

THE SAGA OF JERUSALEM’S EIN LAVAN SPRING: HOW THE HUMAN RIGHT TO DEVELOPMENT TRUMPS RIGHTS OF NATURE

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INTRODUCTION

Ein Lavan, “White Spring,” named for the white color of surrounding bedrock, is located in the Refaim Stream National Park in Jerusalem.¹ The spring flows year-round out of a cave from its groundwater source, streaming into two ancient pools carved out of the hillside landscape.² Ein Lavan is part of a narrow ribbon of similar springs encompassing

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1. Rachelle Adam, *Securing Rights for the Ein Lavan Natural Spring*, EARTH L. CTR. (Nov. 15, 2018), <https://www.earthlawcenter.org/blog-entries/2018/11/securing-rights-for-the-ein-lavan-natural-spring>; see also *Things to do in Israel*, ATTRACTIONS IN ISR. (Aug. 14, 2011), <http://www.attractions-in-israel.com/jerusalem-area/jerusalem-parks/ein-lavan---lavan-spring---en-lavan---nahal-refaim-nature-reserve/>.

2. Adam, *supra* note 1; see also *Things to do in Israel*, *supra* note 2. See also Yoni Cohen, *Weekend Walk: Ein Lavan*, THE JERUSALEM POST (June 3, 2011 12:40PM), www.jpost.com/Travel/Around-Israel/Weekend-Walk-Ein-Lavan; Yishaysho, *Ein Lavan Spring*, GEOCACHING (Nov. 20, 2010), www.geocaching.com (login and search “Ein Lavan Spring”) (describing the spring).

Jerusalem.³ These springs were the critical elements of ancient settlements nestled within biblical agricultural landscapes, festooned with terraces that supported intensive farming for Iron Age farmers.⁴ This area has been described as the cradle of agriculture of the Kingdom of Judea, dating to around 900 B.C.E. Consensus holds that these springs must be preserved and protected as important natural and cultural assets.⁵

Ein Lavan is a critical water source for the rich biodiversity of its surrounding lands. In addition, as a naturally flowing spring in an urban setting within an arid country, Ein Lavan provides unique cultural and recreational services. Israel has few surface water sources thus enhancing the value of Ein Lavan, widely used by landlocked and beach-less Jerusalemites (in contrast to the denizens of Israel's coastal Mediterranean cities), "thirsty" for a cool dip in a natural spring during the long and hot summers.

Yet Ein Lavan is under threat; the government is promoting a development plan extending throughout the spring's watershed that, according to scientists, is liable to kill the spring by cutting it off from its underground water sources.⁶

I propose to frame a discussion of Ein Lavan within the context of the human right to development versus rights of nature, and specifically from the biocentric viewpoint of the spring itself. Currently, Ein Lavan is a vividly alive natural spring enjoying its flow of water from a watershed still mostly in a natural state.⁷ The spring thrives within its ecosystem. It is fed by an underground system of water as well as runoff from a natural area still relatively free of the blight of urban pollution.⁸ Most importantly, the spring is protected by Art. 6 (6) of Israel's Water Law—that guarantees its

3. Adam, *supra* note 1; *see also* Ron Havilio, presentation submitted in objection to the Reches Lavan plan (on filw with author)

4. *Id.*

5. YOSSI BAR, (2018) (Expert opinion of Yossi Bar on the impact of the development of Reches Lavan on the Ein Lavan spring, attached to the objection submitted by the Society for the Protection of Nature in Israel regarding District Masterplan 1/30/1, January 8, 2018).

6. Zafirir Riant, *Environmentalists Up in Arms Against Massive Jerusalem Housing Drive*, HAARETZ (Jul. 23, 2018) <https://www.haaretz.com/isreal-news/premium-environmentalists-up-in-arms-against-massive-jerusalem-housing-drive-1.630167> (describing a conservation group's concern for the Ein Lavan's value from groundwater and water ecology).

7. Adam, *supra* note 1; *see also* *Things to do in Israel*, *supra* note 1 (describing the characteristics of the Ein Lavan).

8. *See* Zafirir Rinat, *Environmentalists Up in Arms Against Massive Jerusalem Housing Drive*, HAARETZ (Jul. 24, 2018) <https://www.haaretz.com/israel-news/premium-environmentalists-up-in-arms-against-massive-jerusalem-housing-drive-1.630167> (describing the importance of the spring for groundwater and water ecology and stating opposition of developing the spring from its natural state). *See also* Adam *supra* note 2 (describing the importance of the natural water to the arid area).

right to water.⁹ Yet forces unknown to the spring hover menacingly, undermining its right to water. Laws granting rights to voiceless nature can be conveniently ignored by governments more interested in expanding their economies while ignoring planetary boundaries. While there are brave judges who issue judgments that fly in the face of political considerations and corporate interests, and the general proclivity of governments to grow, develop, and expand courts in general tend to toe the line and issue judgements conforming to government policy, sometimes even under government threats.¹⁰

Part I describes the impending dangers to the Ein Lavan Spring. Part II discusses the underlying causes behind the development plan and their impact on Israel generally. It also discusses how, through technology, Israel has succeeded in overcoming water scarcity, and the role of technology in the development plan. Part III addresses the Ein Lavan case as a conflict between the human right to development and rights of nature: bringing examples of similar cases from other countries. Part IV discusses nature's right to water under Israel's Water Law, and Ein Lavan's legal position under the law. Part V examines the situation today regarding Ein Lavan, and raises various scenarios regarding litigation in the name of the spring. Part VI summarizes and concludes this article.

I. EIN LAVAN UNDER THREAT

A development plan for 5,000 housing units over an area of 550 dunams (0.55 sq/km) threatens Ein Lavan in "Reches Lavan" or, "the White Ridge"—a key Jerusalem nature site abutting the spring.¹¹ Reches Lavan comprises Ein Lavan's watershed area that extends throughout this forestland marked for massive development.¹² In addition to housing, the

9. *See generally* Water Law, 571901959, SH 1361 (Isr) (declaring "[a]ny right for water is linked to... [p]rotection and restoration of natural and landscape values, including springs, rivers, and wetlands).

10. *See* DAVID BOYD, *THE RIGHTS OF NATURE, A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* 179 (2005) (discussing examples of negotiations canceled after phone calls with the prime minister).

11. Decisions of the District Planning and Building Committee for Jerusalem, from July 17 and July 28 2019, at 2, para 1 [Hebrew] (hereinafter "Decisions"). *See generally* Zafirir Rinat, *Environmentalists Up in Arms Against Massive Jerusalem Housing Drive*, HAARETZ (Jul. 23, 2018) <https://www.haaretz.com/israel-news/.premium-environmentalists-up-in-arms-against-massive-jerusalem-housing-drive-1.6301617> (discussing the proposed housing complex and its impact on Reches Lavan); *see also* Adam, *supra* note 1.

12. Adam, *supra* note 1; *see also* Rinat, *supra* note 8 (describing the natural area and the potential impacts of the urban development)

plan includes areas for commerce, light industry, public institutions and hotels.¹³

Reches Lavan is characterized by its high hydrological sensitivity. Experts hold that construction of the new neighborhood will likely dry up Ein Lavan and other springs in the area.¹⁴ The construction will block underground flow paths to the spring, sealing the spring off from its natural inflow.¹⁵ Excavations are likely to cause fragmentation of karstic flow systems and impede the movement of groundwater.¹⁶ Moreover, by covering the area with cement and asphalt, the construction will divert runoff that naturally filters down to the aquifer as groundwater recharge.¹⁷ Residential, industrial, and commercial areas are likely to become sources of sewage and other contaminants, seeping into groundwater through cracks in the ground and polluting both land and water.¹⁸ Construction of the new neighborhood also threatens the following ecosystem services: (1) rainwater percolation,¹⁹ (2) the supply of clean air and drinking water, (3) carbon sequestration, (4) climate regulation, (5) soil creation and conservation, (6) biodiversity support, and (7) cultural and recreational activities.²⁰

Despite the critical contribution of these services to the health and welfare of Jerusalem's residents, the current planning system does not provide mechanisms for incorporating their value into decisions on the conversion of forests and other natural areas to high-density residential and commercial uses. Hence the decision to deposit the plan was approved without an in-depth discussion on the impact of their loss. Moreover, Ein Lavan's rights to water under law, and generally its right to continue to exist and to thrive, were simply not considered. The Jerusalem district

13. Adam, *supra* note 1.

14. *See id.* (describing how the construction will stop the functions of rainwater and percolation, and will seal off the area from natural water flow).

15. *Id.*

16. *See* Guoping Ding et al., *Modelling Study on the Impact of Deep Building Foundations on the Ground Water System*, 22 WILEY INTERSCIENCE 1857 (2008) (discussing how building in coastal cities can affect groundwater flow).

17. Adam, *supra* note 1; *see also* Jonathan M. Harbor, *A Practical Method for Estimating the Impact of Land-Use Change on Surface Runoff, Groundwater Recharge and Wetland Hydrology*, 60 J. OF THE AM. PLAN. ASS'N. 95, 95 (2007) (describing the impact of development's impervious surfaces on runoff and groundwater).

18. *See generally id.* (describing the impact of runoff volume on areas undergoing land use changes). *See also* the planning committee's response to the argument that the development will increase the pollution of aquifer recharge, that "water samples of the springs in the area indicate pollution... from land use in Moshav Ora and particularly from old septic tanks ...", 41

19. Adam, *supra* note 1.

20. *See generally* Susan M. Stein et al., *Forest on the Edge*, U.S. Forrest Services, https://www.fs.fed.us/openspace/pubs/gtr_wo78%20pg36-40.pdf (last visited Feb. 15, 2019) (discussing the repercussions of housing development on various ecosystem services); Adam, *supra* note 1.

planning and building committee²¹ decided that although “the local springs have great importance ecologically and historically and are a cultural and recreational resource . . . even if after all efforts to prevent it, the springs dry up, *the public need for this plan justifies its approval, despite its impact on the springs.*”²²

II. UNDERLYING CAUSES

Understanding the planning committee’s decision requires an identification of the underlying causes that have shoved Israel (and other countries) into its current environmental crisis. Israel’s population is growing rapidly and by 2065 will reach 20 million from the current 8.7 million.²³ Israel is experiencing high economic growth, fast-growing consumption and a rising standard of living.²⁴ Furthermore, geographically, Israel is located in an arid region characterized by chronic water scarcity—by 1980, water use reached the total capacity of freshwater.²⁵

Historically, Israel has solved its water shortage by creating more water.²⁶ The country generates extensive use of treated wastewater effluents for irrigation in agriculture.²⁷ Today, roughly 90 percent of the wastewater generated is reused,²⁸ marking Israel as the world’s leading country in water reuse.²⁹ Since the beginning of this century, Israel ranks high in the production and use of desalinated water, which makes up approximately 70

21. Hereinafter “the planning committee”, or, “the committee”.

22. Adam, *supra* note 1.

23. See Lidar Grave Lazi, *Israel’s Population to Reach 20 Million by 2065*, The Jerusalem Post (May 21, 2017) <https://www.jpost.com/printarticle.aspx?id=492429#> (reporting that Israel’s population will be 20 million by 2065); See David Krivine, *Houses for Israel’s Growing Population*, 67 INT’L LAB. REV. 262, 262 (1953) (describing Israel’s growing population). Adam, *supra* note 1.

24. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD ECONOMIC SURVEY: ISRAEL 10, 34 (2018).

25. ARTHUR WIENER, LEVELS OF CONTROL IN WATER QUALITY UNDER CONDITIONS OF SCARCITY, IN WATER QUALITY MANAGEMENT UNDER CONDITIONS OF SCARCITY: ISRAEL AS A CASE STUDY 18 (Hillel I. Shoval ed., 1980).

26. See Kole Kelly, *Let There Be Water: Israel’s Solution for a Water-Starved World*, 21 U. DENV. WATER L. REV. 267, 268 (2018) (describing mechanisms used by Israel to better manage water resources).

27. See Melanie Lidman, *Desalination isn’t the magic bullet, Water Authority warns Israelis*, TIMES OF ISRAEL, (June 5, 2018), <https://www.timesofisrael.com/desalination-isnt-the-magic-bullet-water-authority-warns-israelis> (mentioning the amount of water relied on for agriculture and how, at times of drought, water use is restricted); see also Adam, *supra* note 1.

28. See Zafir Rinat, *Israeli Wastewater Policy Continues to Pay Off*, HAARETZ (March 23, 2015), <https://www.haaretz.com/life/premium-israeli-wastewater-policy-continues-to-pay-off-1.5341228> (asserting that 90 percent of wastewater makes it to water treatment facilities).

29. Zafir Rinat, *Israel is Undisputed World Leader in Using Purified Wastewater for Crops*, HAARETZ (Dec. 11, 2016 11:44 PM), <https://www.haaretz.com/life/premium-israel-is-undisputed-champion-in-using-purified-wastewater-for-crops-1.5472512>.

percent of Israel's drinking water supply.³⁰ The question of sustainability of the extensive reuse of effluents and massive desalination looms large over Israel's formidable success in overcoming its chronic water scarcity. To further complicate the issue, an admirable goal of government policy in its sweeping use of desalinated water is to cut back on pumping groundwater,³¹ allowing the restoration of natural inflow to denigrated streams and springs.

Yet while technology can increase Israel's water reserves, it cannot do the same for Israel's land reserves.³² Israel's high rate of population growth has led to an ever increasing demand for housing, leading to the loss of natural areas to new neighborhoods, such as the development plan threatening Ein Lavan.³³ Israel's laws and official policy recognize Ein Lavan's and other wetlands' right to water.³⁴ However, other government policy in expanding the economy and increasing the country's GDP, together with a rapidly expanding population, determine policy de facto.³⁵ Human needs unquestionably take priority in the allocation of ecosystem goods and services.³⁶ As a result, laws recognizing rights of nature are rendered powerless when faced with formidable political forces demanding construction of massive new neighborhoods in a geographically small country.³⁷

30. See generally Lidman, *supra* note 27 (speaking about Israel's general need for clean water); see also Josef Federman, *Israel Solves Water Woes with Desalination*, PHYS.ORG: TECHNOLOGY, ENERGY, & GREEN TECH (May 30, 2014), <https://www.timesofisrael.com/desalination-isnt-the-magic-bullet-water-authority-warns-israelis> (estimating the "[r]oughly 35percent of Israel's drinking-quality water now comes from desalination. That number is expected to exceed 40 percent by next year and hit 70 percent in 2050."); Adam, *supra* note 1.

31. See generally Lidman, *supra* note 29.

32. See *Israeli Cabinet Looking into Plans for Construction of Artificial Islands*, PRESSTV (Jan. 8, 2018), <https://www.presstv.com/Detail/2018/01/08/548221/Israel-artificial-islands-coast> (discussing the technology available to purify drinking water, while also addressing the lack of land to build infrastructure and housing).

33. On over=population in Israel see 1 Generally on population in Israel see Alon Tal, *The Land is Full: Addressing Overpopulation in Israel* (2016); Alon Tal, *Racing Towards Disaster: Israel's Unsustainable Population Bomb*, THE JERUSALEM POST (Mar. 13, 2015) <https://www.jpost.com/printarticle.aspx?id=504249> (describing Israel's booming population has the government scrambling to 60,000 new housing units a year); Adam, *supra* note 1.

34. See generally ISRAEL MINISTRY OF ENVIRONMENTAL PROTECTION, WATER AND WASTEWATER (2012), <http://www.sviva.gov.il/English/Legislation/Pages/WaterAndWastewater.aspx> (compiling a comprehensive list of Israel's water legislation in English).

35. See generally Yoram Gabbay, *Israel at an Economic-policy Crossroads*, Haaretz (Feb. 18, 2016) <https://www.haaretz.com/israel-news/business/.premium-israel-at-an-economic-crossroads-1.5405807>.

36. Adam, *supra* note 1.

37. *Id.*

III. THE HUMAN RIGHT TO DEVELOPMENT VERSUS RIGHTS OF NATURE

Ein Lavan illustrates the conflict between the human need for shelter, versus nature's need for habitat and water. By returning to a "rights" context, the conflict can be framed as the universally recognized human right to development³⁸ versus the unrecognized rights of nature.³⁹ The right to development, along with the human rights to shelter, water, property, employment, and family—while worthy and necessary rights—can readily be abused as justification for economic growth and massive consumerism,⁴⁰ which exploits nature as an unlimited repository of commodities, feeding the economy and the consumption addiction of humans.⁴¹ Human needs are the moral and legal justification for governments' and corporations' illegal and immoral activities that exploit the human right to development, and drive the worsening ecological crisis.

This is particularly evident in countries rich in forests, minerals, and fossil fuels, sought by wealthy and powerful corporations in cahoots with governments for lucrative profits.⁴² Ecuador is a particularly salient example of the gap between laws granting rights to nature and the implementation of these laws.⁴³ In 2008, Ecuador created a world-renowned constitution that includes a chapter on the rights of nature.⁴⁴ The Constitution acknowledges that nature in all its life forms has the *right to exist, persist, maintain and regenerate its vital cycles*.⁴⁵ The Constitution authorizes the Ecuadorian people to enforce these rights on behalf of

38. See Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986, <https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx>.

39. See generally UNIVERSAL DECLARATION OF RIGHTS OF MOTHER EARTH, April 22, 2010, <http://therightsofnature.org/wp-content/uploads/FINAL-UNIVERSAL-DECLARATION-OF-THE-RIGHTS-OF-MOTHER-EARTH-APRIL-22-2010.pdf> (addressing the unrecognized rights of nature at the World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia).

40. See generally Neva Goodwin et al., Consumption and the Consumer Society, Global Development And Environment Institute (2008), http://www.ase.tufts.edu/gdae/education_materials/modules/Consumption_and_the_Consumer_Society.pdf.

41. Roberto Bermejo Gómez de Segura, HANDBOOK FOR A SUSTAINABLE ECONOMY 24 (2014).

42. See generally GRANT WILSON ET AL., EARTH L. CENTER, FIGHTING FOR OUR SHARED FUTURE: PROTECTING BOTH HUMAN RIGHTS AND NATURE'S RIGHTS (2016).

43. *Id.* at 88-89.

44. CONSTITUTION POLITICA DE LA REPUBLICA DEL ECUADOR, Oct. 20, 2008, art. 71-74, translated in Political Database of the Americas, available at bda.georgetown.edu/Constitutions/Ecuador/english08.html.

45. WILSON, *supra* note 42, at 4.

ecosystems.⁴⁶ Yet, the Ecuadorian government is guilty of multiple violations of both its own constitution and universal human rights,⁴⁷ These violations including the government's involvement in the murders of indigenous leaders protesting "mining, oil extraction, hydroelectric dams and colonization of the indigenous lands by Transnational Corporations . . . [that] are committing Human Rights abuses and violate economic, social and cultural rights."⁴⁸ In a much-publicized incident, the government granted permits for fossil fuel extraction in the Dasani nature reserve despite its initial opposition.⁴⁹ The government also granted permits to foreign corporations for mining gold in the Mirador mine in Ecuador's Amazon rainforest.⁵⁰ The mining destroyed hundreds of thousands of hectares of protected rainforest and its incredibly rich biodiversity.⁵¹ The indigenous Shaur, who inhabit the area and who have been protesting the mine, were subject to brutality and violence at the hands of the developers.⁵² One indigenous protester was murdered days before he was meant to testify against the mine at the International Tribunal on Rights of Nature in Lima, Peru.⁵³

The 2017 protest of the Standing Rock Sioux Tribe against the North Dakota access pipeline has been framed by the US government and corporations as an attack on development and the general good of the United States.⁵⁴ The tribe was protesting the threat to their health, environment, water, and culture from the pipeline carrying half a million gallons of crude oil each day, The Tribe also protested the authorities' lack of consultation regarding the location of the pipeline. Yet the tribe and

46. LINDA SHEEHAN & GRANT WILSON, EARTH L. CENTER, FIGHTING FOR OUR SHARED FUTURE: PROTECTING BOTH HUMAN RIGHTS AND NATURE'S RIGHTS 9 (2015).

47. Silvio, *Leaders from Peru and Ecuador Reunited in Bomboiza*, PROTECT ECUADOR (July 9, 2013) <http://protectecuador.org/indigenous-leaders-from-peru-and-ecuador-reunited-in-bomboiza/>.

48. *Id.*

49. John Vidal, *Drills for Oil on Edge of Pristine Rainforest in Yasuni*, THE GUARDIAN (Apr. 4, 2016), <https://www.theguardian.com/environment/2016/apr/04/ecuador-drills-for-oil-on-edge-of-pristine-rainforest-in-yasuni> (discussing the drilling efforts in Ecuador's Rainforest despite the country's recognition of the rights of nature).

50. Mazabanda C. et al., *Impacts of Mining Project "Mirador" in the Ecuadorian Amazon*, MONITORING OF THE ANDEAN AMAZON PROJECT (2018), <https://maaproject.org/mirador-ecuador/>.

51. Silvio, *supra* note 47.

52. *Id.* at 88.

53. Jonathan Watts & Dan Collins, *Ecuador Indigenous Leader Found Dead Days Before Planned Lima Protest*, THE GUARDIAN (Dec. 6, 2014), <https://www.theguardian.com/world/2014/dec/06/ecuador-indigenous-leader-found-dead-lima-climate-talks>.

54. See ENERGY TRANSFER LP, *Dakota Access Pipeline Facts*, <https://dappipelinefacts.com/>.

other protestors who joined them were decried by the epitaph “eco-terrorists,” as destroyers of public property, threatening personal safety, and undermining the public need to expand infrastructure in making the U.S. energy independent.⁵⁵

And the list goes on, Canadian tar sands, fracking in the United States and other countries, palm oil plantations in Malaysia and Indonesia and South American countries as well, logging of rainforests, mining for gold and other minerals in highly sensitive lands, these crimes of ecocide are being committed in the name of development.⁵⁶ Governments and corporations justify corruption and ecocide under the guise of progress and development. Indigenous people defending their lands and homes, and other environmental defenders are accused of being anti-development and standing in the way of progress.⁵⁷ Many of these people have paid with their lives—hundreds have been murdered for protesting these incidents of ecocide and the numbers are growing from year to year, triggering not only an ecological crisis but a human rights crisis as well.⁵⁸

IV. NATURE’S RIGHT TO WATER UNDER ISRAELI LAW

The legal right of nature to water developed in Israel as a response to the degradation of Israel’s streams, springs, and other wetlands by intense human activity.⁵⁹ Israel’s Water Law evolved from a tool for intense urban, industrial, and agricultural development to a law also protecting nature’s rights to water.⁶⁰ At the Water Law’s initial adoption in 1959,⁶¹ water was perceived as a commodity for development. Yet evolving together with the growing awareness of the environmental crisis, a new chapter on pollution prevention was added in 1972.⁶² In 1991, stronger enforcement provisions

55. Craig Stevens, GAIN coalition spokesman, <https://www.desmoinesregister.com/story/money/business/2017/10/25/should-iowas-dakota-access-pipeline-protesters-face-terrorism-charges/796025001/>.

56. See EARTH LAW CENTER, *Fighting for our Shared Future*, <https://www.earthlawcenter.org/co-violations-of-rights/>.

57. *Id.*

58. WILSON ET AL., *supra* note 42; see generally GLOBAL WITNESS, DEFENDERS OF THE EARTH, GLOBAL KILLINGS OF LAND AND ENVIRONMENTAL DEFENDERS IN 2016 (2017) (highlighting the increasing suppression and murder of environmental and land rights activists).

59. *Id.*

60. See TAMAR KEINAN, WATER JUSTICE: WATER AS A HUMAN RIGHT IN ISRAEL 18 (Gidon Bromberg ed., Ilana Goldberg trans., Heinrich Boll Foundation 2005) (discussing how the water law’s aim is now to protect water sources from pollution); Adam, *supra* note 1.

61. Water Law, 5719-1959, § 1, 13 L.S.I. 173, (1959-1960) (Isr.).

62. Amendment to the Water Law, 1971, S.H.640.

were added to the law to strengthen pollution control.⁶³ Most recently in 2004, the law finally evolved to guarantee nature the right to water for the “conservation and restoration of nature and landscapes, including springs, streams and wetlands.”⁶⁴

The 2004 amendment was a direct response to the grievous state of Israel's streams.⁶⁵ They reflect the extreme development of the past 70 years that dried up wetlands and transformed streams into drainage and sewage canals.⁶⁶ Stream restoration became a national priority, supported by the 2000 government decision allocating 50 million cubic meters of water annually.⁶⁷ In 2002, a government masterplan for water management implemented allocations for stream restoration, defining nature as a legitimate consumer of water.⁶⁸ In 2003, the government issued a landmark policy paper entitled “Nature's Right to Water,” which recognized streams' entitlement to their own inflow rather than water from the national grid.⁶⁹

The concept of streams' rights to water was now driving government policy, which directly led to the 2004 “Nature's Right to Water” amendment to the Water Law.⁷⁰ The explanatory note to the amendment clarified that “the proposed law will create a legal framework for restoration . . . of . . . wetlands . . . it is proposed to add nature and wetlands to the list of those entitled to water and establish a right to water for nature. . . . Thus nature will also be taken into consideration when allocating water.”⁷¹

Can Article 6(6) of the Water Law ward off impending threats to Ein Lavan? The law has certainly not stopped the government from moving ahead with the development of its watershed. As noted above, when the issue is the public's needs for housing versus Ein Lavan's need for water, the government decided that “the public need for this plan justifies its

63. See Water Law, 5719-1959, SH 1361 (Isr) (providing stronger regulations on water pollution); Adam, *supra* note 1.

64. Water Law, 5719-1959, § 6 (1959-1960) (as amended) (Isr.) (translating Hebrew version of Water Law).

65. *Id.*; see Sharon Hophmayer-Tokich, *Water Pollution Control Legislation in Israel: Understanding Implementation Processes from an Actor-Centered Approach*, 5 *Water* 1393, 1407 (2013); see also Israel Ministry of Environmental Protection, *supra* note 32.

66. Adam, *supra* note 1.

67. *Id.*

68. *Id.*

69. See Keinan, *supra* note 60, at 18 (emphasizing that while the Water Law entitles all to the basic right of access to water, two supply problems exist in “connecting the unrecognized Bedouin villages to the national grid and the use of water cut offs to communities that have not paid their water debts to the national water company.”)

70. Water Law, 5764-2004 (2005) (as amended) (Isr.) (translating Hebrew version of Water Law).

71. *Id.*

approval, despite its impact on the springs.”⁷² If the plan is finally approved, environmental organizations and activists will undoubtedly petition for judicial review. Can Ein Lavan also petition the court challenging the government decision threatening its survival? The law recognizes the right of the spring to water but does not go further to declare the stream a legal person. While the original intention was to declare wetlands a legal entity, this provision did not make it to the final version of the amendment.⁷³ Streams and springs are legally entitled to water, however, humans have priority over nature in the conflict between humans’ rights to shelter and streams’ rights to water.⁷⁴ Whether Ein Lavan would be allowed into court, as a formal petitioner, remains unseen.

Could the public trust doctrine support the spring’s standing in court? Under Section 2 of the Water Law, “water sources belong to Israel’s public, subject to the control of the state.”⁷⁵ Government officials are public trustees for protecting the country’s ecosystems, streams, springs, plants, wildlife, and biodiversity, but the public is the beneficiary and not the actual ecosystem, stream, or spring.⁷⁶ The alternative would be to turn the public into trustees and nature into the beneficiary. However, this would require new legislation, which always problematic.

V. THE SITUATION TODAY

Government bureaucrats and planning committees, under pressure by politicians, worked furiously to gain approval of the development plan.⁷⁷ The plan was deposited in late December 2018. The planning committee justifying its deposit by declaring that the plan accurately reflects the balance between the need to address the housing shortage and the need to protect ecosystems.⁷⁸ Over the next several months the public submitted six thousand objections.⁷⁹ The opposition was led by Israel’s Society for the Protection of Nature (SPNI) that orchestrated a coalition of

72. Adam, *supra* note 1 (quoting a recent decision of the Jerusalem Region Building and Planning Committee).

73. David Schorr, למים הטבע זכות את מבטיה הישראלי הדין, *Israel’s Laws Ensures the Right of Nature to Water and Not from Power of the Water Law*, 8 *ECOLOGY AND ENVIRONMENT* 94, 94–96 (2017) (Hebrew); Adam, *supra* note 1.

74. Richard Laster & Dan Livney, *Israel: The Evolution of Water Law and Policy*, in *THE EVOLUTION OF THE LAW AND POLITICS OF WATER* 121, 136 (Joseph Dellapenna & Jpyeeta Gupta eds., 2009) (arguing that there exists a fragmented system when it comes to the relationship between human rights and rights of nature); Adam, *supra* note 1.

75. Water Law, *supra* note 61.

76. Laster & Livney, *supra*, note 74; *see also* Adam, *supra* note 1.

77. Water Law, *supra* note 61.

78. Decisions, *supra* note 12, 35.

79. *Id.* at 11, para 32.

likeminded organizations to create a forceful and unified response. Websites were set up for digital signing of objections. Experts in hydrology, ecology, zoology and economics were drafted to support the objections. Regularly scheduled hikes to Ein Lavan and Reches Lavan were offered to the public to persuade visitors to voice their opposition over the loss of this unique nature site. Four full-day hearings were held.⁸⁰ Tensions were high and the hearings often developed into rancorous squabbles within the crowded conference room of the planning committee.

The key argument throughout the hearings was that the development would cause irreversible harm consequential to the fragmentation of the ecological corridor that transverses the area, the desiccation of natural springs in the area, and destruction of the landscape.⁸¹ It was further argued that the harm was avoidable because of the potential for new construction within the city. This was a key issue during the hearings: the government argued that Jerusalem suffers from a severe housing shortage that could only be solved by building new neighborhoods, while the SPNI countered, on the basis of its own data, that building opportunities within existing neighborhoods offered the same number of housing units, avoiding the destruction of natural areas. Finally, the committee rejected these findings and its official position remained that the acute housing shortage in Jerusalem justifies the development in Reches Lavan.⁸²

With the completion of the hearings, in July 2019 the district planning committee decided to approve the development plan. It noted the vast number of objections protesting the ecological damage that the development entails. The committee reiterated that the plan minimized the environmental impact and in particular by its scaled-down size that excluded highly sensitive areas adjacent to Ein Lavan.⁸³ Yet the committee admitted that “there is still no doubt that the development plan will . . . cause environmental harm. . . . Implementing the plan will expose the top layer of soil, harming the natural plant diversity including protected and rare species, reduce in size the range lands of the Israeli Gazelle, increase human activities [in the vicinity of the spring] as well as air pollution and noise . . . and the spread of invasive species. . . .”⁸⁴

As to the plan's impact on aquatic ecosystems, the committee responded that the plan provides for the implementation of a model developed to ensure groundwater recharge. The model calls for construction of a series of

80. *Id.* at 12, para 34.

81. *Id.* at 31-43.

82. *Id.* at 11-12; *see generally*, 13-31.

83. *Id.* at 34.

84. *Id.* at 33.

artificial pools designed to catch runoff and secure aquifer recharge as well as to safeguard the spring's natural flow. But the committee admitted that because of the model's limitations, the assumption underlying the plan remains that the development could reduce the spring's current flow. To remedy this and prevent its desiccation, the plan provides for connecting the spring to external water sources, namely, Jerusalem's water supply.⁸⁵

Firing back the SPNI noted that "An artificial system, as sophisticated and well-invested as it might be, is not an alternative to a natural system . . . municipal tap water is a sorry and absurd alternative to natural spring flow. . . ."⁸⁶ And finally the committee held fast to its earlier decision that despite the probability of harm to the spring as a result of the development, notwithstanding the implementation of technology meant to minimize the harm, "the public need for housing justifies the plan's approval."⁸⁷

Following the planning committee's approval of the plan, seven objectors—both organizations and individuals—filed administrative appeals to the National Planning and Building Council, the country's highest planning authority. If the Council rejects the appeals, the next step will be petitions for judicial review to Israel's Supreme Court. As to the spring's right to water, the key question is whether Ein Lavan has standing to petition the court itself or would it have to rely on humans petitioners. Yet even if Ein Lavan succeeds in crossing the court's threshold to argue that the government's development plan for Reches Lavan violates its legal right to water the court would in all likelihood reject its claim. As its custom, the Court would defer to government experts testifying that the dire need for housing requires building in natural areas despite the impact on Ein Lavan, tossing out evidence on building opportunities within the city and Ein Lavan's right to water.⁸⁸ Human petitioners acting as guardians for the spring would find a similar fate in the court rejecting their arguments and yielding to government experts.

That of course does not mean that litigation in the name of the spring should not proceed. Multiple cases submitted in the name of rivers, streams, ecosystems, etc., suffering from a lack of water due to diverting it to human needs, will eventually drive the message home to the courts, government, and the general public. The lingering question is one of time: will we have time as agents of change to promote this revolution?

85. *Id.* at .38-39

86. SPNI objections Reches Lavan plan 101-0387449, February 2019, at 9 [Hebrew].

87. Decisions, *supra* note 78, at 38

88. *See generally* FRANK DANE, BORROWING LEGITIMACY: THE ISRAELI SUPREME COURT AND AMERICAN LAW (noting that the Israeli government is afforded special deference because it executes the will of the state).

CONCLUSION

I started writing this article while forest fires rage in northern and southern California, forcing members of my own family from their homes. As these fires raged, the U.S. federal government issued its report on climate change with dire findings.⁸⁹ As I complete the article, fires are ravaging Australia, destroying homes, towns, vast tracts of wilderness and forests, and reportedly killing roughly one billion animals. I question myself, while facing this crisis that threatens the future of life on earth, should I be writing about rights for nature, a seemingly esoteric issue with a medley of dissenters who mockingly argue that it borders on the absurd (rights for insects? For viruses? Microbes?)? Is this not similar to Nero fiddling while Rome burnt?⁹⁰

However, if the human species is to save itself from collapse, rights of nature are a critical tool to return our species to living within Earth's ecological limits. Rights of nature are not meant to extend well entrenched human rights—formally recognized by the international community since 1948 with the adoption of the UN Declaration of Human Rights—to non-human species, but rather to create a context within which to tackle the most fundamental drivers of today's ecological crisis.⁹¹ Reversing this crisis requires transforming the status of nature from human property, to an independent entity with its own legal rights. Adopting a biocentric perspective, nature has inherent value far beyond its worth to humans as property to be exploited for economic growth.

The frenetic pace of consumerism that engines the global economy is based on the belief in unlimited growth and an ever expanding global population (despite lower birth rates) together driving our civilization to a calamitous end.⁹² The overall goal is to change society's relationship to nature, from one of ownership over "natural resources" as raw material for the economy to one recognizing that humans and nature are intertwined on this planet. To protect human rights, we must recognize and protect nature's rights to thrive, evolve, and exist. It is not enough for laws to recognize

89. See generally FOURTH NATIONAL CLIMATE ASSESSMENT, <https://nca2018.globalchange.gov/> (last visited Feb. 15, 2009) (discussing the implications for not addressing climate change on the future, focusing on twelve areas including communities, the economy, interconnected impacts, etc.).

90. See generally *Did Nero really fiddle while Rome burned?* HISTORY (Nov. 20, 2012) <https://www.history.com/news/did-nero-really-fiddle-while-rome-burned> (telling the story of Nero fiddling while Rome burned).

91. *What is Rights of Nature?*, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, therightsofnature.org/what-is-rights-of-nature/ (last visited Mar. 20, 2019); G.A. Res. 217 (III) A Universal Declaration of Human Rights (Dec. 10, 1948).

92. MEADOWS ET AL., *THE LIMITS TO GROWTH* (Potomac Associates 1972).

these rights. These laws are too easily tossed out in favor of the perceived needs and interests of humans and corporations. As David Boyd points in his book, “Not only our laws, but also our cultures require a fundamental reorientation, transforming humans from conquerors of nature to members of the planet’s community of life.”⁹³

The role of rights of nature is to counter the all-powerful right to development, as well as to challenge our belief that the earth’s resources are unlimited; that nature is indestructible and will recover from whatever we throw at it; and that we can populate, mine, manufacture, and consume without limits. On the positive side, rights of nature reminds us that our well-being is symbiotically intertwined with the well-being of nature.

93. DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD*, 219 (Susan Renouf ed., ECW Press 2017).