

# Balance of interests and the implementation of the rights of nature in Swedish law

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## Abstract

This reflective essay makes several points about the balancing of interests in the environmental permitting process. It discusses the lack of clear guidelines regarding how this balancing should proceed. It then goes on to suggest that treating nature as a rights-bearing entity may increase the number of interests that must be balanced, making an already complex issue more complex. Using moose hunting as an example, it suggests that nature's rights may force a question of "what truly benefits nature" into conversations where it had previously been absent. Finally, it points out that the interests of the Indigenous Sámi people are currently being balanced against Sweden's energy and consumer demands.

As a newly graduated lawyer, attending the symposium on the rights of nature was both instructive and inspiring. The timing was also fortuitous, as it allowed me to engage in discussions shortly after submitting my thesis, which focused on the re-examination of water operations that produce hydroelectric power to ensure they adhere to modern environmental standards as set out in the Environmental Code.<sup>1</sup> This is a contentious procedure where multiple interests are pitted against each other. The aim of my thesis was to investigate the re-examination of water operations in light of the issues presented in Miljöprövningsutredningen<sup>2</sup> in 2022, which addressed the current environmental permitting process and the causes of its inefficiency. The investigation specifically concentrated on how the collaborative process, the court's duty to inves-

tigate and lead the process, and permits based on ancient rights (*urminnes hävd*) affect the efficiency of the re-examination process. For this purpose, qualitative interviews were conducted with parties actively involved in the re-examinations to highlight the difference between the theoretical legal literature and practical application. What particularly piqued my interest during the thesis was the issue of trade-offs evident in the collaborative process. The purpose of collaboration is, among other things, to compile the necessary data before individual assessments of the involved water operations so that all operations can be provided with modern environmental standards in a manner that, according to Chapter 11, Section 28 of the Environmental Code, yields the greatest possible benefit for the aquatic environment and efficient access to hydroelectric power. However, how this trade-off should be conducted is not clearly regulated or specified in the legislation, which poses an obstacle to an efficient environmental process and the implementation of modern environmental

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<sup>1</sup> Lenvin, Fabianne, *Re-examination of water activities – efficiency and modern environmental terms at the expense of hydropower production?*, <https://www.diva-portal.org/smash/record.jsf?pid=diva2:1730265>, published January 2023.

<sup>2</sup> SOU 2022:33.

standards. To my knowledge, the issue of trade-offs is one of the reasons the government imposed a pause in the re-examinations in December 2022. The pause was initially intended to last for a year and was meant to provide legal clarification regarding the aforementioned trade-offs. However, the government has already decided on two occasions to extend the pause further, now until July 1, 2025.<sup>3</sup> In my opinion, the government's decisions clearly demonstrate how complex and challenging the issue of trade-offs is, making it difficult to find legislation or solutions that satisfy the interests of various parties.

Similarly, I believe that the application of rights of nature may encounter comparable challenges in future environmental legal processes. The rights of nature represent a relatively recent legal development. As I understand it, the idea is to recognize nature as a legal entity with rights, aimed to protect nature from exploitation and preserve ecosystems and species. A balancing of interests, on the other hand, is a principle used to balance conflicting interests or rights in various processes. Especially in environmental law, the interest in economic growth is often weighed against environmental protection and species conservation. Although most legal fields involve interests that need to be balanced against each other, I believe that the environmental law process is a particularly complex system. The regulations are based on both national law and EU law. Coordinated assessments are required, in-

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<sup>3</sup> Regeringskansliet, *Regeringen flyttar fram pausen av omprövningen av vattenkraftens miljö tillstånd till 1 juni för vissa aktörer*, <https://www.regeringen.se/pressmeddelanden/2024/03/regeringen-flyttar-fram-pausen-av-omprovningen-av-vattenkraftens-miljotillstand-till-1-juni-for-vissa-aktorer/>, den 15 mars 2024; Regeringskansliet, *Regeringen förlänger pausen av vattenkraftens omprövning till 1 juli 2025*, <https://www.regeringen.se/pressmeddelanden/2024/05/regeringen-forlanger-pausen-av-vattenkraftens-omprovning-till-1-juli-2025/>, den 6 juni 2024.

volving authorities, operators, and municipalities. Environmental organizations and property owners may also consider themselves affected by the case and thus have the right to participate. All these parties have different guiding interests.

In addition to the re-examinations for modern environmental standards, which exemplify when various environmental law interests are weighed against each other, an incident that garnered media attention last autumn can be mentioned.<sup>4</sup> Several hunting teams chose not to shoot moose despite the Swedish Forest Agency and the Swedish Environmental Protection Agency allowing more hunting. In my opinion, this is an example that illustrates the complexity of balance of interests between the forest industry, which wants to increase timber production, the moose that destroys the quality of the trees, and a declining moose population in Sweden. However, the crucial question remains: what truly benefits the nature? In my opinion, this question is not considered in the current debate. Nor do I believe it necessarily belongs there, but additional issues may influence the implementation and application of rights of nature.

During the symposium, we heard Christina Allard present how the rights of nature have been applied in relation to the Māori in New Zealand, where the Whanganui River was recognized as a legal entity with rights, and how this could potentially influence the development for the Sámi in Sweden. The Sámi's long-standing traditions and view of nature are of particular interest. The Sámi are an indigenous population striving to preserve their lifestyle, their rights, and perhaps most importantly, the rights of nature. This continually needs to be balanced against, for example, Sweden's energy needs

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<sup>4</sup> SVT, *"Hunters refuse to shoot: They want to eliminate the elk"*, <https://www.svt.se/nyheter/lokalt/vasterbotten/jagare-vagnar-skjuta-de-vill-eliminera-algen>, 26 October 2023.

and the demands of contemporary consumer society. In other parts of the world, the rights of nature have also gained recognition, such as in Colombia, where the Atrato River's rights have been acknowledged. These examples demonstrate the potential to apply the rights of nature domestically, provided that the legislature will open up to such a possibility.

Overall, my view is that the rights of nature represent a necessary, albeit utopian, legal field

where balancing of interests will influence its implementation and use. With ongoing climate change, several questions will eventually come to a head. We will need to change our perspective on nature, our consumption, and how we choose to live our lives. This makes the rights of nature a highly relevant topic that deserves further discussion and development – a development I look forward to following in the future.

