiative based on the Te Urewera model is thus most useful in cases where the government is unwilling to transfer title of land directly to the tribe and will be unlikely to do so in the foreseeable future. The Yurok Tribe has focused on expanding their tribal land base through direct purchase of land. The tribe may prefer to focus their energy and resources on purchasing title to land around Redwood State and National Parks, rather than focusing on a rights of nature initiative for the parks.

A second potential concern is that a rights of nature initiative for Redwood National Park may be co-opted by the US government and other non-Indigenous interest groups, essentially attaching a flashy label without materially changing how the land is managed or by whom. The Te Urewera board model, which includes government officials and non-Indigenous members from tourism sectors and other interest groups, may create barriers to real change and diminish Indigenous voices on the board. Some of these concerns are visible in the disputes central to *Tuna v. Te*

*Urewera Board.* Increasing the number of Tribal members on the board for a Redwood National Park rights of nature initiative may help reduce some of these risks. Additionally, placing disputes arising under the rights of nature initiative in the jurisdiction of tribal courts, as suggested above, would help give the Yurok Tribe and other tribes in the area significant decision-making power when disputes arise.

Lastly, funding may be a concern for the Yurok and other tribes involved in a rights of nature initiative for Redwood State and National Parks. The cost to manage these parks would be a significant expenditure for the tribes. In 2023, the National Park Service's budget for Redwood National Park was \$10,271,000.<sup>386</sup> The Te Urewera model, which was accompanied by financial settlement under the Tūhoe Claims Settlement Act, may help alleviate funding concerns for a Redwood National Park rights of nature initiative. Though Indigenous communities in the United States have been calling for reparations for historic injustices and treaty violations, a financial settlement of this type would likely be met with significant resistance from the US government, particularly under the current Trump administration. The government may be more amenable to continuing to allocate annual funding directly to management of the parklands through a co-governance model similar to that used for Te Urewera. In the case of Te Urewera, the DOC annually provides around \$2.1 million to Te Uru Taumata for operation of Te Urewera and over \$100,000 directly to the Te Urewera Board for management costs.<sup>387</sup> This funding is justified both as part of historical redress and as reflecting DOC's continued stake in management of Te Urewera as they still have a presence on the Te Urewera Board.

Funding concerns may also be offset by private contributions, such as grant funding from conservation-oriented nonprofits, and from revenue generated from park visitors. Additionally, as shown in the case of Te Urewera, a rights of nature initiative that prioritizes tribal management and connection with the parklands may create more employment opportunities for tribal citizens, both in direct management of the park and in the tourism sector. Though these employment opportunities may not result in money going directly to the tribe as an

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<sup>386</sup> U.S. DEP'T OF INTERIOR, BUDGET JUSTIFICATIONS AND PERFORMANCE INFORMATION FISCAL YEAR 2025: NATIONAL PARK SERVICE 58 (2025).

<sup>387</sup> N.Z. Taxpayers' Union, *Accountability Needed Over Disastrous Failure to Care for Te Urewera*, SCOOP (Jan. 11, 2024, at 14:35 CST), <https://www.scoop.co.nz/stories/PO2401/S00014/accountability-needed-over-disastrous-failure-to-care-for-te-urewera.htm> [<https://perma.cc/C7XD-Z8WK>].

entity, they would help funnel additional resources to the tribal community.

## B. CONCLUSION

In many ways, the Te Urewera Act and the work of the Te Urewera Board illustrates how reconciliatory and restorative justice principles can be integrated into land-management frameworks that retain a resemblance to already-existing environmental management systems. Rights of nature initiatives that engage multiple stakeholders in a collaborative environment, with Indigenous voices uplifted and centered, can help society as a whole meaningfully engage with the natural world and switch from a human-centric view of nature as commodity to a view of nature as relative and an integral part of our human identities.

These initiatives can also help prevent future colonial patterns by engaging stakeholders in honest conversation around colonial history and mending relationships going forward. Applying a similar model to Redwood National and State Parks in collaboration with the Yurok Tribe could prove successful in the United States and help further address the National Park Service's colonial history while restoring a level of Indigenous decision making over parklands.