



# RIGHTS OF NATURE SYMPOSIUM

RECOGNIZING AND ENFORCING THE RIGHTS OF NATURE:  
THE NEW FRONTIER OF ENVIRONMENTAL PROTECTION

## SYMPOSIUM PROCEEDINGS

OCTOBER 27, 2017 | TULANE LAW SCHOOL | NEW ORLEANS

The Rights of Nature Symposium was co-hosted by the Community Environmental Legal Defense Fund (CELDF), CELDF's International Center for the Rights of Nature, and Tulane Law School. The Symposium sponsors included the Wallace Global Fund, the Myrin Institute, the Blackstone Ranch Institute, and the National Community Rights Network.



The Proceedings were prepared by the Community Environmental Legal Defense Fund, with generous support from the Myrin Institute.

For more information, please contact CELDF at [rightsofnature@celdf.org](mailto:rightsofnature@celdf.org).



# SYMPOSIUM PROCEEDINGS

On October 27, 2017, the Rights of Nature Symposium was held at Tulane Law School in New Orleans, Louisiana, in the United States.

The Symposium drew presenters from around the world – including activists, lawyers, and academics – to share how the movement for legal rights of nature is advancing and growing.

Within these proceedings are the presentations from the panelists and speakers describing the development of new laws to recognize legal rights of ecosystems and natural communities, and efforts to enforce and defend these rights in courts of law.

Videos of the Symposium panels and speakers are available to watch at:

**<https://celdf.org/rights-nature-symposium-2017-video/>.**

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Generous supporters of the Symposium included the Wallace Global Fund, the Myrin Institute, the Blackstone Ranch Institute, and the National Community Rights Network.

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We invite you to learn more about the rights of nature, and to engage with this emerging movement. For more information, please visit **<https://celdf.org/rights/rights-of-nature/>** or contact **[rightsofnature@celdf.org](mailto:rightsofnature@celdf.org)**.

Please note, these proceedings were prepared by transcribing the presentations of the Symposium speakers. Every effort was made to transcribe the presentations exactly as they were made, though due to sound recording quality, there may be errors in the text.



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# INTRODUCTION AND WELCOME

## MARI MARGIL, COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

Welcome to the Rights of Nature Symposium. To everyone with us here today in beautiful New Orleans on the Tulane University campus, and those joining us by livestream from around the world, we're very happy you're with us.

My name is Mari Margil with the Community Environmental Legal Defense Fund and our International Center for the Rights of Nature. We are so pleased to be hosting the Rights of Nature Symposium today with Tulane Law School. We also want to thank our sponsors whose support has made this symposium possible, including the Myrin Institute, the Blackstone Ranch Institute, the Wallace Global Fund, and the National Community Rights Network, as well as to give great thanks to the folks here at Tulane including Jamie Barnett, Patrick Dunn, Katherine van Marter, and Jane Johnston who have made all of this come together.

And, of course, to our musician, Nelson Denman, for playing so beautifully. Today, we are gathered to explore a new movement that is building to secure legal rights of ecosystems and nature. In just over a decade we've had the first rights of nature laws passed at the local level here in the United States with communities now in more than ten states having enacted such laws. The first countries have now secured the rights of nature into law beginning with Ecuador, which enshrined the rights of nature in its constitution in 2008.

As we all know, nature today is suffering. Ecosystems are collapsing. Coral reefs are experiencing bleaching and die off. The oceans are acidifying, species are going extinct at more than 1,000 times natural background rates and of course, climate change is accelerating. 2016 was the hottest year in human record, the third record setting year in a row.

That fundamental change is needed is clear and today we're going to learn about a movement that is emerging which represents a fundamental paradigm change in human kind's relationship with the natural world. This shift is occurring as more and more people, communities, and even governments round the world are recognizing that existing environmental legal systems, which authorize human use and exploitation of nature are not able to protect nature. These environmental laws are giving way to new legal frameworks which recognize the need to change our relationship with nature. As Colombia's constitutional court recently declared, it's time we recognize that humans are "an integral part and not simply a ruler of nature." And as such, they went on, we must establish "a legal instrument that offers nature and its relationships with the human being greater justice."

The Court went on to explain that it's "time to take the first steps toward effectively protecting the planet and its resources before it is too late or the damage is irreversible. Therefore, it is necessary," they said, "to take a step forward in jurisprudence to recognize nature as a subject of rights." Now, this has happened before, of course with people's movements that have mobilized to recognize rights of those considered right list under the law. In the United States, we have had movements to end slavery and to recognize those freed from slavery, to secure rights of women, to secure rights of indigenous peoples as well as others.

These movements were forced to change not only hearts and minds, but the law as well. Today, we have gathered together panelists and speakers from the United States from Ecuador, from Nepal, Australia, Sweden, from the Ponca Tribe, the Ho-Chunk Nation, and the Navajo Nation who will speak of this emerging movement and the need for transformation. They will examine the limitations of traditional environmental laws and share with us how a new form of law is advancing that recognizes that nature possess its own legal rights, rights to exist and thrive, rights to regenerate and evolve, rights to be restored. They will share how and where such laws are moving forward and how they are being defended and enforced. We will also have a keynote presentation from Karenni Gore from the Center for Earth Ethics.

It was about a year ago that my phone rang with a call from a professor here at Tulane Law School. I knew him only by reputation as someone who is part of developing the first wave of national environmental laws. His name is Professor Oliver Houck. He attended Harvard and Georgetown Law School. He was general counsel for the National Wildlife Federation. In 1981, he moved to Louisiana where he joined the law faculty of Tulane University.

Professor Houck has served on boards and panels of national science and environmental organizations and is active on issues dealing with endangered species, water, and coastal protection. He also taught comparative environmental law and environmental human rights in universities abroad, including Havana and Auckland, and he recently conducted a seminar here at Tulane exploring the legal rights of nature. We began talking with him about holding a gathering on the rights of nature and, as they say, the rest is history, because here we are all today. It is with great pleasure that I introduce to you Professor Oliver Houck.

## PROFESSOR OLIVER HOUCK, TULANE LAW SCHOOL

Well, let me add my welcome to those of you in the room and those of you watching from abroad. This is quite an event. I had been asked by Mari to say a few words, emphasis on a few words, about my own personal journey toward rights of nature and legal rights of nature with the thought that perhaps, it might track your own. In many case, it came in three stages. The first was who needs it? And the second was, I'm curious. And, the third was voila!

So to track that a little bit and bring you back in time, rights of nature first hit the radar in the United States from a dissenting opinion of the Supreme Court which did not rule on rights of nature at all, but the dissent raised it and raised a law review article that discussed it and it planted the seed. I was practicing at the time in Washington, DC, for a large environmental group and my first reaction was this is interesting, but is it relevant? We had all kinds of standing to sue. We had many members. We had many companion groups in every state. We had communities that we represented. We had Native American nations and tribes that we represented. The Jicarilla tribe of Apache, the Beaufort Sea Inuit, North Slope Borough. So we didn't need standing. We had it. Nor did we need law.

Law was pouring out of the Congress in buckets. You couldn't suppress it. There were 15 different environmental laws that came out of Congress in that very short period of time. So plenty of law, plenty of standing. We just liked what would become hundreds of other environmental lawyers. We just put the nose to the grindstone and get to working it through and I didn't give rights of nature a second thought until my Ecuadorian graduate students, international students, came and joined the program and reintroduced me to what was going on in Ecuador and I was curious. A, what was happening and B, could it translate? Could it travel? And so, as Mari said, I taught a seminar on it in order to find out about it. That's an odd thing. You would think a professor would teach what he or she knew.

I was teaching what I didn't know, and learning along with them, and in the process came the eureka moment. I'm worrying the thing in my head for weeks, for months, and one evening I'm out on the Mississippi levy, that's less than a quarter mile from here. It borders the Mississippi River, which drains three-fifths of the United States. Big river boarded by trees, and on this particular evening a flight of whistling duck would come down -- coming down the river and when you hear them chattering in the sky they blow your mind. So I stopped and I looked at them and they're trying to negotiate the power lines that transect the river at that point, and I'm rooting for them to get over the lines.

Then it occurred to me, everything sort of gelled and I thought, "You know, those birds aren't there for me. They're there for themselves." And it also occurred to me that they have a right to be there. Once I put it in that context, everything else flowed. I want to talk about four flows for a minute. The first is that everything I was involved in I had conceded was a mono a mono, a duel, a fight with -- between my clients and how they used nature, and somebody else's clients and how they wanted to use nature, but it was always human to human. In that fight, nature more often lost than won because the forces on the other side, politically, legal, and otherwise were just tremendous. It's not to say we lost everything.

We made some remarkable happenings, but that unequal fight suddenly had a third party. There was another party at the table and it had its own interests and those interests were measurable. You could tell what nature needs to exist and to continue to exist and to thrive. You can measure it in parts per million. You can measure it in cubic feet per second. You can measure it in the diversity of trees. So here is a new measuring stick. So there's not only a new party at the table, there's a new base line at the table because nature's needs, measurable needs became a bottom line.

No matter what else the environmental programs did or didn't do, here was a new line below which environmental protection could not fall, and I found that extremely powerful, potentially extremely powerful. Worth pursuing.

And the third take out from this for me, once you recognize that nature has a right to exist, you're being very honest because that's what I had believed all my life and that's what moved me to act. I didn't really act because my clients wanted to go shoot things or fish things or see them in binoculars or take photographs of them, and they did all of those things. But I was serving my clients needs, but that wasn't why I was serving them.

The reason I was serving was I believed that existed, and once you accept that, it becomes supremely honest. You're no longer saying, "I'm here to represent these fishermen or these hunters, and it's up against this mining company and this smelter and so many jobs." I'm here representing nature, which has a right to exist, and that's very direct and it's honest.

There's a power of being honest. Think of the power of being dishonest. When you look at the dishonesty that goes on today, all the cover stories and false reasons for doing things. We're now subsidizing coal, of all things. Massive subsidies to coal in order to combat terrorism. Go figure.

We're now proposing tax cuts for billionaires in order to help the poor. I mean, go figure. We're now building a border wall in order to fence out Mexicans in order to prevent crime. I mean none of these rationales are real.

So, there's some power in being honest. Maybe I'm late in life, but to me being honest is about what I have left. The last aspect of this is the untapped power of the human DNA and the human heart. Azia Loosen once commented, "We grew up with nature long before we grew up with anything else." Our respect for and dependence on and recognition of nature goes back eons before Trump, eons.

Think of the potential of that feeling being enfranchised and incorporated into environmental protection at large. I hope my colleagues who might be listening recognize that this movement and this thesis in no way disregards, disrespects, or supplants, or replaces existing environmental systems, existing environmental protection systems. They're all necessary, but it's the supplemental kick of this, and the baseline you can't go below of this, that is of huge value added. Think about enfranchising that from the heart. I mean, I'd love to see the poll on this and I don't have it, but my guess is if you poll the America people, a significant number of Americans would say yes, nature has a right to exist.

It's an assumption. All the people with bird feeders, all the people with puppy love, all the people with the thrill of seeing a fox in the wild, whatever. This is sort of -- it only indirectly tapped resource, and if it were tapped, I have a feeling it could do great things for the planet. And this is my closing word, although is the dean here? Yes, good. Think of the irony of this. Rights of nature may be one of the best ways, maybe the only, but certainly one of the best ways, of humanizing human beings in the humanity sense. So, the radial effects of this could be far larger than any lawsuit or any particular local ordinance.

It's a mind change, and there's something very scary about that to people, and there's something very beautiful about it. And, we have changed our mind in this world and often for the better. So, the question of this conference then boils down to a simple one. If one is willing to entertain the thought that nature has a right to exist and to continue to exist, then why not make it real?

So, leaving that question hanging, because it's really the question of every panel that follows, it's my great honor now to present you the dean of the law school who can make this entire gathering official, legal, regal even, and I have to say that he has to cut. He has had to do the unpardonable. He has had to cut his class short this morning in order to come be with us. We never allow that, and he has also, of course, agreed to be the host of this conference. And so, I have a double thanks to Dean David Meyer. Thank you so much.

## DEAN DAVID MEYER, TULANE LAW SCHOOL

It's my great regret that I am late arriving to this conference to welcome you because of teaching this morning. My biggest reason for regret is not being tardy and giving you the all-important, official welcome to Tulane, but is in the fact that I have to follow Oliver Houck by arriving late. That's a position nobody wants to be in, but he makes my job easier as well in welcoming you because he has made the case compelling for the importance of your undertaking in this conference today. And so, besides welcoming you to Tulane and New Orleans, I really just wanted to have the opportunity to endorse the importance of the conversations that you're going to have today.

As Oliver has made clear, they're important for multiple reasons. First, of course, is -- as Oliver has just made the case compellingly -- they're important because this is a big idea, and it's a big idea with big potential to have a huge effect in changing the nature of legal discussion about a topic that is ultimately existential, the future of life itself. So, it doesn't get more important than that in terms of the subject matter. It's also important, of course, in terms of the time which you're engaged in this conversation because this is a time of extraordinary, both urgency and possibility, in taking up this discussion.

The urgency you know all too well, both that the threat to the interests of nature are made urgency clear to us both by developing evidence, mounting evidence about the threat to nature -- melting ice and species lost, and hurricanes in Ireland, and everything else along the way, but also because the threat is made more palpable because of mounting resistance to basic science and basic facts, new doubts that seem plausible, more plausible today than they seemed before. So, that urgency is real but the timing is also important because it's a time of possibility.

Both some notwithstanding recent developments locally, a time of political possibility made evident through international collaboration in things like the Paris climate accord and also legal possibility evident in the fledging developments to recognize rights of nature that you'll be exploring today.

This is also not only an important time to take up these topics, but this is an important place for those conversations to happen. Louisiana is, of course, a place of unsurpassed splendor in terms of the beauty and bounty of nature, but also unsurpassed in terms of the vulnerability of nature made plain to us every day by coastal erosion and loss, that make the topics that you'll be discussing very non-theoretical.

And also, I should say if you'll allow me a point of parochial pride, it's an important place for you to have this conversation because of Tulane's long leadership in environmental law and policy, and the pioneering work of Professor Houck and other members of our faculty. So, I want to just with that welcome you to Tulane and New Orleans, and say how pleased we are to have you here, and to wish you success in the important conversations to come.



# PANEL 1: LIMITATIONS OF CONVENTIONAL ENVIRONMENTAL LAW

## THOMAS LINZEY, COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

Thank you, Dean Meyer. Thank you, Professor Houck. Thank you, Tulane Law School. Good morning. My name is Thomas Linzey and I'm the executive director of the Community Environmental Legal Defense Fund.

As I was preparing to moderate this first panel today, which is entitled, "Limitations of Conventional Environmental Law," I recalled the first eight years of the work of our law firm, which consisted mostly of appealing on behalf of community groups wanting to stop a particular corporate project. Permits that had been issued to those corporations by the Pennsylvania Department of Environmental Protection and other state and federal agencies.

While we would win the first, second, or even third round of those permit appeals, the corporate permittees would simply fix their permit application and resubmit, filling in the holes that we had identified on the first round. Eventually, their projects, whether they were toxic waste incinerators, factory farms, or frack wells, would then be sited in the community that didn't want them and we were left powerless to stop them. Those eight years led us to re-examine the work that we had been doing and to question the way in which environmental protection is currently done in the United States.

After all, it was the very corporations that were the subjects of our appeals that were writing the environmental regulations in the first place under which they were obsessively being regulated. In essence, those industries are writing a script for us to follow in our defense of the community and we were following it.

The first panel this morning focuses on the structural defects of our environmental law and regulatory system. If the current system was working, of course, we wouldn't be here today to talk about new ways of protecting nature.

With that, it's my pleasure to introduce as the first panelist this morning, Richard Mott. Richard Mott is director for the environment at the Wallace Global Fund.

Before coming to Wallace Global in 2007, he was vice president for international policy at the World Wildlife Fund in the United States, having served as treaties officer at WWF International outside Geneva, Switzerland, in 1990. In these roles, he was responsible for managing WWF's work on climate change, wildlife trade, whaling, toxics, and development assistance. Prior to his work at WWF, he directed a program on atmospheric pollution at the Environmental Law Institute in Washington, DC, and served as judicial clerk on the U.S. Court of Appeals for the Ninth Circuit.

Richard received his bachelor's degree from Tulane University in 1981 with distinction for an honors thesis in subtropical plant ecology. He received his J.D. from the University of Oregon in 1985, where he was associate editor of the Oregon Law Review. He has published in various academic journals, on topics ranging from the National Environmental Policy Act to air pollution policy, with articles in the popular press on biodiversity, climate change, whaling, and other environmental issues. Join me in welcoming, Richard Mott.

## RICHARD MOTT, WALLACE GLOBAL FUND

Thank you, Thomas. It's an honor to be here. When Mari Margil first asked me if I could appear here the first thing I said was, "Yes." And then, I saw the program that Thomas sent me and I realized that I was going to serve as the lead example of what hadn't worked drawing on a lifetime of experience. So, I'm happy to oblige on that.

I wanted to start with a quick, personal note. What I'm going to talk about today began for me a couple of hundred yards from here out on Freret Street. The first, a chance conversation with my then thesis advisor, Doctor David White, who in the -- I guess was May 1981.



He first mentioned to me, just in passing, that CO2 levels were rising in the atmosphere, and it was the very first mention I had heard of climate change and it stayed with me and in many ways shaped my career. The second chance conversation was with Professor Houck, who I bumped into one fall day out in front of the old law school building on Freret, and asked for council on environmental law programs in the country and he said -- and I'm paraphrasing here -- "Go west, young man."

And in particular to Oregon, which had -- the University of Oregon -- which had one of the very few active environmental law clinics in 1981. The rest is really my personal history, but it has always driven home for me the lasting power of apparently chance conversations and I want to thank then both.

So with a little luck here -- let me try to get to -- here we go. All right, to Oregon. In addition to the Law Clinic, what Oregon offered was a still relatively intact environment, at least by the standards that I had seen before, and tracks of old growth forest and there was, in the very early 1980s, a vigorous litigation effort to try and save what was left, and I was part of that as a student.

And so, I want to move to a couple of the early cases there. The first was a challenge to the Forest Service's herbicides spraying, which was being done ostensibly to kill all understory so that the conifers might prosper to the benefit of industry. But in so doing, they ended up saturating the local communities that were living in the forests, with truly horrific health impacts being reported, including spontaneous abortions and anencephalic births. And we brought pretty vigorous litigation against this, and we were successful, ultimately in shutting down much of the Forest Service herbicide spraying, but at a pace that, for me as young man, seemed grindingly slow.

This was followed by the spotted owl litigation, which is, I think, relatively more well known, which was itself followed by the discovery of the marbled murrelet, another old growth dependent species. And we brought, NEPA claims and Endangered Species Act claims again with some success. But what was really going on, you can see in this slide here. The first map is what old growth looked like in 1850 and the second map, in case you can't make it out very well, was not 1980. It was 1920.

There's just been this crest moving across the country eliminating old growth forests and by the time of the early 1980s we were down to something like two percent, which if I had a map -- and I don't -- you probably could not even make out the remaining forest. So, in some ways this national tragedy was going through its final chapters in the Pacific Northwest, and we were trying to come to grips with it, which itself was the extra patient of entire ecosystems and the functions in them by grasping onto an endangered species or to nip up procedural violation.

But, in some ways, what was going on was bigger certainly than I think my understanding at the time. In some ways bigger than the vocabulary that we had and beyond, in some way, the reach of the tools that we had to fight it.

In summary, I would say that we had some real non-trivial successes. There are critical stands of old growth that remain today but for this litigation. One of the fellows that I knew who worked with this said famously that if the spotted owl hadn't existed we would have had to invent it, that it really was the tool that we needed, but we were challenging something bigger. On one level it was a little bit like bringing Al Capone to heel with a tax violation. Environmental banks were being robbed and blood was in the streets, but we had to grasp at something that was concrete.

I think we were just limited by our tools. Many of the laws that we were working with predated an understanding of really the enormity of that crisis.

So moving briefly to something bigger, I want to talk about climate change here, which following my conversation with David White, was really thirty years of my career one way or the other. There are three main accords that I worked with. The first is the Framework Convention on Climate Change that was agreed in Rio at the Earth Summit in 1992, the Kyoto Protocol, which followed five years later in Japan, and then most recently the Paris Agreement on climate from December 2015.

And it's interesting, if you compare these a little bit with the prism of this conference, interestingly to me the framework convention, the earliest of the agreements, now twenty-five years old, was the only one that really talked about protecting nature and climate systems, but it did so without binding targets to change the behavior of nations or any kind of enforcement mechanism. Kyoto was in some ways more specific in the sense that it included binding targets at least for developed country industrial parties, but without reference to endpoints like nature or climate system protection. The Paris Agreement is in some way different from both of them.

Rather than a top-down negotiated international agreement, it's kind of a voluntary thing where nations brought in intended contributions and then we added them all together and put them under the umbrella of saying we're trying to stay well below two degrees. That agreement failed patently in that objective in the sense that when you accumulate and add up the commitments made, you're somewhere around 3.6 degrees. Two degrees itself, I think, is manifestly inadequate to protect nature. There was an ambition to get to 1.5, but as we've seen here along the Gulf in just the past couple of months, even at a degree, we're witnessing catastrophic events just for cities, and at a single degree the Arctic is in the process of an accelerated unraveling.

So these agreements, just to run through them, I think -- I looked at them through the prism of this conference, or retrospectively. Most of the effort was about protecting and preserving national sovereignty in an intergovernmental context. They certainly included key first steps, but events on the ground, as we have seen, are outstripping them. Nature was scarcely a name to beneficiary, much less was it at the table or at the top of the mind of negotiators.

I think there's no better reality check on this than to look at the Charles Keeling Curve from the Mauna Loa measurements of the seasonal fluctuation of CO<sub>2</sub> in the atmosphere. Now at 405 parts per million. I think when I started this unsuccessful career, it was around 375.

So, I've presided over 35 or 40 percent -- 35 or 40 parts per million increase. And if you look at the curve, the second half of the curve moves across Rio and Kyoto and the last couple of blips, I guess, are Paris but there's no inflection evident in that. So if you just do the math, what we have in the international legal context right now is manifestly not taking up to where we, as a society, needs to go and where nature needs to be.

I'm going to close with something more recent that gripped much of the country last year, and this was the crisis last year at Standing Rock around the Dakota Access Pipeline. This is one of the -- this the Oceti Sakowin sacred prayer camp that sprang up along the Cannon Ball River.

This is a group of activists and a few funders thrown in, including your speaker, taking a kneel at the far right of the picture there before that was controversial. Just to touch on the litigation. I think the way to look at what went on at Standing Rock is as an environmental justice case. Really, an environmental racism case at its core. It involved a pipeline that had been proposed north of Bismarck, a largely white town in North Dakota, but it was deemed to be too much of a threat to the water supply, where upon it was moved thirty odd miles south, within two or three miles of an important Native American community, where lo, it presented no such threat to drinking water.

As is so often the case, the EIS was rushed through by a federal agency that was attempting to accommodate industry, and in terms of the court rulings, there refusal to grant an injunction. Trump early on his presidency produced an executive order essentially telling the Corp to run this through, which they did. Oil began flowing in the pipeline in early June, but as recently as two weeks ago, federal district court in D.C. held that the pipeline was in violation of law on at least three points that had been raised by the litigants and yet -- which brought a risk to the communities and yet refused to order even a temporary cessation of the oil flow through that pipeline.

I was in this. I was funding the litigation through Wallace Global Fund, so I'm not as close to these things as I might have been when I was an earnest law student, but what I was told by the lead attorney is that the standard for securing a preliminary injunction, which is essentially to preserve the situation before harm is done to it, has become so onerous in the federal court system that they were currently running zero for fourteen on efforts to secure preliminary injunction.

So, I would say just an overall reflection on these three or four cases that it's undeniable that many of the most important laws that we have to use pre-date our understanding of the enormity of the environmental crisis.

There's a tech bias that runs through many of them. Others are focused on procedure and I think our community has used very resourcefully to try and bide time. I should say they have been wheeled energetically by a dedicated environmental bar, but the struggle that they're meant to affect remains deeply, deeply asymmetrical for the reasons that Professor Houck I think referred to so eloquently.

So, if I'm not way over time, I'm going to take the liberty of closing with a quote from Shakespeare and Julius Caesar, a well-known quote. "There is a tide in the affairs of men. Which, taken at the flood, leads on to fortune; Omitted, all the voyage of their life. Is bound in shallows and in miseries."

And I think from my own view, the flood in our own time, it has been the tide of environmental destruction and this is whether by the wave of forest loss that broke across continental United States in the last century. It could be the gyre of plastic out in the Pacific Ocean, or it could be that continuing crest of the Keeling Curve and CO2 in the atmosphere, and I think in important ways we have not yet fully risen as a community to meet that tide. And that, to some degree, despite our best and most creative efforts, has left us, in Shakespeare's words, bound in shallows. I believe that we can change that and this conference is about beginning the conversation to do that. So thank you.

Thomas Linzey: Thank you, Richard. Our next panelist this morning is Tammy Belinsky. Tammy Belinsky practices law in Virginia. Her practice includes litigating mold exposure claims, right of way disputes, and environmental causes. Her environmental law practice has included Clean Water Act enforcement, Clean Air Act permit challenges, and National Forest Management Act project challenges.

Tammy's education in the sciences informs her law practice. Tammy earned an A.A.S. in ecology and environmental technology from Paul Smith's College, a bachelor's in science and public health from the University of North Carolina, and a master's in environmental science and engineering from Virginia Polytechnic Institute and State University. She was awarded her J.D. at the University of Richmond in 1999. After surviving a career as a water quality regulator for the Commonwealth of Virginia. Tammy currently serves as a member of the board of directors of the Community Environmental Legal Defense Fund. Help me welcome, Tammy Belinsky.

## TAMMY BELINSKY, ENVIRONMENTAL LAW GROUP

Thank you. Thank you, Thomas and everyone for being here. So, my perspective comes first as my moment as a teenager when I realized all I wanted to do was help nature. As a teenager I really had this moment where I realized I didn't like people that much, and that what I really want to do is protect nature. And so being here today is the place I feel most comfortable, is talking about the rights of nature. So, my first path to doing that took me to water quality regulation for the State of Virginia and it really didn't take me very long to learn that I wasn't going to be successful writing permits to pollute.

I wasn't going to be able to protect anything. One of the structural problems that I saw in my short career there is basically, within five years, I was writing water and wastewater discharge permits. I was inspecting industrial facilities and what I realized was that the law compartmentalizes the resource. I even hate to use the word "resource," but it compartmentalizes water and air and waste and it regulates them separately. So one of the examples of where I became very frustrated was inspecting and permitting the Goodyear Tire and Rubber manufacturing plant. I'm going to get really just down into the weeds here, but the -- I was going to issue a stormwater permit.

At that time, in the early 1990s, stormwater was just being enforced under the Clean Water Act. They were just starting to collect data. Lo and behold, the Goodyear Tire and Rubber's stormwater was full of zinc and it was starting in

just tiny little tributaries running down into the Dan River. Zinc is really toxic in really small amounts. My sensibility is I'm worried about those little critters being exposed to that really toxic zinc.

Well, it turns out the zinc is in the air emissions from Goodyear Tire from manufacturing tires. So, they have an air quality permit. Air quality permits are -- the standards are based on human health exposure at the property boundary. The considerations of it coming, going up in the air and falling back down as deposition and becoming part of the water stream wasn't even -- it's still not considered. Still not considered. And it was so frustrating to me that I really wasn't going to be able to make a difference at all.

Another example there, another example of finding out that a creosote plant had ground water -- it was a recess site on the Roanoke River being managed by the EPA at that time, not Virginia, and right downstream was the city's drinking water supply.

There was no traction for me. I was told to just push the paper. So, I decided to go to law school. I get to law school. I was already thirty-five years old and I tell you, I had real -- a real hard time with the concept of "standing."

What Professor Houck spoke of, representing the interests of humans in -- their own interests in nature, and the harm to humans, and the harm to nature is not a factor. Practicing law and the practice of law, when you're representing people who fundamentally want to protect the eagles, they want to protect the eagle's habitat that's going to be harmed by the industrial wind turbines or whatever it is that's going to harm the critters. It becomes -- there's this canyon then between the people who want to protect the critter, but the critter isn't part of the process, and it becomes about the plaintiffs, the human's interests and the human's harm.

It's an artificial construct that's really very hard to maintain and I was very frustrated in law school with that. I had trouble with it. At the time I was in law school, Scalia was going to rule on zone of interests, and there was a whole story there about a law school assignment and my law school professor told me he was worried about me and with good reason. That's why I'm here today. I'm comfortable with you all.

So, an example in my practice, we use land use law to get at protecting habitat and it, again, it's artificial. We have to use the laws that we have and so we have the Clean Water Act, the national laws, but at my level, doing state litigation and state law and state practice, we use a lot of land use law to do that.

I had a case where we had a river group step forward, wanted to protect a river from a sand and gravel operation. We had some adjacent landowners who were plaintiffs too, but the sand and gravel operation not only was on the banks of the river, but they were going to use barges to move the sand and gravel downstream. There's no rights of the river. Unbelievably, we lost that case because we -- because the court ruled that we inadequately alleged harm from the sand and gravel operation, but had we been able, I think, to allege harm, that the river had rights, I want to believe that when we have that in the law, that the courts will have a much harder time getting around the regulatory law, which I believe is what they do now.

I mean, what I've watched in my growing up is that the slow erosion of all those wonderful regulatory laws that had -- all had good intentions and proper intentions, but that erosion, little by little, by the regulating community, by the agency capture, that erosion has undermined what those laws were intended to do. So the Keeling Curve, the Impaired Waters list -- one more thing.

I wanted to acknowledge Professor Houck. I have had one successful Clean Water Act case, enforcement case. It was great. It was glorious. I can't tell you how stunning the result was, but in the process, one of the reasons why we were so successful was that we caught the water authority falsifying data.

They had been doing it for six years and the regulatory agency that I used to work for had never found it. It was stunning to me because it was permit inspection 101. I don't know what the agency is doing. They're not doing their job. This authority had been falsifying data for six years, but that's what it took for us to be successful in the Clean Water

Act case. So the Keeling Curve, the Impaired Waters list, the Superfund list, what I see over my lifetime is a visible increase in air pollution. I can see it.

I live on the top of the Blue Ridge and when I drive down the mountain -- I've been driving down the mountain for twenty-five years, I can see the increase in air pollution. Each and all of those measures are evidence that the regulatory system is failing nature. Nature, I believe, has the right. So I hope we make progress this weekend. Thank you.

## THOMAS LINZEY

Thank you, Tammy. The next panelist is Ryan Talbot. Born and raised in the Allegheny National Forest in Northwestern Pennsylvania. Ryan holds a bachelor's degree in environmental biology from Clarion University, a master's of studies in environmental law from Vermont Law School, and is a graduate of Lewis and Clark Law School.

He currently serves as executive director of the Allegheny Defense Project, where he works to protect public lands from industrial extraction and to stop the destruction of new natural gas pipelines. Ryan also currently serves as a member of the board of directors of the Community Environmental Legal Defense Fund. Join me in welcoming, Ryan Talbott.

## RYAN TALBOTT, ALLEGHENY DEFENSE PROJECT

Thanks, Thomas. A couple of cases that I wanted to talk about from the Allegheny National Forest and kind of spring boarding off the slide that Richard showed earlier. You can see that first slide where you saw all the old growth forests that were still in Pennsylvania, and by 1920 that was gone. And it was shortly after that, in 1923, that the Allegheny National Forest was established, and it was established because of that clear cutting.

The federal government went in and said basically the state has failed to protect -- state and private landowners have failed to protect this land, and because of all that logging that had occurred,

Pittsburgh was flooding substantially and there were massive wildfires across the landscape from all the tree limbs that were left. And so, in 1923, the federal government started acquiring the land that is now the Allegheny National Forest. But nearly a century later, the same corporate interests that had gone through and just whipped out that forest, still basically control what goes on in that national forest. And it's not -- they're not going through and clear cutting the entire forest like back then, but they are still in control and doing clear cutting on a massive scale, and oil and gas industry also has almost complete ownership of that national forest.

The first oil and gas well drill in the United States was just outside the boundary of the Allegheny National Forest, and kind of propelled the oil and gas industry in the world. So, the first case I wanted to talk about is this timber sale case. At the time, I think, it was the largest timber sale in the eastern United States.

So the East Side Timber Sale was, at the time, I think it was the largest timber sale in the eastern United States and it was primarily almost all clear cutting. And after the clear cutting of the old growth forest, the tree species that came in was black cherry, and historically, black cherry was a very minor component of the forest over story. But after the clear cutting era, it came in like it's a weed species and it's also very valuable.

So the Forest Service started saying, "Well, we're going to manage this forest for black cherry." And they even have a black cherry bible, this whole manual that they have that tells you how they're going to grow trees straighter, taller, and faster. So black cherry has gone from less than one percent of the forest before the clear cutting era, to about thirty percent of the forest in less than a century. And some of the understories, it's closer to fifty percent of the forest.

So, you're seeing a complete forest conversion that's going on, and it's solely for the value of that single tree species and we just -- you go up, you walk out in multiple parts of the Allegheny and it's just seas of black cherry. No forest diversity. So we -- the Forest Service wanted to log 8,000 acres, basically, for black cherry. We sued. Initially, we won. It's a bizarre procedural history but initially we won.

It was a magistrate judge, and then she rescinded her order and issued a second order saying we lost, and that the issue we had sued on was under the National Forest Management Act that said that the Forest Service cannot select a logging method primarily based on getting the greatest dollar return. We had a clear case. The evidence was really strong that the Forest Service was managing this forest because of the value of black cherry. That's it, and we initially won on the claim. Then six months goes by and the district judge never rules on the magistrate's report, and then the magistrate pulls her order, issues a second order saying we lost, and basically she said because Congress didn't define the word "primarily" in the statute, she had to defer to the Forest Service's interpretation.

There we were, just right up against judicial deference to agency interpretations of federal law. And, just like that, our win turned into a loss. We appealed to the Third Circuit and they upheld the district judge order. That was my first case that I was deeply involved in, and I thought -- and that was even before law school jaded me. So, I was just astonished that that had happened.

That leads into the next case where deference played a different role, or the lack of deference. I mentioned earlier, that the Allegheny was sort of the birthplace of the oil and gas industry, and there are thousands upon thousands of active oil and gas wells. Tens of thousands at a minimum of inactive, abandoned wells.

And then, we were sort of having the fracking boom on top of that around 2005-6. Because of the way that the Forest Service acquired the land, they didn't acquire the mineral rights under the land back in the '20s. So, private industry still owns the mineral rights under ninety-three percent of the forest, and it's the most lopsided example in the national forest system.

So, when I say the oil and gas industry owns that national forest, they really do. But regardless, we said the Forest Service still has authority to protect the surface. You have to comply with NEPA because you have discretion to say this road can't be built here so close to a stream.

So, we sued and shockingly the Forest Service agreed with us and settled the lawsuit, and said from here on out we're going to comply with NEPA and do prepared environmental assessments or EIS's on future oil and gas drilling. And then the industry, of course, predictably flipped out and they sued over the settlement agreement saying that it trampled on their private property rights. The federal government had no authority to regulate, but I had in the back of my mind, we settled with the agency.

The agency is going to get deference on its interpretation of federal law, that they have the right to protect the forest and they're not taking anybody's private property rights. They're just regulating, which is completely -- that's rational. I've noticed there's a slight delay when they're going to get the drill, but we get in the court and the district judge says the Forest Service gets no deference in this case. So we went -- it was because they said that the Forest Service had changed their position because before they said they couldn't regulate, and now they're saying they can regulate, and they didn't offer enough of a good explanation for why they have the authority to regulate, except that they did.

So the first case, we had environmental plaintiffs suing the Forest Service and boom, we're up against the judicial deference to the agency and the timber industry wins. The timber industry gets their timber off the Allegheny. But when it's the oil and gas, when it's the industry suing the Forest Service, all of a sudden judicial deference to the Forest Service goes out the window and industry wins. So either way, industry -- at least in this example from the Allegheny National Forest, industry wins and it's amazing to see how the juggling of deference can go one way or the other depending on who the plaintiff is.



So that's about all that I had to talk about. I'd just like to close by saying the second case took five years and I worked on that case from the complaint all the way through two rounds in the Third Circuit. One on the preliminary injunction, one on summary judgment. Richard mentioned earlier how hard it is to get a preliminary injunction, but the industry got a preliminary injunction to strike down our settlement agreement. So you can. It depends on who you are, again. But what we were fighting for in that second case was the application of NEPA, just saying that the Forest Service had to comply with NEPA and prepare an EA or an EIS before drilling could occur.

So we spent five years working on that. If we had been successful it wouldn't have stopped the drilling. Lost in both of these cases was what we were actually fighting for. I mean we were arguing with the definition of primarily was in the first case. We're not talking about nature at all. We're just arguing about congressional intent. So I think we kind of lost -- we really lost sight of that and I think that's something important to remember when you're writing briefs, you're thinking about ways to frame arguments, make sure to remember what you're actually fighting for.

## THOMAS LINZEY

Thank you, Ryan. Next up is Dr. Michelle Maloney. Michelle holds a bachelors of arts in law. This is going to take a little while. Holds a bachelor of arts in law from the Australian National University and a Ph.D. in law from Griffith University in Australia. She has more than twenty-five years experience creating and managing social and ecological justice programs, including ten years working with First Nation's peoples in Queensland, Australia. As co-founder and national convenor of the Australian Earth Laws Alliance, or AELA. Michelle manages the strategic direction and governance of the organization, including the extensive partnerships and networks that AELA has with the legal, academic, indigenous, and environmental advocacy communities.

Michelle also designs and manages AELA programs and events, including Australia's Rights of Nature Tribunals. Michelle has written a dozen articles, edited two books, and teaches a regular summer school about earth laws at Griffith University. She is also the Australian representative on the executive committee of the Global Alliance for the Rights of Nature, a member of the Steering Group of the Ecological Law and Governance Association, and is co-founder and steering group member of the New Economy Network Australia. Please join me in welcoming Dr. Michelle Maloney.

## DR. MICHELLE MALONEY, AUSTRALIAN EARTH LAWS ALLIANCE

Thank you so much. It's really delightful to be here. I thought that perhaps I should actually say hello in Australian, which is "g'day" because most people expect that, but no, hello. And as the only person from Australia here, perhaps the only non-American person from North America, it's a real privilege to share the stage with these lovely speakers. So thank you to CELDF and everyone for letting me into the country. It's really exciting.

What I'd like to do -- and I think we're a bit over time so I might just touch on a couple of points and try to be a little quicker. If anyone who knows me, that's not a problem. I normally speak too fast. I'm going to speak very generally about our legal system just to give you a bit -- like a few dot points on how it's structured.

And then I might just give a couple of examples and there's so many similarities from what the other speakers have talked about. It's really good because I can kind of connect some of those horrible things that are going on in Australia to some of the things that are going on here.

So, Australia is a constitutional monarchy. It's very embarrassing to a youngish person like me that we are still not a republic, but like other Western legal systems that were created by the English, we have certain ways of being in our legal system that deeply affect our relationship with the natural world. Like many other Western legal systems around



the world, we had a proliferation of environmental laws from the 1970s onwards. One other thing that's handy to know is that Australia is a federation. The states came first. All the colonies came first, and then in 1901, we had a national constitution or a federal constitution.

So, the Australian government was born. Now, this matters because predominantly our environmental laws or resource management laws -- and I also hate that word -- the powers lay with the states. So, today in Australia we have laws all over the place. We have them coming out of our ears. We have laws for national parks, for threatened species, marine protection, water management, air pollution, laws regulating pollution from industry.

All the usual environmental laws. However, that has not stopped Australia from having -- I think it's the world's second worst offender for mammal extinction. We've all but decimated old growth forest. The colonial folks who invaded the continent of Australia did so with a body of English law that not only disrespected, but legally ignored, the First Nation's people in Australia. There are no treaties. They claimed the international framework of terra nullius, empty land, which is a profound and deep insult to the oldest continuous culture on earth. Indigenous people have been in Australia, so the scientists say, at least 70,000 years. It's not 2,000 or 10,000 years. 70,000 years.

So the English or, what I like to call, the medieval legal system that plonked itself on top of the Australian continent in 1788, just cheerfully dumped an entire structure of property law, feudal power, and hierarchal structures upon one of the world's most profound earth-centered cultures. Five hundred-plus language groups, and deeply established estates across the entire continent. Bioregional, earth-centered governance had been in place and had managed the continent very beautifully for millennia. So where does that leave us in Australia?

Well, we have a national environmental law, the Environmental Protection and Biodiversity Conservation Act, or EPBC. It enables the federal government to step in now and then to and protect the environment in various states or territories in certain circumstances. Very rare, and it's normally when there's a hook, like an endangered species. Otherwise, day-to-day management of natural resources or the environment falls to the states.

So, the problem with environmental laws in Australia, like many other places, is that they're really just a poor cousin to the much older, deeply embedded, hundreds of years old medieval laws. And I keep saying "medieval" because they are, and particularly in Australia. If you commit a crime, you're -- it's the Crown versus you. I mean it's the Crown. It couldn't be more visually medieval than possible.

The government can authorize -- the government is basically the owner of all the land in Australia. So that, to me, is pretty feudal. Do we feel like peasants? Yes, occasionally. Technically, like over here, I guess the government can authorize use and abuse of the land, but then the relationship between the government and corporate powers is just as glued together in such a way that both corruption and distortion in the legal and institutional systems of Australia are rife.

Other key characteristics of the Australian legal system, private property is paramount. Logging and agricultural land has really created most of the land clearing in Australia, but interestingly, agricultural land is of course leased to private land holders. And up until even the last decade, there were pretty much no land clearing laws, unless certain triggers, again, for endangered areas. So, although we still have many beautiful ecosystems, all of our old growth forests have been decimated. We have phenomenal land degradation areas. We have a very ancient continent.

North America still had glacial and volcanic activity much more recent times. We still have places in the center of Australia -- Finke River is the oldest, continuous river on earth. There's 300-million-year-old ripples in the sand up in King's Canyon near Ayer's Rock. It's a really old place. The mountains are not high and pointy. They're all round and slow. It's a phenomenal ecosystem and we've done pretty much everything by the letter to destroy it as fast as we could, those of us who are the invader, settler types. So similar to what some of the other folks have been discussing, we have mostly, in the state level, people are trying to stop unwanted developments through planning and land use laws.

Basically, however, our planning legislation is really just a way for enabling corporations and others to just continue the urban sprawl, to continue taking out forests, even re-grown forest, even to green spaces. We're continually having residential development set up significantly larger than perhaps they were in the '70s. The land clearing and threats to wildlife continue and are legal. In fact, they've even been repealing some of the native animal protection law in New South Wales. Ultimately, what I like to call the gods of the law, or supreme laws, are our petroleum, coal seam gas, which we call it coal seam gas, or unconventional gas, what you guys call fracking.

We do different forms. We don't have a lot of true fracking, but basically petroleum, gas, and mining laws reign supreme over everything else. Whereas private property law is meant to be paramount in the English legal system -- as you know, I think it's pretty the same here. The Crown likes its shiny bobbles and from medieval times was always allowed to have the rights for everything under the earth.

In Australia, the introduction of fracking, coal seam gas exploration, and drilling about ten years ago has actually meant that even private land owners, even the folks who were singularly responsible for a lot of the land clearing, have suddenly discovered they have no rights to stop this new exploration and this new use of their own land.

So, our laws have not given anyone any rights to stop fracking, to stop coal seam gas, and often not often to stop coal mines. So, what these laws do is actually allow -- the government allows private drilling and private operators to just turn up on land. Many farmers literally looked out the window and guys were turning up with machinery to have a little poke around on their land, and they had to find out what the heck was going on. Some, in fact, didn't even know things were about to happen until they read something in the newspaper and people were on their land.

So suddenly we saw these interesting alliances, and I guess to me, and I've spoken about this with Thomas and Mari, as one of the greatest indicators of the failure of environmental law or law generally in Australia to protect the natural world, or even local communities, is that really powerful rise of civil society. A group directly in response to gas mining called Lock the Gate. And that was when farmers and environmentalists, who had often been at loggerheads themselves, started to work together and literally locked the gate so that they wouldn't let these guys into their land and they wouldn't let them on country. So, they developed a sort of massive, triangular, yellow symbol.

Lock the Gate, and it ended up with between 15 and 20,000 people across the eastern seaboard of Australia participating, and the protests and the attempts to stop all these activities have become so profound that several years ago, the New South Wales government and a couple of others, actually passed new laws trying to make protest illegal. So the legal system is failing the ordinary community person. They were rising up in a way that was peaceful, so peaceful. Australians with their sort of Anglocized heritage were so compliant. Some of the environmental activists actually had to teach farmers how to say no.

They're such polite people that they'll offer you a cup of tea and a scone, but they said no, you've really got to stop these people onto you land. So, the law was failing human beings, failing the natural world, and then when civil society was taking it upon themselves to be very peacefully, legally disobedient, then they passed really nasty laws to try to imprison people who were protecting their own land for up to six to seven years. The only good news is the High Court has decided this year that those protest laws breach an implied right to protest. But some of those laws are still out there.

So, I guess what we're facing in Australia is not just the failure of environmental law, but ongoing laws that allow the destruction of the natural world. Land clearing, logging, they're still felling the remnant old growth over in Western Australia. What we see is a continual failure to consider anything beyond human and particularly, corporate needs in the legal system. So I guess this is starting to sound familiar. The map that was shown of the destruction of forests looks the same for Australia if you look at 1788 versus today.

So I'll probably wrap up with the last big issue that I will talk about, which is pretty -- is humiliating for someone who is passionate about the earth and loves my country, because it's a fun place to live, but we were called by a friend recently, the last coal colony on earth. Despite the science, despite all of the indications, despite everything all thinking

human beings know about climate change, our governments are still permitting new coal mines in Australia. Worse, we've got one of the biggest in the southern hemisphere leaning towards where I grew up called the Adani Carmichael coal mine. It's an Indian owned mine. Citizens have tried every legal angle known to humanity to stop this mine.

I was recently, for the last six years, a chairperson of the Environmental Defenders Office Queensland, which is what I would call a traditional environmental law public interest environmental law group taking cases, using the existing legal system to try to stop this coal mine. Every case has failed. There are no hooks within our legal system around climate change to stop the mine. Regardless of the fact of what the physical footprint of the mine, the transport rail, and port issues will do to the Great Barrier Reef, which is World Heritage protected, which has already copped several years of bleaching for the first time in record history.

Despite all of these things, judges are still interpreting these clunky, little laws by saying, "We can't see these extra impacts. It's just a coal mine. It's not really going to contribute to climate change." So, the ultimate failure of the law is that the government of both Queensland and the federal system see these kinds of mines as really great for the economy. Interestingly, the sheer amount of civil society disruption -- we've had these awesome divestment campaigns and many others have physical protests, non-violent wherever we can.

All of the banks in Australia have pulled out of investing in this mine. Banks from around the world have pulled out from investing in the mine, but the Queensland government is still sitting there saying, "Please come. You're very important to our economy."

So probably to finish off, I normally don't dwell on the gloomy stuff. My organization, AECLA, actually spends all of its time building a really different vision and practical projects but to focus on the horrible things that our environmental laws have done, it's simple to say.

Current environmental laws are powerless in the face of mining, petroleum, pro-development land use laws, ongoing logging, and all of the pollution issues that are coming out of the activities that we make legal. So, on that depressing note, I'll end out.

## THOMAS LINZEY

Thank you, Michelle. The final presenter for the panel this morning is Tulane's own distinguished professor, Oliver Houck. Professor Houck.

## PROFESSOR OLIVER HOUCK

Thank you very much, Tom, and thanks for your patience. It's almost getting to be time. Very much appreciate, again, you being here. I'd like to start with a shout out to so many people. You know them. Lawyers, activists, local groups, communities, Native Americans who have been in this a very long time. Think of the Pacific Northwest, Native American restore the salmon initiatives have been going on over a century in are beginning to bear fruit. Nothing that I say today, and I don't think anything any of the panelists say today, should be misinterpreted as disrespecting that, as saying it's been a waste of time.

Absolutely the contrary. You all have been indispensable and you will remain indispensable, including the laws you're working with, and I can't wish you a heartier god speed. May you thrive. We could not do without you.

Now this panel deals with limits and I've been asked to fall into that vein. I'm happy to do it. I'll do it in two levels. I'd like to do it locally, so you see it, and then to step back to a conceptual point that I think is the greatest limit of all.

So, without further ado, we are now in a Louisiana coastal zone, and when you fly over in an airplane, you'll look down and see some green and you'll see some harsh marks. If you get closer, you'll see a lot of hash marks and this is one industry and one zone.

The zone is five million acres of wetlands at one point, although we're losing them at twenty square miles a year. Three acres every hour. This has been one-third of the wetland inventory of the United States, coastal. One quarter of all of the migratory birds that fly, one-third of the commercial fisheries. This is a big deal. So, here's what's down there. We're going to take an overflight and we're going to go at speed. These are pipelines that transact, and these are just transect zones, and these are just major pipelines. Imagine, they all have feeders. Now, if I can advance it -- these are oil and gas fields in South Louisiana. As you see, there's no landscape without them. Let me see if I can do this. I may be beyond my pay grade here, Richard. Okay, good. I see.

Here is one parish below us. They are counties, and here's Plaquemine, and these are production wells in Plaquemine. Is there any place in Plaquemine without them? Lafourche directly below us. Terrebonne below us. All of these, by the way, are hurricane corridors. When these marshes go, we get slammed. One acre, one mile of marsh, knocks down hurricane surge by six inches and there's fifty miles of this between us and the sea originally.

So, what's happening? Here's canal access Golden Meadow. This is just a traditional access to an oil and gas deposit. This is what it looks like afterwards. It once was grass. That's the remaining field.

Pointe-aux-Chenes, every one of those little tags is a separate oil and gas activity. Pointe-aux-Chenes is not only a wildlife management area, it is the home of the Pointe-aux-Chenes Native American subtribe of the Houma Nation. They felt the brunt of it. Here's what their territory looked like before. Here's what it looks like now. Open water and they're having to move. Here's the City of New Orleans at the top and below us, about ten miles is Delacroix. We're just going to focus in on that little triangle of land.

Understand, this is the buffer for not only a great wildlife area and nature area, it's also hurricane protection in the raw. Here's what Delacroix looked like in '56. In comes the first dredge canal. And see the breakup off the first canal? Here's the second canal coming in. See the break off after the second? And there it is in 2008. We're done. It's water. Now we're going to take a tour of the parishes. Just get in your plane and fly. Are we ready? Here's Plaquemines Parish. It's what it looks like from the air. Here's Saint Bernard, what it looks like from the air. Understand, previously you were looking at a very living tapestry of green. Here's Jefferson Parish below us. Lafourche Parish below us. Terrebonne, Vermillion, Cameron, and I won't go further.

There are ways to stop this with over-marsh vehicles. They're being used in Suriname. We had none of it. There are ways of restoring a canal. Here's an old canal. Here's recovery after two years. You just push the banks back in. Here it is after four years. Outside Jean Lafitte Park there's been no backfilling. There's been no restoration out there and the use of off road vehicles were stymied. The oil and gas industry just does it another way and they do their thing.

So, what's missing here? The landscape being so badly damaged, its restoration. I think some of you mentioned that in your presentations, but it seems to me that perhaps the most successful and implementable ingredient of rights of nature is the duty to restore.

We cannot get the industry to pay for restoration here. They absolutely stonewall it. Basically, the position is we employ people and we're good for the state. Go home. The fact is both of those things are true and they've made billions of dollars doing what they do, but we have been unable to tag the industry with the bill to pay for the harm that they've caused. Duty to restore would be absolutely key.

Now I want to deal conceptually for a moment because I know we're running short of time. The greatest advantage to conventional environmental laws is pragmatism.

It has reasons for doing things that benefit humans. Human health, human use and enjoyment, and those are identifiable. So, when you're passing legislation in this area, or you're litigating in favor of an environmental program, these are things the court immediately picks up on. But that human element, we do this for humans, is also the greatest limit and disadvantage of conventional environmental law, because humans change and they can change like lightning. They can change overnight and when the humans change, the humans empower change, and then these programs tank. No programs in the world are tanking as fast as in the United States today.

There's almost a race to tank the most and it's a nightmare. That is the Achilles' tendon of conventional environmental law, that by pinning it all on humans you leave yourself susceptible to human changes that will just blow you away. It doesn't care what the program says. They're repeal the program. They'll repeal the regulations. They just won't implement it or they just won't fund it, and they're doing all of those things and more.

So this is not just, by the way the U.S. I'm sure that our Australian colleague could tell us horror stories in Australia as well, and it's sort of a nasty wave. So there needs to be a counter wave, and there needs to be a break on this stuff that is not based on humans, that is external to humans. The nature of that break and its utility and its future is exactly where we're going in the rest of the panels.

So, I guess this sort of ties it up, Tom, for that to come. So, thanks for your patience and I look forward to any questions that I'm sure we all do, you might have, or any other comments. Thank you.

# KEYNOTE ADDRESS: “THE RIGHTS OF NATURE”

## KARENNA GORE, CENTER FOR EARTH ETHICS

Thank you to the organizers, CELDF, and Tulane Law School. I am grateful for the honor of speaking here. And I am delighted to be back in New Orleans -- especially so close to Halloween.

I’ve always had mixed feelings about Halloween and even more so since becoming a parent of three children. As is true of so many things, it seems to be more commercialized every year. This year, according to one recent study, Americans will spend \$7.4 billion on candy, costumes and decorations. (Remember when we just made our own?)

On the other hand, Halloween still brings us a worthy suggestion, traceable all the way back to its origins, that we should, at least one day a year, contemplate the dead. Where better in the United States for such contemplation than here in New Orleans, with your robust sense of esoteric spiritual traditions, jazz funerals, and those elevated cemeteries with the creeping vines and roots coming up under the sidewalk. More than anywhere I know, there is in this city a palpable sense that those who once walked these streets are not exactly gone, a feeling that they, and we, are part of a long continuum. New Orleans doesn’t bury its past under mall developments and parking lots; it’s right here for everyone to see.

Why are we drawn to contemplate the past and those have passed on? Well, for one thing, it is painfully obvious that we have profoundly lost our way in this country. Our nation seems to be strangely obsessed with the most superficial aspects of our society, no matter how phony or fleeting. And now we are constantly prompted by the digital realm--the voracious algorithms controlling our ubiquitous engines of distraction, always selling us something or trying to shape our minds to prepare us to want whatever they think we are vulnerable to wanting. It has gotten to the point where we seem to have no time left over to focus on deeper conversations about who we are and what legacy we will leave for those who might – perhaps on some future Halloween -- contemplate what we were thinking when we inhabited the world we bequeathed to them.

Now, more than ever in the past, is a time to seek wisdom and a deeper understanding from all generations – not only from those in the past but also from our contemplation of the generations to come. One of the best-known teachings from Native American traditions that is always worth lifting up is the concept that every important decision made today should be made with a sense of how it will affect the next seven generations. And actually, that span of time is not as wide as it may seem. I knew my great-grandmother and I hope to know my great-granddaughter. I already care about her, and I care about how I will answer some of the questions that she and her generation will ask: what exactly were we doing in 2017? Did we really care about the generations coming after us, or did we just pretend to?

We need to deepen our sense of TIME – living not just in the moment, but with a recognition of all who came before and will come after. Philosopher Steven Gardiner has argued that what we all know as the Tragedy of the Commons is better understood as the Tyranny of the Contemporary.

We also need to deepen our sense of PLACE – and cultivate an awareness that we are living not just in one community, or one country, but on one Earth – the one and only that we – and our great grandchildren – will ever have.

And we need to deepen our sense of BEING – thinking not just about humans but also about the rest of life on Earth, not just about human rights, but about the moral claims that inhere in Nature. Despite the spell cast by our modern culture, we do not live in a self-enclosed, air-conditioned, bubble-wrapped, hermetically sealed reality designed to satisfy our desires and impulses; we inhabit this magnificent Earth.

We need to be comfortable with language about nonhuman life that conveys ontology rather than just utility.



So today, I'd like to talk to you about the "Rights of Nature." This morning, we have heard from distinguished experts about the limits of conventional environmental law. I will try during my turn at this podium to focus on the larger context in which this discussion takes place and help introduce this Rights of Nature field that is presently considered to be unconventional, but which makes far more sense than continuing on the present course, and if we change our definition of wealth, may be the biggest source of wealth creation in human history.

I also believe that we need an Earth Ethic to guide us as we explore this field. Ethics draw on deep moral values; they often undergird laws but when laws are out of step, ethics operate independently to argue for changing them. This is indeed such a time.

Why do we need to formally acknowledge and protect the Rights of Nature?

For one thing, nature is obviously speaking to us. I wouldn't say she is asking us to hear her – rather I'd say she is now demanding to be acknowledged and respected. Of course, here in New Orleans, one does not need to explain the voice of Nature.

In many ways Hurricane Katrina in 2005 was a turning point in the awareness of what the impacts of global warming pollution look like. And this community pulled together from the ground up, making up for the transgressions from the top down.

I also applaud this city for the courage with which it has taken hold of its own cultural narrative. Last time I was here, about a year and a half ago, I spent awhile walking around and paused in Lee Circle to look way up at that extraordinarily tall statue of Robert E Lee, and then across to the handful of people sitting around the base of that monument. What an act of communal grace it was when New Orleanians took down that statue! You chose to lift the veil of a perverse and persistent myth and embrace instead the much more interesting colorful and exciting possibilities that exist in reality. As Mayor Landrieu said, you simply corrected a "wrong turn" to be "more closely connected with the integrity of the founding principles of our nation."

Let's also remember what Reverend William Barber says: it is not just the statues, it is the statutes. We must reform our legal and political systems so that they reflect our values.

So to begin the discussion of whether Nature has Rights, we should first ask the obvious question: are rights only properly assigned to people? If the answer to that question is yes, then why do corporations have rights? We all know the Supreme Court's sleight of hand: corporations are persons, they tell us. From the decision in *Santa Clara vs. Southern Pacific Railroad* in 1886 to *Citizens United* in 2010. It is a lie, of course, and a lie written by the lawyers for corporations. But leaving that aside, if sleight of hand will suffice to expand the definition of person, then "Mother Nature" seems to me more worthy of the benefits of this artifice than, say, "ExxonMobil" or "Koch Enterprises."

And the effort to expand the definition of "persons" beyond corporations in order to accommodate the assignment of "rights" to entities other than human beings has now led to the consideration of giving personhood to robots. In Estonia, the Economic Ministry is working on legislation that would address the status of artificial intelligence on legal disputes by creating the legal term: "robot-agent." What they have in mind is something between property and a separate legal personality.

But the point illustrated by these examples is that the law does not remain static; it incorporates, evolves and changes based on society's needs. So why should we not evolve and change our conception of rights to incorporate the Rights of Nature?

In fact, one of America's great legal minds proposed this idea long ago. Justice William O. Douglas said in his famous dissent in *Sierra Club v. Morton* in 1972: "Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing on environmental objects to sue for their own preservation." He went on to say that just as a corporation has legal standing "the river as plaintiff speaks for the ecological unit of life that is part



of it.” And he also specifically pointed out that the federal agencies charged with overseeing the regulatory law are “notoriously under the control of powerful interests who manipulate them.”

The problem then – and much more so now -- is that we are only bending our legal system in one direction-- to widen and pave the path that well-financed corporate litigants constantly urge us to take: a path that leads to the separation from nature. In the 21<sup>st</sup> Century, we urgently need to open a legal path that has been less taken, but that can make all the difference – a path toward harmony with nature.

The history of Rights of Nature is difficult to characterize because it draws on Indigenous knowledge that has been deeply imbedded in ancient and even some contemporary cultures, but has come to expression in academic and legal discourse in ways that are genuinely new to those areas. Douglas’s famous dissent was influenced by the work of legal thinkers such as American law professor Christopher Stone whose piece called “*Should Trees Have Standing? Toward Legal Rights for Natural Objects.*” Stone laid out some basic rationales for this field which continue to hold true: giving legal personality to nature would enable us to protect the world because it would lift up the harm to nature itself as the issue at hand rather than the derivative harm to human beings and then, accordingly, the remedies would apply to this entity in nature, ending the harm and helping to restore it.

He also situated this new form of jurisprudence in the context of other ways in which laws have developed alongside morals. For example, at one point in time in many societies, children were property that could be bought, sold, or killed according to their father’s will, but as cultures evolved, they have been acknowledged to have their own separate legal personality which makes them intrinsically worthy of protection, even before the age they can speak for themselves.

In the time of slavery, the murder of a slave was only legally considered as property damage to the slaveholder. And the same dynamic has been true for women in different but related ways, especially as the history of domestic violence law clearly reveals.

The widening of the circle of human rights (and the roots of this thought in the European Enlightenment) is the unfolding story of truth and dignity and freedom from which we can draw inspiration. Of course, dehumanization is a real and vicious force too, which tells us something about the long journey for the protection of nature.

The concept of the human right to the environment, which is written into some state constitutions and is the subject of some initiatives coming out of Europe is a positive development to protect nature, but it is also vulnerable to being mistaken as a mechanism for more equal opportunity to exploit resources. Among the most extreme human rights abuses today are against those who defend nature for its own sake, in order to leave it undeveloped and often in the hands of Indigenous communities. Some even describe themselves as Mother Earth defending herself. *The Guardian* and Global Witness maintain a careful record of the extraordinary rate of assassinations of defenders of land or the environment and estimate that 185 such people were killed in 2016 alone.

So human rights are important but we are talking about something different here and we need to put humans in context. In 1948, the year of the *Universal Declaration of Human Rights*, the human population was about 2.4 billion. Today, there are about 7.6 billion people on Earth, and we will be 11 to 12 billion by the end of the century. As hard as it is for us to count humans, it is nearly impossible for us to count other species, in part because we know that there are so many of which we know nothing. E.O. Wilson has estimated the number at between 5 and 30 million. He also says this: “The one process now going on that will take millions of years to correct is loss of genetic and species diversity by the destruction of natural habitats. This is the folly our descendants are least likely to forgive us.”

The “process” he is warning us about is, of course, the ongoing massive loss of species that has been termed the Sixth Great Extinction, and the first such wave of extinction caused primarily by human activity. It is important to note that this wave of extinction also threatens some of the plants and animals that make up global food supplies for humans. Biodiversity International published a report last month that analyzed the loss of “agribiodiversity.” Right now, three quarters of the world’s food comes from just 12 crops and five animal species (pigs, cows, chickens, sheep and goats)

but there are also tens of thousands of wild or partially cultivated species that nourish human beings and are at risk from environmental destruction. Without acknowledgement and protection, these may be lost. Of course, we know about larger species on the Endangered List – the so-called “charismatic megafauna,” such as elephants and wolves and whales – but we should care about the others as well – including birds and bees and tiny life forms that connect strands of the web of life in ways we do not yet understand.

Yet one of the features of our current legal system is that we do not value species for their intrinsic worth until they are almost gone. By then, it is sometimes too late, especially if their essential habitat is too far gone – as E.O. Wilson’s work teaches us. And even then, it seems to be always a struggle for many people to justify any concern for their fate.

Earlier this month, the writer Elizabeth Kolbert gave a lecture on *The Fate of the Earth*, in which she chose to look at that topic from the viewpoint of “the millions and millions of nonhuman species with which we share the planet.” She pointed out that our rapid re-shuffling of the biosphere is one reason so many scientists argue that we have entered into a new geological age—we no longer live in the Holocene but instead in the Anthropocene -- because human activity has become the most powerful force in Nature and is now radically changing the distribution, quality and chemistry of life on Earth.

And Kolbert rightly framed the central issue this raises in terms of violence: “When we burn coal and oil and gas, we are taking carbon that was sequestered in the course of hundreds of millions of years and throwing it back into the atmosphere in a matter of centuries, or even decades, as carbon dioxide...Ocean acidification looks to corals like chemical warfare.” Let’s also keep in mind the concept of “slow violence” that Coretta Scott King articulated, as it affects all life forms including our own.

Another way to think about life on Earth is in terms of ecosystems, interconnected webs of life often sustained around and within geological entities like rivers, mountains, wetlands, forests, and oceans.

The World Wildlife Fund estimates that about 46-58 square miles of forests are lost every year—which amounts to the loss of about 48 football fields every minute of every night and day. This not only means habitat loss, it is the loss of a portion of the lung capacity of the planet necessary to turn carbon dioxide into oxygen. All types of ecosystems are threatened today- sometimes by agribusinesses seeking greater market share by seeking more land to raise and grow more of the 5 animal species and 12 crops mentioned above; sometimes by extractionist industries digging for more fossil fuel sources and other mineral wealth, and sometimes by other forms of what we are told to call “economic development.”

A whole host of animate and inanimate materials that are considered “natural resources” are being depleted at a rate 1.5 times the pace that it would take for them to replenish. Both topsoil and underground fresh water aquifers are being depleted at a rate many times faster than either “resource” can ever be replenished and restored.

A recent analysis by Global Footprint Network showed that if developing countries grow their economies as fast as many hope to, in an effort to catch up to higher income countries, we would need 3.4 Earths to sustain humanity. And this is assuming that the high income countries stop increasing production and consumption rates, which, if you have listened to any politicians recently, seems about as likely as us finding other 3.4 Earths to which we might decamp.

The main problem with our present way of thinking about poverty, wealth, and the economy is that it does not acknowledge the health of the biosphere itself, the source of all true wealth – and does not assign to it the most basic right to exist that would confer standing to seek protection within our legal structure, a system that is designed to be responsive to rights-based appeals.

Perhaps the clearest example of this is climate change. Despite the advent of ever cheaper clean renewable energy technologies, fossil fuels still produce 80% per cent of the world’s energy. We spew 110 million tons of global warming pollution into our thin shell of atmosphere every 24 hours. As many now know, 16 of the 17 hottest years on record have occurred since 2001, fueling the heat waves, droughts, wildfires and stronger storms that we have seen with increasing frequency and severity in recent years.

Most of the heat energy thus trapped ends up in the oceans. In addition, carbon dioxide emissions make the oceans more acidic (producing carbonic acid), which affects all marine life and is especially harmful to infant marine life. Since the Industrial Revolution, the acidity of the oceans has increased by 26%. One current manifestation of this is that coral reefs that Elizabeth Kolbert referred to as experiencing chemical warfare—sometimes called underwater rainforests—are dying—half have been lost in the last 30 years and some say 90 % of all coral reefs will be gone by the year 2050. In the Caribbean alone close to 80% of the coral cover has disappeared. That means that in our children's lifetime one of the most important natural features of our planet will have died.

There is also the issue of waste—plastics, for example, the result of the rapidly spreading culture of throwaway products and commercial wrapping and packing (more evidence of “economic growth” as it is currently measured) are fouling waterways all over the world. According to one calculation, the weight of all of the plastic in the ocean will soon surpass the weight of all the fish. A recent analysis by *The Guardian* concluded that every minute sees the piling up of one million plastic bottles alone.

Sometimes when I hear people trying to wake people up to this ever-more obvious reality around us, I think of a joke. What's the difference between an optimist and a pessimist? A pessimist says I just can't imagine how things could get much worse and an optimist says, “Oh I think I can!”

In large part *because* of all the harm we are causing to the ecological system – and because the consequent disruptions are causing harm to us, there is a fast-growing awareness throughout the world that something has gone terribly wrong there is also a building collective will to do sometime about it.

Though many environmental activists have critiqued the Sustainable Development Goals and the Paris Climate agreement – both adopted in late 2015 – as merely voluntary and woefully insufficient to meet the challenge at hand, there have been encouraging changes in many nations in the aftermath of those agreements. Group expressions of intention and values can slowly permeate into new norms. Global CO2 emissions have stabilized for three years in a row; deployments of renewable energy technologies appear to be growing rapidly in many nations; many state, provincial and municipal governments are pledging to convert to renewable energy at a much faster pace; and a significant number businesses appear to be responding to the demand of their customers and other stakeholders to examine their supply chains and reduce their emissions, with more than a hundred global corporations pledging to achieve zero emissions. The sum total of all these efforts is of course very far from what is truly needed- it should never be mistaken for what is necessary-- but at they have at least given rise to glimmers of hope. And the opportunity to look deeper at the systems at work in our world.

At Union Theological Seminary, we had a conference in September 2014, in conjunction with the United Nations Climate Summit and the People's Climate March. It was called *Religions for the Earth* and its goal was to reframe climate change as a moral issue and galvanize faith-based activism to fight it. On the day our conference opened, an essay was published in the journal *Science*, co-authored by an economist and a climate scientist, that expressed the need for a deeper level of change. “Over and above the institutional reforms and policy changes that are required,” they wrote, “there is a need to reorient our attitude towards nature and thereby ourselves.” This, of course, is precisely what the Rights of Nature does.

Our common language- especially words like climate and environment—are often inadequate and disappointing because they portray a flat inanimate view of Nature. We know instead that Nature has volition, agency, and personality. Indigenous traditions have always honored and expressed this. Western civilization has largely relegated its moral and spiritual expression to the artists, writers, musicians and mystics-- and separated out and promoted the practical observations for what we call science, many have observed recently that science aligns with Indigenous wisdom in important ways in calling our attention to the ecological crisis and these are two kinds of knowledge that will both be needed as we pursue this new path of commitment to the well-being of nature.

Of course, we *are* Nature. We are in constant dependence on the biosphere—it is a matter of interrelationships and connections. The breath we inhale and exhale is hardly external to human wellbeing. Yet the sense of separation is pervasive in all parts of our social systems.

One important example of this is that institutions have difficulty tracing human health impacts to environmental causes, even when they are quite direct – and there are layers of powerful interests that stand in the way of making that connection. I read the other day about a Trump appointee in the EPA who went from being a top executive at the chemical industry’s main trade council to running the EPA’s toxic chemical unit and she is insisting on rewriting the rule to make it harder to trace the health effects of the chemical known as perfluorooctanoic acid or PFOA which is linked to kidney cancer, birth defects immune disorders and other serious health problems. The EPA’s Office on Water has objected, but this woman argues that in this and related issues, the government should not be burdening the private sector with a whole host of concerns that are apparently termed “phantom risks.”

As we know, the White House has famously deleted references to climate change on their websites—as if this would suffice to delete the problem itself. And the President’s pick to run the White House Council on Environmental Quality has called concern about climate change “a kind of paganism” for “secular elites.”

What is going on here? Why are those who claim to speak up for the link between the health of the humans and the health of our environment being cast into the realm of pagans and phantoms? By the way, again, Happy Halloween.

How did it come to pass that we began to define issues involving water, soil, other living beings, air, as “environmental”? ... as something separate from people?

Part of this problem is *theological*. Many have interpreted their religious traditions to separate matter and spirit. This is particularly relevant in cultures such as ours in America, where the Christian religion came to prominence in tandem with the force of colonization. In the fifteenth century, when Europeans sailed to distant shores and that particular race to colonize and extract wealth began, the Vatican (specifically Pope Alexander VI) issued decrees -- papal bulls, they were called -- proclaiming that the land and the peoples of the Americas and Africa should be conquered, vanquished and subdued. The bulls actually specified that non-Christian humans were part of the flora and fauna.

An astonishing degree of cruelty and contempt accompanied the dominance and settlement of these places. The legacy of all the violence, genocide and slavery still haunts our world today; it has not been honestly confronted and dealt with.

But the contempt I want to focus on today was not only contempt for the people who had been living on these lands for many millennia, but also contempt for the way these Indigenous peoples understood themselves to be inter-connected to the local ecosystem, (what my colleagues who run the Original Caretakers program at the Center for Earth Ethics call this “biocultural heritage”).

And it is precisely the same contempt that is still present when we dump pollutants in the air as if it were just an open sewer, and when we hack away at the earth and even the ocean floor in the name of short-term economic “growth” – and when we define the concept of growth in ways that systemically exclude any consideration of the destruction caused in its exploitation, including to human beings. This actually now even extends to blindness to economic consequences even on conventional terms—because the lens of those calculations is so short-term. In other words, the spirit of the colonial conquest is still very much alive in the way we are asked to think about our economy.

Fifty years ago, in 1967, a medieval historian named Lynn White wrote a paper called the *Roots of Our Ecological Crisis* in which he famously claimed that, “The victory of Christianity over paganism was the biggest psychic revolution in the history of our culture” and that the new belief system about land (which removed the animistic beliefs and sense of the sacred in the physical) was what sowed the seeds for commodification of nature and widespread ecological destruction.

This paper caused a lot of controversy—and many continue to push back on it—and there has been a lot of recent effort to retrieve and revive the ecological sensibility within the Judeo-Christian tradition, including reinterpretations of the Bible based on ancient Aramaic and Hebrew and Greek. Pope Francis has written an extraordinary encyclical *Laudato Si: On Care for Our Common Home* which is full of Christian theology about the intrinsic worth of nature and acknowledges a right to the environment. One of my favorite lines is “the entire material universe speaks of God’s love, his boundless affection for us. Soil, water, mountains: everything is, as it were, a caress of God.”

However, White did voice some important truths. The way that Christianity has been interpreted from medieval Europe to the age of colonization to the efforts in the 1950s in America to wed it to capitalism through moves like putting “In God we Trust” on the money (as documented in a recent book by Kevin Kruse), to the, contemporary expressions of the Prosperity Gospel, mainstream religion has contributed to the objectification and exploitation of nature. Emphasis on the afterlife doesn’t help either. Of course, this is combined with the legal history in which environmental law emerged from European common law and cast land primarily as property.

We know that the destruction of ecosystems is driven not only by the notion that nature is property but also by the economic development model that is based on short term monetary value, no matter how inequitable and no matter how destructive to nature. Measurements like GDP are so flawed as to be perverse. GDP has four infamous flaws that are worth revisiting. 1. It does not count so-called externalities like pollution. 2. It does not count depletion of what we know as “natural resources.” 3. It does not count the long term positive effects of expenditures on public goods, such as investments in high quality child care and preventive health programs. 4. And finally, it does not count the consequences of inequitable distribution of incomes and net worths. These systemic flaws in GDP – and the prevailing business accounting systems that are derived from it – have long been known. Indeed, the inventor of the GDP categories of value, Simon Kuznets, was himself the first to call attention to them and begged people not to use it as a measure of success in society. Yet seven years after he first warned against their use as the principal guide for economic policy, they were codified in the Bretton Woods Agreement of 1944 and are still pervasive today.

I bring this up today because the first two problems with GDP are really problems about how we relate to Nature. As we talk about the Rights of Nature we must always contend with the fact that currently, all of the natural world is viewed merely as a collection of resources, to paraphrase the great Thomas Berry, all *objects* to be used in service to the one supreme *subject*: the economy. Berry urged us all to awaken to the truth that the universe is “a communion of subjects not a collection of objects.”

Now there are environmental *laws* of course. We just heard about many of them—the Clean Air Act, the Clean Water Act, the Endangered Species Act. These are important achievements and they certainly make a huge difference. I was part of a fight to stop a fracked gas pipeline going through my home state of New York. The only way we could prevail came through an administrative lever from the Clean Water Act, the state DEC denial of the water quality certificate.

But these laws are inadequate. Pipelines, for example, are almost always approved, no matter the destruction or the fact that they do not benefit the local communities they run through. Advocates for the area at risk—the Catskills, in my case, are compelled to calculate dollars that would be lost in the tourism industry rather than the intrinsic value of peaceful existence. Of course, the Standing Rock Sioux broke through this discourse this year... As for the Endangered Species Act, since last January alone, there have been 46 legislative attempts to weaken it, according to the Center for Biological Diversity. One measure specifically allows “economic” factors to be weighed in in evaluating a species for eligibility. We know what that means.

As we talk about the Rights of Nature let us not forget the Laws of Nature. This phrase is not merely a familiar cliché or metaphor. Nor is it alien to American jurisprudential thought—it is in fact seminal. In 1776, the Declaration of Independence, the Founders of the United States of America wrote that this nation would sever our ties to the colonial power of England in order “to assume among the powers of the earth, the separate and equal station to which the laws of Nature and Nature’s God entitle them.” It was only after this assertion that they went on to say, in words more frequently referenced, “We hold these truths to be self-evident. All men are created equal, that they are endowed by the Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.” Nature is the one and only legal authority cited in the very first founding sentences of this country.



We are all subject to the laws of Nature, from the equality of human beings to gravity to the carbon cycle. Yet the norms of the “developed” world have been built to some degree around fighting against them. Notions of success have been built around controlling nature and amassing material goods-- even being encouraged to look much younger than you are seems to be part of it, and we are actually demanding that the entire Earth abandon the notion of natural cycles in favor of some notion of humanity’s linear progress. The language around “worth” and “wealth” reflects all this. Lifting up this value system has very real consequences for behavior. The people living in the top economic brackets of the richest countries are notoriously concerned with the trust funds of their children and grandchildren, yet often unconcerned with the state of the world they will inhabit. If those that fought the estate tax channeled that energy to protect the health of the atmosphere and the oceans that their progeny will one day enjoy and depend upon, we might not be facing this existential ecological crisis.

The trajectory of materialism over time has also revealed the limits of its ability to make people happy—or allow for any real pursuit of happiness, as the case may be. As Pope Francis has written, the constant flood of new consumer goods can baffle the heart and prevent us from cherishing each thing and each moment.

The way most of us live now—with cars, televisions, computers, strip malls with goods and services manufactured all over the world, the proliferation of single-use disposable bags and cups—was not the way our ancestors lived, no matter where they were from. And all those things contribute to a mentality that has further alienated us from the cycles of nature -- and from the conditions in which our species evolved -- and have contributed as well to the present epidemics of depression and anxiety. Just as sedentary consumer-based lifestyles have contributed to obesity and heart disease.

Yesterday I was in Florence, South Carolina, where I have listened to people of different races and backgrounds tell about missing the knowledge and ways of their grandparents who grew their own food, made their own soap, and watched the signs from birds and other animals to help them anticipate changes in weather. This same group talked about increased cancer and asthma rates among those living near coal ash and the struggle to find the money to afford medications to deal with poor health.

The more our culture has been divorced from the land, the more the land is contaminated, the more we have to rely on purchasing goods and services originating in foreign lands in order to simply survive. We really should change this.

Let’s take the case of Flint, Michigan. The government officials (actually an unelected “emergency manager”) looking to cut costs switched the water supply from Detroit city water, which comes from Lake Huron and the Detroit River, to supplies drawn from the Flint River, which had been horribly polluted by the Ford Motor Company in the 1970s. Predictably, the acidic toxins in this new source of water leached the lead from the pipes. The number of children with elevated lead exposure doubled, residents reported rashes and hair loss, and fetal deaths increased by 58%.

There has been a great deal of focus on Flint, and it has been appropriately focused on issues of race and class, the discriminatory way in which this decision was made, as well as the immediate need for new pipes. But we should also consider that we *could* be a society that values the health of a river—the Flint River-- over the corporate desire to use it as a dumping ground. And if the Flint River had a right to its health and integrity, the entire tragedy might have been avoided in the first place.

We should also consider that fresh water is not scarce in that region. Even now, as residents of Flint still do not have fresh clean water, Nestle, the world’s largest food and beverage company, bottles water from the aquifers around them and sells it for a tidy profit. In a recent permit application, Nestle asked to pump 210 million gallons of water per year, a 60% increase, from the town of Evart (a mere 2 hours from Flint), and proposed to pay no more than it pays today: \$200 per year. Nestle made 7.4 billion dollars in sales from water alone in 2016.

Reverend William Barber was recently in Flint and declared, “when it comes to water, we should be working within the government to make that as cheap as possible. Privatizing that which the Lord created is just wrong.” Nestle’s absurd-

ly profitable bottling plant, Flint River's absurd volume of pollution, and the absurd shutoffs of Detroit's water are all connected.

The same tragic absurdity characterizes "mountaintop removal" for coal, fracking in fragile wetlands, clearing of forests for mono-cropping, and so much more. This is the way we treat the whole ecosystem- and disregard the well-being of the people within it. Elements of nature that are essential for life are naturally and freely given to us from the Earth yet are treated as worthless until they are privatized. If you can put these same elements in plastic throwaway containers and slap on a price tag, then they are considered valuable. But if their intrinsic worth is acknowledged and safeguarded for generations to come, our system tells us they have no value at all.

We are paying too high a price for cheap goods- and this perverse interpretation of the whole concept of economy. Real wealth is the abundance of nature shared by the community of life over generations. In order to really create wealth, in order to honor the true meaning of prosperity, and in order to safeguard freedom, we must acknowledge the rights of Nature in our law.

Of course, recognition of and respect for the Rights of Nature will bring its own jurisprudence, which is already underway. From the ordinance in Tamaqua Borough, Pennsylvania, to the Constitution of Ecuador, bold language recognizing Nature's right to exist and regenerate has been written into binding civic documents. In New Zealand, the Waikato river who the Maori consider an ancestor with spiritual power and authority. has been officially recognized with legal personhood. There are similar cases in India and Colombia and even Colorado. We are here to learn more about this exciting field.

There is an "expressive function" in law with a dynamic of its own—a setting of intentions that will sow seeds and shift thinking in important ways, though this shift may take a while to come to fruition. Also, a widely adopted statement such as the *Declaration on the Rights of Mother Earth* can elevate the planet's needs in much the way that the *Universal Declaration of Human Rights* elevated the needs of human beings after the devastation of the Second World War and the Declaration on the Rights of Indigenous Peoples is shared and cited in ways that are building influence today. When combined with local ordinances and other practical steps towards jurisprudence, rhetorical work can help lead us to a new way of thinking.

It will be an uphill battle. There are powerful forces arrayed against us. But all of the great steps forward in rights thinking were almost unthinkable when they were first imagined. The Declaration of Independence was laughed at in England, as unenforceable and illegitimate. The Emancipation Proclamation was only a theory, long before it became a fact ... and it only applied to places where the United States government had only the most tenuous control. In many ways, these began as aspirations.

But aspirations matter. Just as human comes from the same root as earth, to aspire comes from the same root word as "to breathe."

I want to end by quoting someone I disagree with. A few weeks ago, John Viola, President of the National Italian American Foundation, wrote an op-ed for the *New York Times* arguing to keep the statues of Christopher Columbus. He wrote that it was worthwhile to lift up "the values of discovery and risk that are at the heart of the American dream." I disagree with his argument; there is no discovery or risk in lifting up a version of history that demeans whole peoples and cultures, enshrining a decayed and illusory hierarchy over life. But I think he is actually searching for something important on which we might agree. This is the time for a movement that is both new and bold, for the revelation of what might look to some like a New World.

The Rights of Nature comes originally from the wisdom of Indigenous peoples but it also encompasses a dynamic ingenuity that runs deep in all peoples. We have the innovative explorative spirit to begin to see the great wealth around us as part of a living breathing reality to be shared in communion. And we also have the courage to take the risk to fight for it.



## PANEL 2: RECOGNIZING THE RIGHTS OF NATURE IN LAW, INTERNATIONAL PERSPECTIVE

### MARI MARGIL

We want to welcome you to our second panel. It is titled “Recognizing the Rights of Nature in Law.”

The rights of nature laws, as you may know, transform how ecosystems and nature are treated under the law. No longer are they considered to be property or to be commerce, but instead are recognized as possessing legally enforceable rights of their own, rights to exist and thrive, rights to be restored, rights to regenerate, rights to naturally evolve. There are efforts now to advance legal rights of nature by people, communities, and countries, and today we want to bring you three perspectives in this second panel to share where this is happening, why this is happening, and how this is happening.

So, we'll bring you an international perspective, a United States perspective, as well as an indigenous perspective. We're going to begin with the international perspective. Coming from the first country in the world to enshrine the rights of nature in its constitution, which is Ecuador. We will begin with Natalia Greene. She was born in Ecuador and is a consultant on the rights of nature at Fundación Pachamama and is the focal point for rights of nature in Ecuador for the Global Alliance for the Rights of Nature. She has been the secretariat for all of the International Rights of Nature tribunals. Natalia graduated from Hampshire College.

She holds a Master's degree in political science and is finishing another Master's on climate change and sustainable development in Ecuador. She promoted the recognition of the rights of nature in Ecuador's constitution and has worked on the environmental and indigenous aspects of the Yasuni-ITT initiative to keep oil under the ground in the Amazon. From 2011 until 2013, she was the president of CEDENMA, the national coordinating entity for environmental NGO's in Ecuador. And today she coordinates the Climate Justice National Platform. She is an energy efficiency professor at Simon Bolivar University and is a consultant to the socio-environmental unit there. Please join me in welcoming, Natalia Greene.

### NATALIA GREENE, PACHAMAMA ALLIANCE, ECUADOR

Thank you, Mari, thank you, Thomas, and thank you everybody for the invitation and for being here. It's a real honor to be here. Of course, where? The question of where, Ecuador. I wanted to share something really short with you. I wanted to remind Mari and Tom that when I met them in 2008, when we invited them to participate in the constituent assembly to the recognition of rights of nature. And then in 2010, when we created the Global Alliance for Rights of Nature in Ecuador. I remember telling Mari that I wasn't going to have babies until I brought -- until I could bring a baby into a better world than the one that I was born in, born to.

In many ways, it's not a better world but I am bringing a baby right now and raising my two-year old that is walking around the streets of New Orleans with his daddy, because we have not been able to cut the cord yet and I realize that I will be bringing this baby to a country that recognizes rights of nature, and when he's going to be born we're going to be celebrating a ten-year anniversary of this recognition. Sorry. And he could say that mommy has not given up in making these rights happen. Last year someone told me I won't be raising a child. I will be raising a defender of Mother Earth.

So, I would like to share with you a little bit of what happened in Ecuador.

Well, we were able to recognize that there are long periods -- Ecuador decided to rewrite its constitution in 2008 after almost ten years of a very unstable process when we changed almost ten presidents in a decade. We were in a moment where we were facing one of the major problems in Ecuadorian history regarding the environment, the Chevron

disaster. We were launching the Yasuni Initiative and it was a moment of change in Ecuador. People really, really needed a change. People wanted a really ambitious change and we were able to recognize in our constitution a model, that I can show you here, that is very interesting is that it is a model that first redefines development in the sense that we're not talking about sustainable development anymore.

We're talking about a new model of development based on well-being, and what we call *buen vivir*, and the two basic, fundamental pillars of this are one the plural nationality. That is the recognition of the diversity of nations living within one nation. And then the real guarantee rights of nature. Without these two pillars, there's no way that you can actually reach this new model of development.

Chapter seven in the constitution recognizes that nature is a subject of rights and what's most interesting about chapter seven -- you can read it in article 71 -- is that nature, Pachamama, where life -- where life is reproduced, has a right to integral respect of her maintenance and regeneration providing functions and has evolutionary processes. This is quite interesting because you can see we were not only able to recognize the rights of nature, but also the rights of Pachamama, and Pachamama translated into "Mother Earth" is much bigger than what we consider around nature. So we could be doing magic. I mean, that's what we were expecting when we were able to recognize rights of nature.

To tell a little bit about the process, because we have a little bit more time, is that we did have to face the limits of lawyers. For example, that were always telling us what are you trying to do? In law, we always said that law 101 told us that a subject of rights is a person, and maybe a corporation, but not nature. So lawyers were a problem. However, when we spoke about law with indigenous people they asked the question, "Don't you guys, white western people, have it already?" It was just absurd that rights of nature was not considered in this legal framework that they were using.

So, what we were doing with rights of nature in Ecuador is we were really taking into account a lot of the cultural considerations, of really recognizing what our indigenous people were saying, that nature is our mother and that it needs rights, and that we, the white people, were not taking those into consideration and that's why we needed it into law.

So after a real, I will say, surprising moment -- because we and Mari and Tom can share this with me -- we expected only to bring this into the debate into the assembly, but this was actually accepted by the majority of assembly members, and what's accepted in the constitution is the respect not only of its existence, its regeneration, its vital cycle, maintenance of the vital cycles, structures, and evolutionary process, but also what's very interesting is the respect of entire restoration.

Who can do it? Everybody can do it. It can be an individual. It can be a collective. It can be -- we have cases of foreign people who have been able to apply this, for example, like the Vilcabamba case. So, anybody can actually go ahead and guarantee rights of nature in our constitution.

Something that's also very interesting is that the protection of nature is very transversal through our constitution. You can see, for example, that it is included, nature is mentioned when you talk about strategic sectors, when you talk about state's responsibilities, when you talk about water and food, freedom rights.

Even when you talk about public endowment or working in production. They're all embedded in the construction of the constitution. So, this is really a bio-centered constitution. And, of course, we were very happy when this was accepted.

What is the situation? We have rights of nature in the constitution. We have the principles because we have very important principles that can guide this. However, we need civil society and judges to continue moving this. Civil societies is something that we have been working on. People are more and more aware that we have rights of nature, not as much as we wanted.

We will still expect communities and others to really get empowered by rights of nature, to bring forth cases of rights

of nature, but we also need to teach judges, because many times the cases getting to the courts and judges really don't know what to do with it. So, with that we've done some work with amicus curiae and other things in a way to sort of teach judges. However, we still need to keep on working with this machinery to really make things happen. I don't expect you to read all of this but I really expect you to understand that it's not only the Vilcabamba case. We have collected twenty-three cases of rights of nature in Ecuador.

I'm too often surprised because we keep on learning about more and more cases. This is what we have. This is what we think we have. There might even be more cases but it's very interesting if you see the variety of cases. We have cases coming from government, coming from a plight for civil society. We have criminal actions. We have protection actions. We have initiative actions. We have all sort of tools to recognize and to be able to support the restoration of our environment, our river, of -- you can see right there by the gestures.

There are many, many different cases that we've been able to apply and what's very interesting is that if you see from all that list, most of those cases are positive cases for implementation of rights of nature. So what has happened -- and I'm giving you here a more detailed summary is that we have identified twenty-three cases. Only four of them are negative cases for rights of nature. Fifteen of them are positive cases of rights of nature. Four of them are still in process. Eight of them have been applied by civil society and fifteen of them have been applied by government.

I want to stop here for a second so you can see, first of all, that when people say, "Well, you guys. It's already almost been ten years of rights of nature implementation. What has really happened?" Yes, we have not been able to change the country dramatically as we expected. I expected, for example, to be able to stop large scale mining. So, I was one of the ones signing the Condor-Mirador case that we put on because that was the first case of a large-scale mining, copper mining, in Ecuador. We have not been able to stop those big ecocides. We have not been able to stop all the exploitation in the Amazon. However, there has been some change in the legislation. It's very interesting to see that we not only have one case. We made it very popular to the real case, but we have twenty-three of them. What's our critique to this?

It's that, for example, we have a case where the person who killed a jaguar was jailed in the name of rights of nature. However, we have not been able to stop the exploitation in Yasuni where many jaguars are going to be killed. So, what's the reading that we make out of all of this? First of all, that there is some political use of rights of nature. If you see most of the governmental cases are the ones being won. So yes, it's great that we can put into jail a person that killed a condor, a jaguar, of course, but if you see it, it's a person maybe with little education who did this without much purpose, but the big scale projects are not being targeted.

So the government is using this in a political way and I can make this even more clear with the Thaishamakunda\* case. That is a case against a prefect that is against the former government of Ecuador. So, they've used the building of this road in a very sensitive area as a political target against this prefect. So unfortunately, yes, they have been used in a political sense and the governmental cases have been won. However, we have -- thank god -- we finished with the Correa era. So Correa is gone. We have a different president and that could change things around a little bit.

Civil society cases might be more accepted. Every time that we were presented one case we were considered enemies of the state. So, we knew we were going to lose the case. So, we stopped doing it. However, there are some other cases that are in process and that are very interesting and that we'll keep on presenting them. So, as you can see, it's very interesting because we do have an advancement in legislation and what I want to bring into your attention is the following. First of all, that Ecuador did not recognize rights of nature thanks to a base trial. It was not like a movement that brought rights of nature into law.

It was something that came in from the top down, because we were all surprised that we were able to put it in the constitution. It was a small group of us that were promoting this in the constitution. However, it does claim a cultural, ecological, and indigenous aspect so it makes sense to Ecuadorians. It makes sense to indigenous people. It makes sense to our culture to recognize rights of nature. It actually doesn't make sense that the rest of the world hasn't. And, it has a youth base right now and this is what I wanted to focus is that we now have nine years of rights of nature.

A person that is right now eighteen has been living where rights of nature has been for nine years already, since he was eleven.

So the young people, when you're speaking with young people it already makes sense. You don't need to explain to them. You have a base people and that's how you can explain the movement of Yasunidos and some other young women is that it makes sense to people because you've changed it and you don't need to change a fifty-year-old. It just made it natural for young people. So, we really have a base now with the youth that is really promoting. They really don't even question the idea of rights of nature.

There are some contradictions with rights of nature because they compete, especially when you compare them with sustainable development, and I think Francisco is going to be speaking more about this. But there's still this contradiction about talking about the safe environment and sustainable development when rights of nature is completely something different. We can explore more of that in the questions and everything, but when you talk about sustainable development, mining could make sense because it's development.

We actually lost the case of Condor-Mirador through that argument, that the mining company was supporting development. Well, we -- we were in there protecting nature, we're going against development. So there is this contradiction, where we still need to make the transition to understand that if nature has rights, we need to change the perspective and the relationship completely. It's still declarative. It has boosted in the juridical arena. For example, there are some constitutional -- some sentences from the constitutional court that demands the need to understand the case through logical rights of nature. However, it has not been -- there is some loss as well in rights of nature as incorporated.

Like the rural land law, the hydro research law, the development plans. They are all taking into consideration rights of nature. So it's very interesting how it has -- this constitutional justice has been developed. However, it has not been put in practice as we foresaw this because it has not stopped the expansion of destructivism and mining in these really sensitive areas. However, we are not giving up on the idea. We know that ten years, in the time of law change is a small time still and what we have already accomplished is a lot and we want to keep doing that. We know that we have had a very great impact in the world. We have been able, for example, to organize four rights of nature tribunals.

I'm actually leaving on Sunday to organize this last tribunal that we're holding in Bonn, and we have realized that what we need to tell the world is that a lot of the change comes from the people. And, we have recognized very ethical and moral authorities to take into consideration how the world will look like if we had rights of nature and we see that the problem is not only in Ecuador. It's a systemic problem and it's all over the world. However, when you look at it through the perspective of rights of nature, it changes completely. It's very, very interesting.

So I urge you to follow up on this, but I think that Ecuador has definitely given the example on promoting a lot of these changes that I see and with great pleasure that everybody speaks about Ecuador and how that inspired them. I think that we cannot even value how much was accomplished through the recognition of rights of nature in Ecuador. We are actually doing an anniversary in rights of nature coming up in September 2018, because we really want to gather and tell the world and tell Ecuadorians how much impact this has had in Ecuador.

With the U.N., with New Zealand, with the whole world really bringing forward rights of nature. So we are doing that. And just to finish up, I just wanted to let you guys know that something that we are doing with the support of Hugo, Francisco, Pam, Craig that are here, is that we are launching a right to nature website in Spanish -- [derechosdelanaturaleza.org](http://derechosdelanaturaleza.org) -- because I think that we still have a whole world of Latin America, Spanish speakers that have not really -- got empowered with this. And all this information that I'm giving you right now is information that, even for us, is hard to get.

So we are trying to collect absolutely all the information, make it public information, because if we share that information we can tell people this has been working. There is some light at the end of the tunnel, and we really think that if you see the societal change in Ecuador, as much as we have not been able to stop these big project, I do feel and I

am proud -- and if you ask me right then in 2008, I will still be promoting right of nature because I think it's the way to go. Its time has come. Thank you very much.

## MARI MARGIL

She has an incredible story. We've known Nati for a long time now and I'm glad you didn't wait on the babies. So, thank you Nati. I am really pleased to let you know of our next speaker who upon hearing about what happened in Ecuador contacted us from Nepal. Shrawan Kumar Sharma is a politics and conflicts analyst devoted to studying the political dynamics of the constitutional policies of democracy, rights of ecosystems, climate change, and violent and non-violent conflicts in Nepal.

He is authored a number of books and articles in politics, social democracy, conflict and peace, ecosystem rights, environmental democracy, peace negotiation, and grassroots peace building in Nepal, and currently he is working on advancing legislation to secure the legally enforceable rights of the Himalayas in Nepal. In collaboration with our organization, the Community Environmental Defense Fund. Shrawan was a journalist prior to the pro-democracy movement in Nepal.

He's written many articles and reports on politics, democracy, parliamentary affairs, international events, which have appeared in weekly and daily print media in Nepal. In 2002, he joined the organization the Center for Economic and Social Development. Through the Center he has developed and implemented a grassroots peacebuilding project in conflict-ravaged areas of Nepal, and has executed cross-political party programs on democracy building, federalism, negotiating resource conflicts, and political policy reform in climate change and environmental protection. Please welcome, Shrawan Sharma.

## SHRAWAN SHARMA, CENTER FOR ECONOMIC AND SOCIAL DEVELOPMENT, NEPAL

Thank you, Mari, for introducing me with the friends participating in this symposium. I would like to thank Mari and Thomas for inviting me to the great event organized in this beautiful and historic city of New Orleans. I am very grateful to Thomas and Mari.

Keeping in mind the time constraint I want to enter directly into the topics that I want to say it with you. I am not going to say the academic things, academic ideas. I just want to say my experiences, what went on and what we are doing in Nepal, what we face in Nepal. Nepal is a small country in between India and China. The giant countries of the world, India and China. Nepal is sandwiched between these two countries.

We have most of the people here in this symposium, but I also understand -- know that that the Mount Everest. We have Mount Everest. Nepal is known, the country of Himalayan ranges. The great Himalayan ranges. Most of the people from the Western world go to the trail mountain trekking and among us, among you, perhaps you have been there in Nepal. I don't know about who have been there in Nepal. Mari, Thomas. I am working with CELDF, Mari and Thomas, since 2009. Yes, Thomas? I want to say some basic things what we have been doing in Nepal concerning the global warming caused by the climate change.

Nepal has a gradient society still. More than sixty-five percent of population fully relies on agriculture. We have no large chemical industry, large products, and industries. Our society is agrarian. Our economy is fully dependent on agriculture. That agriculture is not fully technologized. That is not technical. That is a very traditional agricultural system. We produce our food grains. Food is in our farmland, in our field. We have small fields in every household, in the rural areas. Kathmandu is a big city where I live, but most of the population lives out of the Kathmandu in small towns inside the villages.

Even our country we think for the climate change and global warming we have been paying heavy costs for that. Our glaciers and our well-known peaks are melting down and some technical histories made by the Western and Nepali scientists has revealed that the mountain glaciers and the mountains is going extinct within a few decades, and what would happen if the mountain and mountain glaciers extinct? How the next generation would continue their lifestyle and living?

Most of you in this symposium I think understand that two giant rivers flowing from Tibet, the Tibetan plateau, that crosses the ranges, mountain ranges and enter into Nepal, then that goes to Bay of Bengal. And, the scientists who study this has revealed that. That water is the major source for drinking and irrigation for the southern Asian population. And other studies are there, that reveal the fact that, water from the mountains recharges the south water, underground water of the southern plainland. If Himalayas is melted down completely what would happen? What would be the disastrous at that moment?

I want to say that by formal training I am not a scientist. I have studied law and political science. In 2002, I joined Tribhuvan University campus to teach political science. But, then I left that job and I'm fully involved in NGO activities, non-governmental activities where I am working now.

Nepal has not long constitutional history. In 1947, we have the first constitution in Nepal and that constitution had not been implemented because of the conflict between the dueling oligarchy. We had oligarchy ruling at that moment. In 1990, we established parliamentary democracy, Westminster model. And that democracy -- that democracy was strengthened by drafting a constitution, a democratic constitution, that has not internalized the environmental rights, environmental justice for the people.

After that, we experienced -- we had army rebellion, since 1996 to 2006. Nepal, again, drafted interim constitution in 2006. That very constitution internalizes environmental democracy in that constitution. But that environmental democracy was not sufficient to address to coping with the problems facing by the Nepali population and facing by the Nepali state and country. And we had established to the universal process of the Constituent Assembly to draft another constitution in 2008, and that constitution has been plagued because of the conflict between major political parties.

Again, in 2012-13 -- elections were conducted to establish to draft the constitution. That Constituent Assembly established -- drafted a new constitution in 2015, and that constitution has invited a little bit progressive ideas and agent in the constitution. But in my opinion, that is still is not sufficient to address the climate change, adverse climate effect of climate change and global warming over the Himalayas, over the giant rivers, and over the natural forest. We have natural forest in Nepal. More than thirty-six percent natural forest we have surface land area.

At most thirty-six percent forest we have now. We have many wetlands, many wetlands in Nepal. To access those natural forests and rivers, Himalayas, we need more aggressive constituent system and constituents in provinces to protect the rights of Himalayas and rights of nature. For that reason, I am particularly doing for that reason. I am working with Mari and Thomas. Mari has visited several times to Nepal working with the -- to discuss to make the discussion with parliamentary and political leaders. Mari has met many politicians and parliamentarians here in Nepal and in Kathmandu.

Since 2009, we're working with the members of parliament and political parties to internalize the concept of rights of nature in the constitution. In my opinion, people have the plain mindset. Manifestation has been already manifested there in place. That manifestation -- that very manifestation has -- people understand that manifestation. Nature is to use. Most of the people has that idea. Nature is to the use for the benefit of the people, for the benefit of the public, for the benefit of the state.

All the people of my country, my country Nepal, we are demanding for the rights, but the basic rights, basic existence of the earth, where we are living, it's going to be in the dangerous state. It still that is largely ignored in my country. I



don't know what is happening all around the world. I would like to confine in my own country, Nepal, and to solve that problem with me, particularly, working with the parliamentarians to strengthen the legal system and constitutional provisions. Now we have not parliament. Parliament has been dissolved and another election for the parliament has been announced.

There will be two phases of elections. First, in November 21. Next is December 7. Next parliament will be founded in December 15, 2018. We have done, we have worked with many parliamentarians, outgoing parliamentarians. They are now former parliamentarians. They are not in the parliament. They have been taught what is the rights of nature, what is the environment, how the rights of nature can be secured to the constitutional provisions, constitutional amendments. Those who learned, they have been gone and elections is scheduled.

Many new members in the parliament will come and I think we, again, need to educate them, need to work with them, and my motive, my optimum understanding is that that manifestation which is in place, the next step is to use for the benefits of the human being need to be changed. That very manifestation. I see the problems in that manifestation, that manifestation needs to be changed. And I am working, particularly, to make the ideas -- make the agenda of rights of nature to make the agenda politics. Like the representation, like the form of government, like the form of the state.

If this agenda does change into the political agenda, in my first opinion, it would be easy for us to widen the impact, widen the impact within political constitution, within the parliament, outside the parliament. This idea should be -- this agenda should be discussed in the parliament and out of the parliament in every forum of national economic development and political activities. Me particularly working with the -- to make this agenda, to make a political agenda. Mari, I am very proud to be a part of the CELDF project and in Kathmandu, she has taught me many things to work with in this regard.

Mari, if I -- time. I have not many things to speak here but we have -- I have some things to say with you but time constraints, I don't want to take your -- long time and the conclusion I want to say with you that we have some technical difficulties in Nepal. We have no sufficient academic expertise to study the impact of climate change environment. We are very few experts available in Nepal and Kathmandu. Those who are formally trained on environmental science and climate change and global warming science and there is the academic gap. To cope with this problem, we have -- we should have -- we need academic support.

The academics from the Western top universities like you and professor to fill the gap of scientific histories of Himalayans, glaciers, and all those environmental resources, natural resources, we need that. And we should be very proactive to engage many communities. We have more than 130 community groups. We have many dialects and most of the community's life living is fully relied on natural resources. They use natural resources for their livelihood. So how these communities perceive the environmental benefits, they are more emotional over the issues of the Himalayans, over the issues of nature, over the issues of natural resources.

We need academic support, academic analysis, to analyze the relationship between nature and the community groups, nature, and the political politics. I expect such types of support, such types of environment from the Western universities. Academics would be more effective for Nepal to achieve the noble cause of rights of nature. When we have achieved something, we have -- parliamentarians have formed parliamentary forum on climate change, within parliament to discuss the rights of nature and in the parliament. On behalf of a group of parliamentarians, premiere parliamentarians, parliamentarians have sent to draft rights of nature to Mari.

Mari is sending that to me. We have achieved that. We need to strengthen that achievement and we have to go -- we have to be more proactive to achieve more than that, to achieve the constitutional provisions to be incorporated in our constitution. Our constitution needs to -- there is a big political discourse to amend our constitution, to accommodate various community groups, grievances of the various community groups, various indigenous peoples demand and grievances in the constitution while the constitution pays for the amendment at the moment, if we have the symbiotic technology to put forward the provisions of rights of nature, provision in the constitution. I think we would



be able to achieve that. This is my thought experience, what I learned, what I face, and what I learn. Thank you very much for listening.

## MARI MARGIL

Shrawan has been a real pleasure to work with. Unfortunately, when you go to Nepal and you have Sherpas telling you that the mountains are turning black from the melting of snow and ice and glaciers, your heart drops. So, he's doing incredible, important work. Thank you.

We have one more international perspective and that comes to us from Sweden. Pella Thiel is co-founder of the Swedish Transition Network and End Ecocide Sweden, which has successfully put ecocide law on the political agenda there. She has coordinated the first two rights of nature conferences in Sweden.

I had the pleasure of being at the second one in Sigtuna, Sweden, in April. She has edited two books on nature interpretation and is currently writing a book on the rights of nature in Swedish. Pella trained as an ecologist and enjoys having her hands in the soil at her home, a small holding in the archipelago of Stockholm. She is part of the ecopsychology activist NGO called Lodyn and the U.N. Harmony with Nature initiative, and Pella is a co-founder of the new organization Rights of Nature Sweden. Please welcome, Pella Thiel.

## PELLA THIEL, RIGHTS OF NATURE SWEDEN

Thank you. Thank you. Do I have five minutes? Okay, so I was just curious to hear does anyone of you know Lodyn? That's L-O-D-Y-N. No one? So does anyone of you know about Thor, the Nordic war god with the hammer? Hands up. Do you know him? Yeah, right. So actually Thor is the son of Lodyn and he is like -- yeah, Lodyn, his mother is the earth goddess. So, the Nordic Gaia and I think it's curious that we are celebrating the war god then doing Hollywood movies about him, but actually you are not alone. I've only met one person who knew about Lodyn. She is so forgotten. So that's why we wanted to bring her to the front.

Sweden, here in Sweden we conveniently got rid of Norway there in the west and in the east is the Baltic Sea, one of the most polluted water bodies in the world. Sweden has often been a leader in environmental issues and starting from the Stockholm Conference in 1972, where the newly elected prime minister of parliament invited the world to come to Stockholm to discuss environmental issues. Actually, it was two women in his administration who was pushing for that and he was a bit mocked for that. So people told him, "Do you really think that world leaders will come to Stockholm to discuss environmental issues?"

I mean, they will not come. But, actually, this is regarded now as a milestone, the Stockholm Conference, and it's intriguing that Palme used a very strong language in his speech. He said, "The man's destruction brought about indiscriminate bombing by large scale use of bulldozers and herbicides is an outrage. Sometimes described as ecocide, which requires urgent international attention." It's shocking that only preliminary discussions of this matter have been possible so far in the U.N. So he's telling the U.N. that really you should do more, and he's also connecting environmental impact with war. And, since the Stockholm Conference, we've done quite well in Sweden in international comparison.

So, for example, do you know who's leading in reaching the sustainable development goals in the world? As you might guess, Sweden is. Yeah. I'm not sure if this deserves applause. So, we're really in love with this image as being international leaders in sustainability and generally there is a sense that we're developing in the right direction. So, you could ask what am I doing here? Well, I hate to reveal this to you but the emperor might have really shiny clothes, but you know, the underwear is a bit dirty. There are some slight issues.

For example, this list.

Sweden has one of the largest economical footprints in the world, which is also true for many of the countries in the top of this list and that's more than a bit curious I think. So, we export our environmental impact to other places. But how do we take care of nature at home? Well, unexpectedly, we have one of the most generous legislations in the world for mining. That's why we are sometimes called the Banana Republic of mining. The mineral tax is two per mil. So, two per thousand, not two percent, of the value of the minerals, and the state gets 0.5 per mil of this and the rest goes to the land owner. So, should we offer some mineral tax to keep them nice and quiet? Well, hello. This is Sweden. Just throw them some glass beads and everything will be fine.

So, Sweden is a forested country. About two-thirds of the country is forest and of that less than four percent of the productive forest is protected land. Actually, maybe we shouldn't even call it forest, because most of it is like what you see in this picture. It's plantations, planted forests. We've been very busy converting our forests to plantations lately and we manage it. We manage it by cutting it down, taking it away, clear cutting like this. That's how we manage our forests. So, it's not strange that more than half of the forest is younger than sixty years, which as you know is like -- trees can be several hundred years.

So not surprising, by trying very hard for almost twenty years we don't reach, strangely, our environmental goal or forests. And this large-scale destruction is happening without much protest. It's like we literally can't see the forest for the trees. Maybe because there's just trees left and I think they are feeling very lonely. And, generally, we perceive ourselves as a nature-loving people. So how can this be? I think it's because the system is still working okay for most people and we don't question it and there's a really high trust in the state in Sweden. We trust the government. We trust authority.

So, there's very little space for systemic change. And there's a lack of interest to look for fundamental shifts in how we do things, and this has been really intriguing to me because what we've done is mostly to show this great idea of rights of nature thinking wow, this is happening. Why shouldn't we engage in it? And it's like it's not really visible and this is so strange to me. So what are we doing for the rights of nature? We're focused on creating a space for exploring this idea and building the networks around it. As Mari said, we've hosted two conferences.

One was in 2014, where Polly Higgins, the U.K. lawyer was speaking and we spent some time after that lobbying for an international law of ecocide and creating a Swedish part of the End Ecocide on Earth Network. But we think that Sweden is unlikely to be a first mover on that issue and then about a year ago a called Mari and I said can you come because we want another conference and focusing more on rights of nature. And she said, "Why do you want to have a conference on rights of nature?" And I was like, "Isn't that obvious?" But why don't you just do it? And I'm like, "Look, we're not there yet."

And, I don't think we were, but since that conference that was held in April it's built a lot of interest and we are like strengthening our network, our networks a lot. So thanks to that we're actually ready now for our first case, which will be focusing on this lake, the lake Vättern. I just want to say -- I wanted to say something short about that but I want to also mention that we are working a lot with the only indigenous people that is in Europe, the Sami people.

They're currently fundraising for their presence at the tribunal in Bonn that Nati mentioned, and three weeks ago some representatives proposed a motion in the Sami parliament for them to work with rights of nature. This is the Lake, Lake Vättern in the picture here and we want to work with that as a legal person. Actually, since Mari spoke we have also a network of lawyers dealing with the rights of nature, as she said. I'm an ecologist so I don't know these things and I think that's worth an applause. We've been looking so hard for that.

So you know, they are watching. They are probably watching this livestream. I think they deserve an applause. I'm just one person but we are many and they couldn't be here. So, the Lake Vättern is here on the map. It's the second largest lake in Sweden. It has very clear water. A quarter of a million people are depending on that lake for its water

and with sea level rise that could raise to two million people depending on that for water, but however it's threatened by a number of mining projects and by the military who is exercising over in the lake, and shooting in the lake, and want to substantially increase the numbers of shots in the lake.

And starting next year we will advocate for Vättern as a living, breathing entity that we are immediately connected to for our daily needs, and she has the right to life and health and she deserves better than us systematically shooting her. Thank you.

## PANEL 2: RECOGNIZING THE RIGHTS OF NATURE IN LAW, UNITED STATES PERSPECTIVE

### MARI MARGIL

So, we're now going to move to our panelists, who are going to share how the rights of nature is being advanced in the United States. They will share with us how this work is being built, how it's being mobilized upwards from communities from the grassroots.

And we're going to begin with my colleague, Ben Price, who is the national organizing director for the Community Environmental Legal Defense Fund. Ben has worked with the Legal Defense Fund since 2004 to coordinate community rights organizing across the country. He has advised and organized in hundreds of communities, many of which adopted community bills of rights that codify the rights of human communities and the rights of nature, and prohibit corporate activities that violate those rights.

Ben worked closely with Tamaqua Borough, Pennsylvania, in 2006, assisting them to become the first community on earth to adopt legally, enforceable rights of nature. He advised the Pittsburgh City Council and assisted in drafting Pittsburgh's protection from natural gas drilling ordinance, which codified the rights of nature into law, the largest city to do so. He works and partners with colleagues in Colorado, Washington State, Oregon, New Hampshire, Pennsylvania, Ohio, California, and other states to train, educate, and organize local people on community rights ordinances and charter amendments that subordinate corporate privilege to the rights of people and nature.

Ben is also the Legal Defense Fund liaison with the National Community Rights Network – one of our sponsors today – and assists strategic organizing across the country to support community rights movement building. Please welcome, Ben Price.

### BEN PRICE, COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

Thank you, Mari. And thanks everyone for being here today and for all of the good work that you do in various ways.

Working with the Community Environmental Legal Defense Fund is initially about empowering local communities, the people living in municipalities and counties across the United States to take charge of their own fate, and to empower them to do what democracy or a democratic republic should actually do. And that's to empower the people who are affected directly by governing decisions to be the ones who make them, or to have their direct representatives represent their interest when they make them.

Our focus wasn't originally on rights of nature. It was on just that, empowering communities to adopt local laws to protect their fundamental rights. And that means in the face of, and in challenge of, state and federal preemption and claims of corporate privileges that trump the rights of the people in communities and continue to do so.

When it came to rights of nature, it seemed to be a controversial issue – certainly, it's a controversial issue among probably the majority of folks – but among our staff as we were talking about should we introduce this idea? Should we talk to local communities about enacting local laws that recognize fundamental rights for nature, for ecosystems, the environment, for Mother Earth? There's lots of ways to say it. And our communities across the country look at it in different ways. But among ourselves, we talked about the controversial nature of the rights of nature.

And our question wasn't whether rights of nature should be adopted nationally, statewide, and at every local level. That wasn't a question at all. I think we all embrace the idea fully and completely on philosophical grounds, on legal grounds, on simple pragmatic grounds.

But, we wondered if going out into the communities where we were working in – we started in Pennsylvania. We cut our teeth just in the State of Pennsylvania. And that meant working largely with conservative rural communities. It was because we were working on agricultural issues to start with. And we wondered if those conservative communities would in any way embrace the idea of recognizing fundamental, inalienable rights of nature. And then we wondered if more progressive and liberal communities would do it either for different reasons.

The conservative communities, very much concerned about property rights and what the impacts of recognizing rights for ecosystems might do to landowners claimed rights and property. On the liberal progressive side, we expected pushback on the level of, well, we already have laws in place. And we've worked really hard for years and years to get those in. And what are you telling us? That what we've been doing just hasn't worked. It's not effective, and we wasted our time.

Well, despite those concerns and our own discussions about controversial issues, one thing that we at the Legal Defense Fund haven't been too shy about is introducing controversial ideas in our organizing, things like challenging privileges bestowed on corporations, corporate property somehow has the same legal status as bill of rights protections for human beings.

We did, of course, advance those ideas and continue to in local lawmaking. When it came to rights of nature, a key maxim of our organizing has been we're interested in creating the livable, regenerative communities that we desire and deserve and that all of the people we work with desire and deserve. And the first thing that all of our organizers talk about – I do – and we had to talk about overcoming any doubt that the rights that we're championing are rooted in values that we're ethically authorized to assert. And in the end, we decided we had to ignore our doubts. We had to overcome them and act on the premise that recognizing rights of nature has always been the moral and ethical right thing to do.

And it was about trying to bring about a change in the world that would make a real and positive difference. And the system of law that we're living under now and continue to is not allowing us, in fact is preventing us, from creating those types of communities and that kind of a world.

In 2006, in the conservative community of Tamaqua, Pennsylvania, situated in anthracite coal extraction capital of the world during the Industrial Revolution, the opportunity arose to test whether or not municipal officials would consider adopting legal rights of nature. Faced with the imminent dumping of urban sludge and dredged material from the Delaware River and the Hudson River – all to facilitate shipping lanes in those rivers – Tamaqua was faced with plans agreed to by the governors of Pennsylvania and New Jersey to bring in that dredge and dump it into a huge open pit mine. And it's called the Springdale Pit.

The plan was to bring that stuff in by truck load after truck load over years and years and dump the stuff into the pit and leave it there. Tamaqua would get a dollar a ton for being the hosts of that. The lawyer for the municipality, he learned that I was talking with city council and the mayor about the prospect of enacting a local ordinance that would not only ban that practice, but would do it on the basis of the rights of the community, their rights to protect their rights in passing local law and exercising the right of local self-government. When the municipal lawyer heard about this, he said well, that's just not going to fly because there's state preemption that says that regulating that industry is a matter of state, not local concern. You're preempted from doing that, there's likely to be an immediate lawsuit, and we just can't afford it. So, I recommend against it.

Well, even so, community members came out to public meetings in large numbers. They had learned about the ordinance because we don't just write ordinances, we organize in communities and educate. And a lot of folks came out regularly to the public meetings and let their local elected officials know that this is what the people expected them to do, wanted them to do. And, as a matter of fact, it was the elected officials' duty to do it because when you take an oath of office at the municipal level in Pennsylvania, you swear to protect the health, safety, and welfare of the community. And it's not necessarily the municipal corporation and its financial interest.

I did talk to the mayor. I talked to members of the council about recognizing legal rights of nature as a way to up the ante, to give them a new tool to pit the rights of the ecosystem against claimed rights for corporations, for instance. And we talked about how the intricate system of environmental regulations regulates the rate of environmental destruction. It doesn't actually protect it and preserve it for all time. It slows down the rate of destruction, which logically leads to the conclusion that the end result will be the final devastation of nature. And we talked about how it was not the kind of outcome that anyone probably wanted.

In 2006, Tamaqua Borough, Pennsylvania, in Schuylkill County, became the first community on earth to recognize legally enforceable rights of nature.

Let me say that they didn't do it on philosophical grounds. I mentioned it's coal country. I would say it's very conservative. Why would they do this? It seems it was maybe counterintuitive to hear this. They didn't like to consider themselves tree huggers, for sure. Matter of fact, they bristled if you said they were activists. That sounded just really too controversial for them. Just to say they embraced the idea on pragmatic grounds, not on philosophical grounds, not on moral grounds. They did it on pragmatic grounds. They were looking for some way that we give them a new tool because the tools that they were told were the only tools they could use – going to the regulatory agencies, the Department of Environmental Protection in Pennsylvania – also known as the DEP, department of everything permitted by most Pennsylvanians.

They knew that wasn't going to work. So they said, well, let's try something different, and they did. We discussed how wealthy investors and privileged profiteers used corporations as a legal weapon against every municipality in the country. Corporations were granted legal privileges. We talked about this stuff and the protection under the U.S. Bill of Rights. With the legal status of persons under the law, corporations are used against the rights of whole communities to intimidate and bully local governments into surrendering those community rights in order to avoid expensive litigation.

By recognizing nature as a rights-bearing entity and by empowering the people in the community to represent the interests of the ecosystem in legal disputes, the people of Tamaqua and a majority of their elected officials realized they could challenge the legal fiction of corporate rights with the reality of legal rights of nature.

And that's how they looked at it. They said we need the tool. Let's adopt the tool. Since 2006, dozens of other U.S. municipalities and counties in the U.S. have worked with CELDF to draft and enact local laws that recognize fundamental, inalienable rights of people and of natural communities. It's an ongoing effort. We continue to work with communities. Even as we speak, our organizers are meeting with people in communities across the country, fighting legal battles just to have the rights of human beings recognized, and in the process, including the rights of nature.

Since Tamaqua enacted their recognition of the rights of nature in 2006, I believe it's every ordinance, and every charter amendment, and every municipal charter that we have assisted municipalities in drafting and adopting includes a recognition of the rights of nature. So, I can't give you a number of how many that is. It's a good number, and it's going up. Some communities like Tamaqua see the rights of nature as a pragmatic move. Others see it as an ethical and moral duty. And whatever their motivation is for doing so, we meet them where they are, and we work from there. And I think that that's the beginning of social and cultural change. The law isn't going to lead on that; people in communities are. And we start at the local level in municipal communities.

And we don't go to the states where we don't really and they don't really have that much of a voice. So that's where we begin. I'll talk a little bit later about where we go from there. But I want to turn things over. And Mari would like me to turn things over to my colleagues to discuss what we've been up to. Thanks.



## MARI MARGIL

Thank you, Ben. Next up, we have one of our partners, Shannon Biggs. She is the co-founder and executive director of the organization Movement Rights, which is advancing legal rights for communities, indigenous peoples, and ecosystems. She's working with California communities and with Native American tribes. Shannon assists communities to ban harmful projects by passing binding laws that assert the rights of communities and nature over corporate projects internationally. She is a recognized leader of the rights of nature/Mother Earth movement, a co-founder of the Global Alliance for the Rights of Nature, and the coauthor and editor of two books, including *The Rights of Nature: Making the Case for a Universal Declaration on the Rights of Nature*.

Shannon also leads trainings and is a lecturer of the Legal Defense Fund's Democracy Schools. She previously was a senior staffer at Global Exchange and the International Forum on Globalization. She holds a Master's of Science degree from the London School of Economics. Please join me in welcoming, Shannon Biggs.

## SHANNON BIGGS, MOVEMENT RIGHTS

Thank you. I want to just reiterate what so many have said. I want to thank CELDF and Tulane Law School for convening this important symposium and also just to thank that we're here talking about the communities on the frontlines of this work.

For those of us as organizers, it is truly a pleasure to walk with communities pushing this forward. And they're the ones taking the risks. They're the ones actually advancing this work forward. It's an honor and a privilege for us to call ourselves organizers in support of that.

I'm also on the theme of mythology that we've been talking about today. We've talked about Thor. We've talked about the mythology of nature as property. I work in California. And I'm going to talk a little bit about that particular part of the work and a little bit about the mythology that you may hold or share about California and the myth that is California.

As Ben pointed out, there's a mythology that we Californians like to believe how environmentally advanced we are and how our laws around the environment are so much stronger than anyplace else. And that's a myth that, while it may be true we have more regulations or tighter regulations than other states, it often just means we have more hoops to jump through, more hearings to testify at, and more signatures to sign on petitions and things. And not that those aren't valid things, the idea that this is environmental work – the rights of nature is this environmental work. And therefore, liberal progressive communities are going to embrace it wholeheartedly is in fact another one of California's myths.

We have more environmentalists and environmental lawyers that you can shake a stick at. And they all have had success within the existing framework holding back some of the destruction. And it's really hard to hear that we need to take also an evolutionary leap to do something different. As we've seen slide after slide after slide, we're watching the forest disappear while we're protecting the tree here and there. And in California, that is oh so true. For all of our environmental protections in California, it didn't stop fracking from coming in. It doesn't stop the heavy use of pesticides on all of our crops, which we produce fifty percent of the fruits, nuts, and vegetables for the United States in a place prone to drought. Maybe you heard a little something about that.

That's also part of the mythology about California. Every state has its own reasons. It's so much harder to work in this state to do this rights of nature work where we live. And in every state, there's a reason, a block, something that stands in the way between us and actually creating and changing and shifting the system into the way it really needs to be if we're really, truly going to protect ecosystems and ecosystems of which we're a part, then we have to start really taking over the spaces and places that we've been told that we don't get to change, that's not up to us. Fracking, not up to us even though we're the communities that bear the brunt of it. And on and on it goes. And this work is

really about confronting and challenging those myths and those ideas that somebody else knows better about what it is that we need to do to protect our ecosystems and to protect the communities within which we live.

For California, part of that myth is how green we are. And wherever you live, there may be another myth. I'm currently working with a place that honestly, the myth is so deep, I believed it. How many people have heard about the Napa Valley and the wine that's produced there in Sonoma? It's a beautiful place, right. It's one of the most idyllic places in California. That's such a myth as I come to find out from the people who live there who tell me that the industrialization of the wine industry is a death machine masquerading as the good life. In Sonoma County and Napa County, they're among the top in the nation for childhood deaths from cancers. Childhood leukemia rates are 500 percent higher in California in the Napa Valley and Sonoma County area than they were ten years ago; they've escalated.

It's just been a sixty-nine percent rise since 2000. There are twenty-three childhood deaths from cancer in that area per 100,000 children as a result of the pesticides that are used and the clear cutting of the forests in that area. So that myth of how beautiful – and I mean before the fires, which are part of the story. Even the people in the Napa Valley and wine growers who we're working with in Sonoma County – there are lots of good family farms, biodynamic farms, people who really tend to the earth, really care about the earth and produce good quality food for their neighbors, and all of the things that we want in our clean, sustainable, society. Big agriculture is really what it is, is coming in and telling these communities what it's going to look like and what it's going to look like for the children and for people who are at higher risk of cancer, who have one of the worst air pollution problems in the nation is this myth of California that they're being force fed and the farmworkers.

Before the fires, they decided that they wanted to do something different about it because they tried all of the usual avenues. They've tried all of the work they hoped would protect their communities. And frankly, I wasn't so sure that in this land of good and plenty that they were really ready to take on this challenging work. I was really wrong I'm happy to say. There are people in Sonoma County who are really willing to say we need to stand up for the migrant farmworkers who are dying as the result of having to work in these toxic fields. We're here to stand out for the last remaining forests in this area to be clear cut. And we're here to stand up for the water, which is not only being used and abused by these corporations in mind, but it's also being polluted with all of the runoff from all of this.

And we're here to say that the rights of nature are going to happen where we live. And I was so excited to be able to partner with them and to start moving this work forward. And we started working on writing the ordinance and planning out our campaign, and then the fire hit. And many of the people that I'm working with were burned to the ground. And I thought hmmm, I wonder if there's still – I mean, they have other things on their minds now. And what's so beautiful is a number of them have said the fires are being put out as we speak, but now is the perfect time to change what this community looks like from the grassroots...from the ground up and to sort of double-down on this idea that it's not just when it's economically viable that we protect the ecosystems, it's for our future.

That's just one example from one of the communities I work with in California. And there are a lot of other people, of course, who are speaking about this kind of work throughout the state and really confronting our own myths. I just want to ask you as I close is what are the myths you tell yourself about the places where you live? And how do we actually work to shift that? So, on that note, I'll thank you.

## MARI MARGIL

Many thanks to Shannon and the work that she's doing there.

Next up, we have Stacy Long. Stacy serves as the elected vice chair of the Board of Supervisors in Grant Township, Indiana County, State of Pennsylvania. She's one of the primary advocates for the inclusion of rights of ecosystems and nature in the popularly ratified home rule charter for Grant Township. A graphic designer by trade, she lives in East Run, Pennsylvania, with her husband Mark and their two cats, Fester and Gomez. She also serves on the board

of the Pennsylvania Community Rights Network – one of our sponsors today – which serves as a statewide advocate for the rights of municipal communities and nature. As a member of the Grant Township Board of Supervisors, Stacy has defended the township's local laws in court over the past five years in lawsuits brought by the oil and gas industry against the township in an effort to overturn those laws. Please welcome, Stacy Long.

## SUPERVISOR STACY LONG, GRANT TOWNSHIP, PENNSYLVANIA

Hello everyone. Thanks so much for having me. I'm deeply honored to have been invited here today and to be sitting up here with Shannon and Ben – very admirable people out there working for rights of nature and community rights. Can we all just applaud them once more because I'm really in? I was allowed a little extra time, and that is how I chose to spend my extra time.

But I was invited here today to share the story of what's happening where I live, which is called Grant Township. It's a township in Indiana County, which is in very rural Western Pennsylvania, and to share the story of what's happening where I live. I will go through that. And you will be agog.

Late in 2012, Pennsylvania General Energy – a smaller natural gas corporation – met with the Board of Supervisors of Grant Township and other local officials to announce its plan of installing a Class IID injection well in the East Run area of Grant Township.

Loosely, what that means is the plan is to squirt fracking wastewater, which is industrial toxic waste, down a re-purposed gas well a mile deep, to the tune of about 32,000 barrels a month for ten years. What could possibly go wrong? PGE told these men that there wasn't anything Grant Township could do about that. It was just there to inform them that the plan was going to move forth. In the process of this, the Pennsylvania state law says the EPA needs to hold a public hearing. So, the EPA holds a public hearing in Grant Township late in 2013, where they did hear us. There were about fifty residents voicing concerns that we thought would be obvious to the EPA that an injection well in Grant Township would be an astonishingly bad idea.

What we learned mostly through one resident's relentless doggedness, my mother, Judy Wanchisn, who isn't here today. But if she isn't livestreaming, she will read this transcript because she's that kind of lady. She learned that permit would probably likely issue no matter what we said to the EPA. And that set off warning bells with my mother. And Judy contacted Chad Nicholson of CELDF on the advice of colleagues in the spring of 2014. And Chad described how pegged in we were because Grant Township at that time was a second-class township. And because the regulating agencies exist to issue permits and act as a taxpayer-funded cloak of safety for harmful corporate projects. All of this resonated with what we'd witnessed so far in the process.

And from here, I'll give you a quick timeline of what's happened in the past three years. So, kind of click this off in your head as I go down. In June of 2014, Grant Township's Board of Supervisors adopted a Community Bill of Rights with an ordinance prohibiting the permanent storage of frack waste in Grant Township as a violation of Grant Township's rights and the rights of Grant Township's local ecosystems.

PGE sues Grant Township in federal court thirty-nine days later over that ordinance. Then the Pennsylvania Department of Environmental Protection – that's our state-funded environmental regulating agency – issued its permit to PGE in October 2014. So, things are moving along.

In November of 2014, a motion to intervene in the federal case is filed by CELDF on behalf of the Little Mahoning Watershed, which is the ecosystem in Grant Township and the East Run Hellbender Society, which is a community group in Grant Township.

This was a national first to have this happen. And then in October of 2015, the federal judge rules against Grant Township, strips out the language in the ordinance that prohibited the injection well, ruling that Grant Township did not

have the authority to enact such a ban. However, just three weeks later, in a landslide vote, Grant Township adopted a Home Rule Charter, reinstating the ban three weeks later, reasserted the community's right to do so, and then again stated that that activity was a violation of those rights.

And if you give me a second, I would like to read that section from our Home Rule Charter. One moment please. Since I actually have a little extra time, I can actually read the whole blurb. One moment. I found it. Section 104 of the Bill of Rights of Grant Township's Home Rule Charter reads like this:

*All residents of Grant Township, along with natural communities and ecosystems within the township, possess the right to clean air, water, and soil, which shall include the right to be free from activities which may pose potential risk to clean air, water, and soil within the township, including the depositing of waste from oil and gas extraction.*

We're good, but CELDF is good to work with. That was in November of 2015. Let's skip ahead to April of 2016. Grant Township passes an ordinance, which – and I'm going to quote from the ordinance, “establishes a right to be free from prosecution for non-violent direct action carried out to enforce the Grant Township Home Rule Charter's rights and prohibitions and legalizes non-violent civil disobedience.” Again, that was the first in the nation.

In March 2017, the federal judge did make her second ruling against Grant Township saying that PGE's constitutional rights had been violated on two counts. And then four days later, the Pennsylvania Department of Environmental Protection sued Grant Township in Commonwealth Court over its Home Rule Charter. And that was a really bad week. So, there are two lawsuits in my township. The federal case is waiting for the judge to set a jury trial date that would determine a damage amount being awarded to PGE. That decision could result in bankruptcy for Grant Township. And then oral arguments were heard on the Commonwealth Court case on October 10. And the judge will be ruling on whether or not Grant Township has the authority to govern itself under its own charter.

In the dozens of legal briefs that I've read over these cases, I've seen plenty of laws that exist that protects PGE's right to do its business. And before the adoption of our Community Bill of Rights, and then later our Home Rule Charter, no laws existed that protected anyone's rights in Grant Township should PGE's project go sideways.

I was given one remedy by the deputy of oil and gas at the DEP. He did tell me that a landowner could sue the operator. Now most people in Grant Township live in propped-up farmhouses and have particle board covering the window holes in their trailers. And it's really not a remedy anyway. So, can we all just agree that more environmental regulations are not protecting people or our environment?

So, I'd really like to echo what CELDF has been working for. That what if your community could just say no to a harmful corporate project that would harm its citizens and its environment? Don't cling to loopholes like industrial zoning or more layered and complicated regulations but just outright, plain no.

Why did Grant Township put itself through all this? Just please hear me on this. Grant Township is twenty-seven square miles of rural quiet. There's zero traffic lights, no white or yellow lines on the roads. There's no police force, no hospital, no schools, no offices, no stores or industry. There are no businesses at all. You can see every meteor in the sky at night if it's clear. Grant Township has 700 people. And the majority of us are not young. And we are not wealthy.

The whole of my township is a watershed. It's a special protection watershed, meaning that we have uncommonly clean creek, streams, and aquifers. That label was given to us by the State of Pennsylvania that is ironically suing Grant Township for protecting that watershed. Isn't that special?

There is no public water system in Grant Township. Every resident in Grant Township has a private well or spring, which is privately maintained. Every day, there is no guarantee that water will come out of your tap. And if you live in Grant Township, you're keenly aware of this. But that's kind of how we choose to live. That's what living in rural Pennsylvania is. And we don't want a gas company or regulating agency overseeing that very difficult and that very necessary thing.

I'd like to leave you with something that I was jotting down as Professor Houck was speaking. You brought up honesty. If I was being honest as a resident of Grant Township, Grant Township doesn't create value for the State of Pennsylvania. And I'll tell you why. It's because we don't make a lot of tax money for the state. And we don't provide a lot of votes. I would honestly have to argue that Grant Township's value lies in its environment. So rather than submitting to state and industry, the people of my township just said no. Thanks.

## MARI MARGIL

Thank you, Stacy. Stacy didn't tell us this, but the Pennsylvania Community Rights Network and other statewide networks of which there are a number, are now working to advance the kind of change she has achieved locally, to the state level. And I'm going to ask Ben Price to say two minutes on what that work looks like as communities are mobilizing and driving change upward.

## BEN PRICE

First, I want to say that Stacy is an example of why I love my job. And I wouldn't want to be doing anything else. It made me cry. I wanted to follow-up with what Mari said. Yeah, hundreds and hundreds of municipalities passing local ordinances and charter amendments and adopting new local constitutions – that's what a Home Rule Charter is – that's not going to do it. We know that. And in Ecuador, you start at the national level, and you get a part of the constitution recognizing rights of nature; that's wonderful. We need to have everybody in the country believing that nature has rights.

Our project has been to start at the local level. When we do that in Pennsylvania, Ohio, New Hampshire, other places, we bring those communities that have been through that process – win, lose, or draw, whether they get the ordinance or not, whether it's been overturned or whatever, we've got a lot of people who understand what we're talking about, about community rights and rights of nature.

And they've been brought together in a number of states to form state level Community Rights Networks. That means those folks are coming together for a purpose. And that is to amend their state constitutions with amendments that we already have language drafted for that recognizes the fundamental right of local community self-government, which includes the right to protect through local lawmaking, the rights of the people in those communities, and the rights of nature in those communities. And that means free from state and federal and international preemption, and free from challenge by claimed privileges – I refuse to say rights of corporations because they're not. They're privileges granted by courts – unelected usually – the Supreme Court, for instance.

They have been granted rights that are used to compete with the inalienable rights of people and the fundamental inalienable rights of Mother Earth. And we're not going to tolerate it. And if we have to, we're just going to change state and federal constitutions to do it.

We'll start at the local. We'll move to the state. By the way, in New Hampshire, we have now over ten sponsors for and introducing such an amendment to eventually put it on the ballot to adopt community rights amendment. We have petitions circulating in Ohio and elsewhere. And I know I'm over time. So, I'm just going to be quiet. And I'm happy to say more to anyone who wants to talk. But we are busy. And we're going to stay busy. Thanks.

## PANEL 2: RECOGNIZING THE RIGHTS OF NATURE IN LAW, INDIGENOUS PERSPECTIVE

### MARI MARGIL

I'm now happy to tell you that we are going to do a quick one-minute transition to bring you the indigenous perspective, the perspective of folks from tribal nations who are here with us today who are looking to advance rights of nature within their tribal governing frameworks. So, I'm going to invite Bill Greendeer, Casey Camp-Horinek, and Deon Ben up to the dais.

We're going to start this afternoon with Bill Greendeer. Bill Greendeer is a tribal member of the Ho-Chunk Nation based in Wisconsin. He is a member of the Deer Clan, which is devoted to protecting the sacred earth and water. His Ho-Chunk name is Rekumani, which means deer that run into the south wind.

Last year he walked the length of the Enbridge Line 61 pipeline corridor in Wisconsin to raise awareness of the pipeline's impact on people, lands, and water. During the month-long walk he brought attention to the sacred effigy mounds, which are not yet registered in the state catalogue and which appear to have been disturbed by the pipeline construction. He has also been active in the opposition to frac sand mining and land mining of the gifts of the Creator.

In 2016, Bill proposed incorporating the rights of nature into the Ho-Chunk Nation's tribal constitution where the first vote was taken there by their general council. He is now sharing the rights of nature with other tribal nations and peoples. Please welcome, Bill Greendeer.

### BILL GREENDER, HO-CHUNK NATION

Mah-yom-ni-nah. First of all, I want to say I'm honored and really humbled to actually be here to talk about the rights of nature. This is not a new concept. This is something that we have lived with forever. What we were actually told by the government to become a sovereign nation and told to become just like the white man. This really hurts. We can't have our own ways? We've got to follow the ways of the governing system of the United States? This is what Creator gave to us. Why should we have to have a lawyer to defend the water, the trees, the air, the animals, the wind? I'm really happy to be here.

I was happy to see Karenni Gore and meeting her on the plane last night. I was so happy because we talked about the rights of nature and we both understood that. It made us smile. We were smiling on the plane, talking, walking in the aisles and just like hey, this is really cool. It's been around for thousands of years.

There's so many people out there that -- I did walk the pipeline but it wasn't just me. I was just a walker and I wanted to learn what was going on with the destruction of the earth and how people were being mistreated by the pipelines. We're all in this together. We have to stick together. It's about the rights of nature that we all believe in, something that we all have always believed in. We've got to stick with nature. This has been in our hearts. This is something that comes from inside us.

So, I'm really happy to be here to be able to talk to you people. I'm not happy about laws. I'm not happy about laws at all. I started with frac sand mines. What you don't know about the sand mines in Wisconsin is these sand mines are our sacred sand, our altars. These sand mines are tearing apart what we hold sacred. I was really ticked off about that so I started really fighting against sand mines. I got educated. I got educated by going to learn about health impact assessments at University of Wisconsin with the help of Julie de la terre. She got me into these classes. I mean wow. What a concept. Health impact assessments.



So, one was put together by her and it was presented against the sand mine and it worked. I've been working with Juliee for a couple of years now, about five -- four or five years on and we started going to Democracy School. We started dissecting the constitution to the state, the U.S., and the tribal, and none of them really covered us and protected us and protected what was sacred. That's what I was all about. I was trying to protect the sacred. It was really cool. It worked. We actually -- Juliee and I put a resolution together because I'm the guy that does the nature thing.

I lived in the woods a lot of my life. I walked the woods, I trap, I rowed in a canoe with my father checking traps, going out there and making strips of wood so we could tie things together. I mean we use real fibers and everything that was from the earth, and we prayed before we cut the wood. We prayed before we went out there and trapped. We did a lot of this prayer thing. You know, you talk about Christians? Holy smokes. I think we pray more than them. And that's okay. I go to bed at night, I go to bed and I pray for daylight. I don't know anybody that goes out and prays for daylight. It's cool. I protested the fossil fuel industry. It's been over a year now that I haven't driven a car. Can you do that? That's what I'm saying. I'm out there and I'm trying to make a difference.

So, the rights of nature actually was something that has always been Ho-Chunk, and that's why I ended up -- when somebody said, "Hey, yeah. You know, do you want to talk to the Ponca Nation?" I said, "Sure." Going out there and I was so amazed at that and it was nice to meet good relatives out there, really good people. We're all related because we all have that same feeling of love for nature in our hearts and that's where it should be. I wanted to say that I did this training and it was great with Paul Cienfuegos, and just from training with the Democracy School with Jan Morris and Robin Milam. I wanted to know about laws and how to actually start using them. White men's system to protect nature.

We didn't have it in our constitution. To me this meant something, to be able to learn. I mean, I'm a -- what would you say? -- uneducated Indian, but I do know about nature. I do know about nature and I know what's sacred. I grew up around the medicine lodge. I grew up around the warrior's society. I grew up out there in the woods and knowing how to talk to animals, how to talk to the plants, how to protect the sacred medicine plants that we have. That's what I was all about. That's what I wanted to help with our people. That's what I thought. Yeah, dissect, learn. I learned about law. I learned about constitutions and to me that's where I really felt like that was something that we could use.

So, as I am putting this resolution together for the constitution for the rights of nature, that was only just part of it. The verbiage, this verbiage, it's all about verbiage with lawyers. I'm not a lawyer either. So that's what I was doing and I actually present at -- I did that Democracy School. 2014, I was working with the constitutions and dissecting them. 2015, I went to the Ho-Chink Nation. Juliee actually put it together and she did the educational part. Me, I did the natural part and we put it all together, to put the rights of nature out there. And you know what? A lawyer changed my verbiage but it passed anyway. That was really cool.

And then the following year I said, "Hey, you said it wrong. I know it." You know what they did? They threw it out anyway. We lost the secretariat position so we had to start all over again. So, we went back with the correct verbiage that Juliee and I had put together and it passed within -- we have 5,000 plus, and there's only 110 people, and the only reason they voted no is because they didn't understand the rights of nature. They were caught in the Christian system, really totally in constitutions and stuff. They didn't understand it, but it passed. So now, right now we're at a point where we have to put it to one more ballot. We had to send the ballots out to all the tribal members and I think that the best thing is that we're actually getting the word out there now.

I'm actually traveling all over the place, walking, hitchhiking, whatever. Leather tramp style. It's cool. It works. You actually can walk and talk to more people when you walk then you can when you're sitting in a car and look straight ahead. Sad news for cars but you know, I really think it's really a good thing to have the rights of nature. My dad used to tell me that and the other thing he used to say, "You got to stick together to protect the earth."

So, I mean, there's a lot of unsung heroes out there. Like Juliee's actually working right now to protect the Great Lakes. I think that is so cool. Anybody out there trying to save the earth, to me, is amazing. We all have to stick to-

gether. We all have to have like hearts in order to do this job, and to do it right. It doesn't matter -- I mean, I'm going to -- I'm kind of scared to say this but I'm going to be honest. Before CELDF, before Aldo Leopold -- there was the Ho-Chunk Nation.

## MARI MARGIL

Thank you, Bill. We next have joining us, Casey Camp-Horinek. She is an elder and tribal councilwoman of the Ponca Tribe of Oklahoma and she is also an Emmy awarding actress. Like her brother, the late Carter Camp who was a leader in the American Indian movement, Casey has been an outspoken activist for her people, for the rights of mother earth, and against massive oil pipelines, injection wells, and fracking in Oklahoma.

As she has shared, we are averaging one death per week in a community of 800 people. All of these are from cancers and unknown auto-immune diseases from the fracking industry. She is on the board of Movement Rights and working toward recognizing legal rights of nature to ban fracking on tribal lands. She travels globally to speak on concerns of indigenous communities. Please join me in welcoming Casey Camp.

## CASEY CAMP-HORINEK, PONCA TRIBE OF OKLAHOMA

Ze-tia. My name is Zhuthi. I'm a Ponca woman from Oklahoma. I've been looking forward to this moment and I thank you for allowing me this honor. I particularly want to acknowledge the Houma Nation for allowing us to be on their ancestral lands. I want to say thank you to my friend and relative, Shannon Biggs, for sponsoring my trip here and for inviting me. I appreciate you very much, you and Movement Rights. Wevdaha, I thank you, CELDF. Is that how you guys say that? CELDF. It kind of sounds like a cute, little elf to me. Always has. And if you will allow me a moment here, I want to honor the true guest here that is the reason we're here and that's the sacred water.

On this moment, a year ago today, I was at Standing Rock with my sons, my nephews, my nieces, my grandchildren, my extended relatives, protecting the sacred water. I was there as a THPO, Tribal Historic Preservation Officer. I was told by the police to give a place to stand. I showed some of you the pictures of my son a year ago today. My son, Mekasi and my son, Jeff had been there since August 8th of 2016, when they were called by Joy Brahma, a Cheyenne River Sioux woman, that there was a 48-hour notice at Standing Rock for DAPL and we had been sun dancing and praying, fasting, going without water, going without food, and he called me. As we were going home he said, "Mama, I think my prayers have just told me where I'm supposed to be."

He said, "I'm going north." And it was a very difficult thing for me because my people have lived through bullets and bayonets, small pox blankets, and forced removals, and I knew what might be facing him. It's the same things that faced my brothers Carter, Dwayne, and Craig at Wounded Knee in '73. The same thing that my grandfather faced when he made the forest walk 700 miles at the age of eight years old. The same thing my grandmothers had faced and my momma when they were kidnapped to the boarding schools and disenfranchised of their cultural, Ponca ways. He went.

Momma followed many times but as a council woman, a grandma, a great grandma, a companion, I couldn't stay there all the time. But on October 27th of last year, he had decided the night before, him and his brothers, that they would challenge the idea of the white man's eminent domain and they, themselves, would establish eminent domain along that pipeline and say if you could do it, our treaty rights tell us that this is unceded territory and we're going to set up a camp up there. That had happened about a week before actually. We did not know at that time that the federal government was working with the state, and six other states, and amassing a militarized police force that was going to stroke against us. And that day we stood in prayer.

So, I want to offer this to the 141 who were arrested that day, and to those who did not get arrested but stood for the sacred water itself. I thank you my relative. I thank you for all that you give us. Water is life. (singing) Water is life and we thank you for that blessing.

That day, it's an interesting thing because I have a whole pile of stuff laid out here in front of me, and when Shannon reminded me of this date, I remember that they numbered us. At this time, they had us sitting on the side of a hill. Little did they know. They had pepper gassed us. They had tased us. Mind you, we're praying. Mind you, we're praying. None of us armed.

They had sound canons. They had percussion grenades. They had armed personnel vehicles. They had over hundreds of them in their flak jackets. Their pepper spray was the size of a fire extinguisher that they were spraying us with. They had helicopters and planes buzzing us. When they put those things on our wrist, and my son still doesn't have feeling in his hands. And they set us down in the sunlight on the side of a hill. They gave us back to the power that we understand, the wind that blows with the sacred breath of the Creator. The power of the earth herself as she held us up as we prayed with her.

The sacred water that was flowing behind us and we could hear it above and beyond the sounds that they were making. And we were joyful together, and we were in our power together because she gave us back the prayers that we were giving to her. She held us up. She gave us strength. The wind gave us breath that we could breathe and blew away that pepper spray. The Father Sun had just this incredible power that he was shining on us. The Moon Mother that night before had governed all of the rhythms within the woman body, within the man body, within the body of the Mother Earth, and we were still feeling that.

The prayers of all those around us were giving us what might be called the rights of nature to uphold. And then those moments when they numbered us, I was 138. I thought of my relatives that went to the ovens in Germany, as well as my own ancestors, as well as knowing that at home there was a live feed going and that my daughters, my husband, my grandchildren, my people were wondering how we were going to be and if we would survive that day. They numbered us. They brought in big buses and they loaded us up in those buses after hours and hours and hours and hours. And they took us to the basement of Morton County Jail, to the bare cement floor where they'd erected these large dog cage looking things, chain link.

One was about the size of a 15-passenger van. There was thirty-seven women in that one. The adjoining one there was thirty-four women. They had a tarp hanging in the middle. On the other side they had my son in a cage by himself because he was the leader. They around forty-two men in the other one in that size. There was no food or drink or rugs to sit on, and I can't tell you how strong we were. How good it felt to sing our songs and look at one another and say, "Wash gom Ponca." You're a strong, strong woman, strong warrior woman. When they come in, "Lu-lu-lu-lu." We honor them. We say thank you for your sacrifice. Girls as young as fourteen in there with me. Three school teachers and a principal were there as observers. They were in jail with me.

Two young ladies passed out that we were trying to take care of with diabetes who couldn't take care of themselves inside there. One young woman who had been herding the buffalo over the hill and as helicopters were trying to herd them back. The Buffalo Nation was in concert with us. They were going to run them down and we were going to say thank you for your help, but the ATVs then went and charged these young children. Three teenagers, two brothers, and a sister, and they knocked them off their horses and she was barely able to move. Her back was so injured, but they wouldn't let her go to the doctor or hospital. They killed her horse. Her little brothers were brutalized. They're fourteen and fifteen.

Another lady came in. Tattooed up. Just tattooed up. A rugged woman. She had been a cage fighter. She said it took six of them. "Lu-lu-lu-lu-lu." We were so proud of her.

We know a little bit about what is the rights of nature. The rights of nature are all of us sitting together because there is no separation. All my relations, whether they walk on four legs, whether they have roots in the ground and they

grow, whether they have feathers and wings and fly, whether they have fins and swim, or they're creepy crawlers and those that go this way and live underneath our skin, whether they are rock, which is made of all living things that once were and now is that, whether it is the oil and the gas itself that is part of the natural ways and the natural laws, whether it is the wings of a butterfly that is blown to the south and blown to the north on that beautiful breath that has now been commodified and called carbon trading, all of those you and I just shared when we went into that breakroom, we ate of those plants.

We drank of her blood called water. We ate the food, the beans that grow on the vines. We had the meat that comes from the four legs or the flying ones or the fins. So, when we say the rights of nature, are we still so ego bound that we think that is separate from us as human beings? Or did that cell my little friend, Nati that started growing in you, was that one cell beginning to grow and divide because of what momma was having? And because of the one, true mother that we all share. Our mother, the earth. Our father, the sky. The star nation. The Moon Mother. The father the sun. The sisters. The three sisters. Yeah, the Ponca's have passed a resolution and we're getting ready to do a statue about the rights of nature.

## MARI MARGIL

Our many thanks to Casey. Our final panelist from the indigenous perspective is Deon Ben. Deon is originally from the community of Tohatchi, New Mexico, and is a member of the Navajo Nation. He earned his Bachelors of Science degree in environmental studies at Northern Arizona University, and he is currently completing his Master's in environmental science and policy there as well.

Growing up on Navajo land, Deon experienced the mesh of traditional knowledge and environmental education, which led him to his graduate work focusing on incorporating traditional ecological knowledge to address animal husbandry and grazing within tribal communities that are facing climate challenges. Deon is the Native American Program Manager for the Grand Canyon Trust and he coordinates their Colorado Plateau Intertribal Conversations. He enjoys the isolation and natural beauty of his traditional homeland and looks forward to positive environmental change. Please welcome, Deon Ben.

## DEON BEN, NAVAJO NATION, GRAND CANYON TRUST

Yá'át'ééh. I want to thank Mari, Thomas, and the Community Environmental Defense Fund for the invitation and also for your presentation and your presence on the Colorado Plateau. I also wanted to thank our partners, Bioneers, who have stepped forth in bringing this partnership together and establishing this direction of the rights of nature on the Colorado Plateau.

I just introduced myself. We say hello. Generalizing is, "Yá'át'ééh." But it's generally translated as "from where I come from, things are well." And, that's how I greet you.

I am of the Many Hogans People Clan, born for the Salt People Clan. My maternal grandparents are the Weaver People, and my paternal grandparents are the Red House People Clan and I am from the Navajo Nation from the New Mexico and the Arizona side, but my parents reside in the community of Tohatchi, New Mexico, which is north of Gallup, going north to Colorado between Ship Rock and Gallup, New Mexico.

I live in Flagstaff, Arizona, and I work for a non-profit organization there called the Grand Canyon Trust. We're a conservation organization. There I work with several co-workers of mine in the Native America Program. Under the Native America Program, we have initiated a conservation amongst tribes that reside on the Colorado Plateau.

We call it the Colorado Plateau Intertribal Conversations. We tried to find a really smart, innovative name but that just didn't happen. So, we just labeled it as it is. Actually, our acronym sounds ways better. We started calling it CPIC, or C-PIC. So, I have some information if you guys want further information on the work that we do, but I'm going to dive into kind of the background work, illustrating, kind of painting the picture of where we engage the rights of nature in discussions and conversations within our organization, within our program, and within tribal communities.

But first I also wanted to acknowledge the Houma Nation who is from this region and I know, I actually met an individual from there, from here, in Washington, DC, and I'm very honored to be here.

This is my first visit to the South and my first visit to New Orleans. So, I'm excited and I actually am trying to get used to going from 7,000 to one feet. So that's quite a challenge.

In 2009, the Grand Canyon Trust Native America Program initiated this conversation. We wanted to reintroduce a time-tested practice, a practice that has existed long before state lines or reservation lines or political boundaries were established.

Before that time, tribes had conversations, interacted and had a relationship just like my relatives here had pointed out, which I am very honored to be sitting next to Casey and Bill who I just met within the past twenty-four hours. I just met Bill here and it's such an honor. And a sense of comfort and a sense of homage for me to sit by some prestigious individuals as well as my relatives. I see them as my parents, my grandparents, and my relatives so it makes me feel a lot of comfort. So, thank you.

So, when we initiated this conversation, the Colorado Plateau is a watershed that drains into the Grand Canyon or has tributaries to the Grand Canyon. So, it goes north, the northwest portion of work that we do is in the Uinta Mountains in Utah. We go as far east as the Rio Grande Valley, right before Albuquerque. We go as far south as the Mogollon Rim in Arizona, and we go as far west as Kingman, right before Las Vegas, the watershed that comes right below the Colorado River. So that is our area of work that we've been focusing on. That's the Colorado Plateau.

We have initiated a conversation with tribes. We have invited ten tribes to come and begin a conversation and during that time these tribes, it includes the Hopi Nation, the Havasupai, the Walapai, the Zuni, the Pueblo of Zuni, the Navajo Nation, White Mountain Apache, the Kaibab Paiute, the Acoma, the Pueblo of Acoma. We also have the Southern Ute and Northern Ute, and we also invited other tribes to participate in this conversation because that's how, historically, work was done and how life was sustained in the desert for us.

So, when we had this conversation and the discussion, we started talking about how we could support one another in our communities and this was not -- the initiative was not to invite tribal government entities or government individuals. They are community members, folks that knew the songs, knew the prayers, knew the stories, that were expert farmers, that were expert medicine folks. Those are the people we invited because they're the stewards of the land who still understand the relationships. And these folks in 2009 had their first conversation and we've been going strong ever since 2009. Sometimes we do two gatherings a year. One gathering a year.

We do spiritual gatherings where we travel together and have ceremony. We sweat and we pray. We sing. We cry together as a family. We re-establish this conversation, this relationship, and it's been remarkable, and I think has been historical for our region to go beyond and exceed the impacts and trauma that have faced our communities. Boarding school, assimilation, relocation. My tribe was also forced to walk and we were fortunate enough to return back to our homeland and not live on a reserve in New Mexico and go all the way to Oklahoma.

All of that was able to be put and to be acknowledged but still have planning going on for our future. That's what this intertribal conversation has been working toward, and when we started working with Bioneers and CELDF, we started having a discussion about how to implement a rights of nature initiative in the Southwest. And as you all may know, the Southwest is one of the most environmentally raped areas in the country. We have, even entities that are run by our own, my own nation, my own tribal community. We are coal powered energy people. We have natural gas meth-



ane productions, coal productions within my own tribal communities, but that doesn't define who we are as people.

So, when we decided moving forward and talking about how are we going to engage this conversation about the rights of nature, how we're going to incorporate our direction. I invited a delegation of folks to come together and meet Mari and Thomas with CELDF, as well as our Bioneers partners, and you will not believe how excited these individuals were to sit and listen to this presentation on what the rights of nature.

What we sat through, what we experienced in the panels before the international perspective, the national perspective, was all case studies to us, but to actually see a person and a face and a culture behind these case studies now will allow me to go back and show them how exciting this is and what they're excitement -- it was a validation for their excitement.

So, when we started our conversation we weren't directly excited to dive right in and say let's go start drafting up ordinances, let's start drawing up statues, let's start drafting up with the rights of nature, because as people, as indigenous people, as tribal members of the Colorado Plateau, we have to understand that our relationship with nature is not -- just like a case I mentioned -- we are not eliminated from the environment. We don't look outside, or we don't look from an outside perspective looking in as we're looking at the environment. Instead, we see ourselves as part of that environment, part of the ecosystem.

It is not until you get the understanding and the mentality that you can actually understand what the rights of the natural world is. I heard through some presentations today, and this will make you guys second guess yourselves I think, but I heard some presentations today, and I heard some folks through lunch speak that we've granted the rights of nature. We've given the rights of nature. So be very careful with the vocabulary in regards to that because we didn't give them or grant anything to anybody, or to nature. It was something that already exists and that they possess. It's just something that we finally acknowledge because our mentality is changing and our perspective is changing, which is exciting. And maybe the entire world and the rest of our country will get that mentality.

That may be the job that we do and the discussions we have today tomorrow. So, when we had our discussion there was some key components that I want to share with you that I think are very important that we discussed. One of them is that the rights of nature is completely, 100 percent up along the lines of indigenous knowledge. We identify the rights of nature to be natural laws for us on the Colorado Plateau, meaning that we have teachings about the water systems, about the wind systems, about the creatures that live below us, the soil health. We have teachings that actually go into these and they tell. There's a saying in Navajo. They say, "Baat-e-hulo," meaning that there's a property, a cautious property you have to be aware of when you deal with this.

The reason being you'll never see a Navajo standing at the edge of a cliff, because we know there's a property with the wind people, the spirit of that wind. That's natural laws. We know that you don't go out at night, because that's when the creatures of the night come out. That's natural laws. So we had to -- we already knew. We already identified what these rights are and what the properties, the cautious properties of these -- nature is.

And then the second thing that we talked about, one of the second components I wanted to share with you, is that when we had come together these tribes said who are we as a species in this ecosystem to say what has more priority over the other?

How can we identify our priority? How can we say a water system is more important than a species? How can we say a landscape or an ecosystem is more important than this other ecosystem, therefore we have to give this a little more rights, or we have to give this a little less rights?

We as an individual, as a species of this system, have to understand how we go about that process and about -- for that reason, there was a little bit of reservation from our team to see how we move forward. And then the other thing is that when we move, in any indigenous culture or community, when we move forward to talk about something of this value or this property of being, of the earth being our mother and the sky being our father, those are not loosely used terms.



We say this because when a man and a woman come together they create life, and we are that life between the father and the mother. And because of that we have to have a balance in our mind and a spirituality. So our delegation said, "We need to have a -- we need to go back and get ceremonially, spiritually connected to understand how are we going to move forward." So, because of these identifications that they gave me as a team leader, they said, "We need to start working on this and organizing how we're going to do this in a step-by-step process."

So because of that, we have not drafted up or we have not moved directly on a draft of ordinance or statutes because we want to make sure that we do it appropriately. Also, there's a number of factors. One of the last big things I wanted to mention is that we want to create rights of nature on the Colorado Plateau that's inter-tribally a collective effort, because if you have an inter-tribal initiative that is so much stronger than one or two separate ones that have different entities, and I think I will be very monumental. If you get twelve tribes to sign onto an initiative and collective support behind it, that's very rare. You can barely get three or four.

Yeah, you can barely get three or four tribes to come together to work on something. So, we want to some, we want to move collectively as inter-tribal tribes pushing the rights of nature and we want to do it appropriately.

So, we're trying to find the common denominator, the common factor, amongst our tribes to see what we will move forward with whether it be a water system, a watershed system, an ecosystem in general, or a species. And, it will be through a proper mindset. A proper mindset, and that's how we're going to move forward. And then one of the other things that we have to focus on, this may be something along the lines of you students in the law school that there are a number of cases and situations with each tribe.

Some tribes are still on treaties. For instance, the Navajo tribe, we're on a treaty. You have constitutions. Some tribes are on constitutions so we're trying to -- we're trying to research how will this -- how will the rights of nature properly sit within each community, each tribal government, or tribal nation. So that's one of the things that we -- it's up ahead of us. I also want to -- I want to end on two little quotes that are things that I was thinking about is that we have to keep in mind that the rights of nature just isn't a law tool. We need the rights of nature to change the mindset of people. We need to change the mindset of mankind so we will no longer have to use the rights of nature as a law tool.

That was something that I think that is just very strong and I think that's something that we need to think about. Also, I wanted to say that we can't compare. This was something I heard in a presentation is that we cannot compare human rights with nature rights because neither of them is equal. Nature provides life and as humans we are a species of that life. So our rights can't be of equal balance. So we have to figure out how we approach it and our tribes are doing that. So we're one step ahead of the curve when we're thinking about these components.

Also, just two more remarks and then I'm going to finish off, but the reason why there's so much passion behind the work that I do, and the work that Casey and Bill are doing, is because this is our homeland. This is our home.

These are our family and these are our ancestors and children. So we cannot mess it up. If we mess it up, we have nowhere else to go. So we make sure that we are doing the job -- we are making sure the job is done right. So that's why I think that it's -- maybe CELDF can feel that excitement that they're invited into the communities, and this is something that we see as a good direction and because of that we've invited CELDF and the rights of nature initiative into our communities.

And then the last thing was I wanted to suggest this to Professor Houck. It's that he had said that he had a class. He was able to structure a class here about outside the box.

So maybe one class that would be really great here is to have folks understand the indigenous tribal knowledge that will make folks understand natural laws, and get that concept to move forward when you use that because who knows where we'll be in the progression of right of nature, and folks will want to know what are these natural laws that they're talking about. But they'll already have taken a class. So that's my last suggestion. Thank you very much. Ahéhee'.

## PANEL 3: DEFENDING AND ENFORCING THE RIGHTS OF NATURE

### THOMAS LINZEY

Next up is our third and final panel of the day, which will focus on the defense and enforcement of the rights of nature. It's entitled "Defending and Enforcing the Rights of Nature."

First up is Francisco Bustamante. Francisco holds an LLM in energy and environmental law and is a graduate of Tulane Law School. He has worked extensively in the public sector as an environmental adviser under the Ministry of Environment of Ecuador, for the Environmental and Social Restoration Program from 2010 to 2012. In 2013, he joined the Constitutional Court of Ecuador where he served as a legal adviser. He has been teaching environmental law in Ecuador since 2009, and he also teaches constitutional, environmental, and constitutional procedure courses. Join me in welcoming, Francisco Bustamante.

### FRANCISCO BUSTAMANTE, ECUADOR

First of all, it's a pleasure for me to be here, and for that I want to thank CELDF and Tulane's Law School for giving me the opportunity to come here and talk to you a little bit about rights of nature and its development in constitutional justice. However, I have a warning that's not – I have not much good news to tell you about this theme.

But the objective of my presentation is to show you – what happened? Okay. So the objective of my presentation is to show you how judges are being interpreting, understanding, and applying rights of nature in constitutional procedures. And why did I choose constitutional procedures? It's because our judges – our constitutional judges – since 2008, are the ones who can create law so it gives content to rights.

And, also, I will focus on mining activities. And why is that? Because Ecuador is a country that originally needs money and we are moving from an oil industry to a mining activity. So I'll present you some cases I'll show you later.

But, for that purpose I have identified a big, big problem with rights of nature in Ecuador, and that is that it had been confused with the right to a healthy environment, or the right to a clean environment, which are two different kind of rights, because one right belongs to us and the other one belongs to nature. But what had happened in Ecuador is that the judges are confusing these two rights.

So, for this purpose I'm going to talk to you about two specific cases – the first one is illegal mining in Esmeraldas, where the plaintiff was the state and the type of procedure was an injunction relief. Esmeraldas is a province up north in Ecuador. It's a very rich land in minerals and it's a haven for illegal mining activities.

And, the second case I'm going to talk about is the Mirador mining project that was already announced. The plaintiff was civil society and the type of procedure is a constitutional action called protection action. I will explain it a little bit later.

Okay. But first in going to the cases, as Natalia said before, under the Constitution of Ecuador, we have a sustainable development scheme, and also we have adopted or recognized rights of nature. Basically, the permit scheme, which is used to protect the right to a healthy environment or clean environment, is being used by this process of presenting environment impact statement and obtaining the permit and that's it. And that's the way how environmental protection works in this sustainability model, it means by a permit.

Also, this permit scheme has helped to guarantee social participation in decision-making processes, access to environmental information, and access to justice. So what I will show you is how judges are understanding these two rights.

So, the first case is the illegal mining at Esmeraldas, and it's an injunction relief procedure which is an action that is designed to protect rights before they are violated. It's a procedure designed against threats of violation. The date of the decision was made 2011, and this date is very, very important because this decision has served for line of reasoning for other rulings.

The petitioner was the Ministry of Interior of Ecuador and the objective was to protect rights of nature from environmental damages produced by illegal mining activities. But, we have to understand that illegal mining activities means not having a permit. And the request was to – the request done by the Ministry to the judge was to dispose all the measures necessary, including the destruction of the machinery found at that place. So, as you can see by the pictures the judge considered the injunction relief and decided to destroy the machinery used.

Although it represents a victory for rights of nature, the judge, in my opinion, did not give an appropriate analysis for the cost. First of all, he could not order the destruction of machinery. I mean, I like the idea, but that's not law. I mean there are other rights involved such as due process and property.

Also, the decision does not explain – and this is the most important thing for me – the decision does not explain why illegal mining affects rights of nature itself. And, the decision was based on permit obtention. So, in conclusion we can say that we can protect the right by obtaining the environmental license.

The second case I want to talk to you about is the Mirador mining project. The procedure was a protection action, that is an action designed to protect when a right has been already violated. The plaintiffs were the civil society, the defendants the Ministry of Environment, the mining company, and other state organizations. The claim was to declare the mining project, the environmental impact statement, and the permit as contrary to rights of nature.

The plaintiffs based their argument that the environmental impact statement needed to be updated because the information was not accurate. And also, despite the environmental impact statement showed a lot of damages and impacts, the Ministry of Environment did not consider this and granted the license to the project.

But, what really bothers me is the decision made by the court of appeals. Our provincial court is like your court of appeals. And the reasoning, the court said, was that the company complied with all the pre-contractual requirements, such as the environmental impact statement, and the environmental license, and obtaining the environmental license. So the permit itself is considered valid because it was obtained under the requirements of law.

And this fragment of the decision for me is key to understand what is going on in Ecuador, in the constitutional level, between the dispute of sustainability model and rights of nature and that is – I will read what the Constitutional Court said – the provincial court said, sorry.

It is not possible that such an activity – referring to mining – could be forbidden or rejected. The exercise of weighing rights is analyzed from the point of view of the improvement of life conditions of society as a whole against the environmental impact that could be provoked at a determined zone.

But, this is what really bothers me and worries me. The pretended improvement of life conditions, resources, and development is above certainly from the impact at the determined zone. That is the analysis that the court of appeals said. So basically, it is creating a dispute between the right to develop versus the rights of nature.

So basically, as I told you, I have no good news to tell you. The permit obtention has become also the threshold to determine violation to rights of nature. And that means that it has been confused with the right to a healthy or clean environment.

So, my first question I want to bring to the audience is what is the difference between one right and the other, if the permit is the threshold to determine a violation of it? And, the second, regarding about the court decision – rights of

nature cannot represent an impediment to the country's development – that's what more or less the court said. So, my question is can rights of nature be effective in this traditional sustainability model and my answer is "no." We have to start thinking in a new model where rights of nature can develop.

So, in my experience, I'm searching for the effectiveness of rights of nature, I think I've made some suggestions. We have to strengthen our judicial system. We need independence of state powers, branches, and that's necessary because we need judges that could stand up against the government and tell them – could stop a mining project, for example.

Also, we need to train the judges and that is the most important thing from my point of view. Judges do not understand clearly what are rights of nature, what is the fundamental of it. From the executive power, the public policy these last ten years have been pro-destructive industries. So, I think that we have to stop gradually destructive activities and search for new ways of income. I know this is easy to say and tough to take into practice, but that's the only way I see it could be rights of nature effectiveness.

And finally, the legislative power – we need to enact laws – environmental or criminal – for rights of nature development, protection, and sanctions. But, what I meant was that we need to start thinking of a new model where the human being is not the middle or the point from where the public policies are designed. We need to change our model and start thinking of a new way to develop.

Thank you very much.

## THOMAS LINZEY

Thank you, Francisco. Next up is Hugo Echeverria. Hugo has practiced environmental law in Ecuador since 2001. He also teaches environmental law at the undergraduate and graduate levels in Ecuador, as well as being a contributor to several environmental law journals in Latin America.

Hugo is a member of the World Commission on Environmental Law of the International Union for the Conservation of Nature. A citizen of a mega-diverse country, Hugo's environmental law work focus is on biodiversity issues, particularly those related to wildlife. Hugo's current academic interests relate to the constitutional foundations of environmental law, the rule of law in environmental protection, and the emerging trend towards recognition of nature as a subject of rights. Hugo Echeverria.

## HUGO ECHEVERRIA, ECUADOR

Thank you very much. I am very glad to be here, learning from experiences coming from all over the world about these emerging idea – the rights of nature.

The organizers have asked me to refer to cases, cases regarding enforcement and application of the constitutional acknowledgement of this idea that nature has rights because she is a subject of law. I would like to refer to nature in female, as Natalia Green did, because in the Andean, the indigenous vision on cosmology, nature is feminine and is written with capital letter, Nature.

I understand that there are law students attending to this symposium, something I really appreciate. And, as you know a constitution is basically the reflection of a society, right? So, in the case of my country, Ecuador is a country surrounded by nature. You have the Galapagos Islands, you have the jungle, and you have the Andes, the mountains, and the coast, Pacific Ocean.

So, to me as a lawyer it only – recognition of rights of nature was a matter of time. It makes sense. Beyond the concept of human environmental rights, it makes sense in Ecuador for Ecuador to have given a step beyond anthropocentric views and acknowledge – as Ben correctly have said – acknowledge rights to nature.

Having said this, I would like to propose a different – what I will provide to this forum – a different -- I would like to provide with a different perspective of rights of nature. Different in two ways. The first one is that I will present three cases that have positive outcomes for nature. I will not say winning cases, but certainly positive cases that we can learn about and maybe winning cases for nature, you might say. And the second one, the blue perspective of rights of nature because these cases relate to the oceans or to the coast.

Before I begin I will also – I will have to say that I agree with my colleagues from Ecuador – ten years is too little, is not enough time to provide not even preliminary conclusions. As lawyers know, ten years is really not much. But, in this small period of time, we have something to share and this is what we will do at the moment.

These three cases have been specifically selected for this symposium. The first case, that is on the screen – this case is about a constitutional petition to review a judicial decision related to a shrimp farm – we all understand the shrimp farm? This farm was located inside an ecological reserve. So, this case is about illegal occupation of an ecological reserve which happens to be Ramsar Site. Ramsar Site means a wetland of international importance because it has extraordinary universal values.

And those values, among others, is that the mangroves you find there are officially classified as the tallest mangroves in the world. They grow up sixty meters. Those familiar with mangroves know that the normal size is two, three, four, five meters, but not sixty meters. And, as you know, recent studies have concluded that mangroves store carbon dioxide in amounts up to seven times the Amazonian trees does. So we are talking about the blue forest as they call it in Ecuador. These are very important ecosystems. The reserve is a big reserve, over 50,000 hectares, so this is a respectable size. And within the limits of this reserve, there was this shrimp farm located.

So, basically the case, the legal case, is a complex case, but basically was about whether or not the owner of the farm has the right to stay there. There was a contentious litigation, and at the end of the day, the justice system of Ecuador gave the reason to the owner. And the problem was that the judges, the lower level judges, said that the owner – they prevailed property rights of the owner. But, there was a big mistake that they made. In their decision, they never referred neither to environmental rights nor to rights of nature.

So, this case was taken all the way to the Constitutional Court of Ecuador in order to analyze the constitutional basis of the decision, of the judicial decision. And, the Constitutional Court concluded that the judicial decision did not integrate rights of nature in the constitutional analysis of the case.

So, this is very important. Please, I would like you to follow this first idea. What the Constitutional Court concluded – and I repeat because it's important – is that the judicial decision did not integrate rights of nature in the constitutional analysis of the case.

This is what they say. This Constitutional Court has been emphatic in pointing out the importance of the rights of nature in setting the state's duty to promote respect for all the elements that are part of an ecosystem. To me as a lawyer this type of – reading this language in a decision is in itself a reason of happiness. You don't see everyday something like this in a judicial decision.

But, the Court also said – look what the Court said – the constitutional character granted to rights of nature – what they are saying is the rights of nature has constitutional hierarchy – leads to the idea that the state has a duty – and that's a very powerful word, legal word – to guarantee their effectiveness. So this is not just theory, this is practice, this has to be put into practice. Falling on the judiciary – and this is wonderful – the specific task to watch over their protection.

This latter reference of the role of judges is really, really important because it consolidated a criteria or criterion, an idea that was originally set in the very first – in an early case, rights of nature case, known as the Vilcabamba River case. The Vilcabamba River case is world famous. It's about a river that was affected by the construction of a road, and it was the first case to be held before a judicial court of justice on behalf of the river, rights of the river.

And, in that time the judges already announced that the judiciary has a role in enforcing these rights. But, the decision was issued by an appeal court of justice, so now the same idea was adopted by the Constitutional Court of Ecuador which is the top court of the country. So, it gives an extra boost to the concept of the role of judges in this new paradigm.

Before I move on, I would like to close this case with another reference that the Court made that is not in the PowerPoint. But, it's important to explain that the judges said that in this case, the lower judges did not at any time examine the existence or not of violations of the constitutional rights of nature. So, what they are saying is basically nor was there any effort to verify whether the rights allegedly violated – which is property – conflicted with the constitutionally recognized rights of nature. Basically the message they are sending – and this is something that is important – is that they said – the Constitutional Court set a new standard with this case regarding the application of constitutional rights in cases regarding the scope of how do you manage conflict of constitutional rights in cases about protected areas.

In the past what the judges did is what Francisco said – basically property will prevail, economy will prevail, development will prevail. But after this case, the standard is different. What judges have to do now is to put in the same balance both property rights and nature rights, so it's really, really nice.

And again, I would like to highlight the type of language that they use. Lawyers know the importance of the language. When a judicial decision says you have to take care of ecosystems, it's something that really flashes out. So this is the first outcome of this case – that nature rights should be integrated into the constitutional analysis. That's the first idea.

Second – I would like to go invite you to take your luggage and go to the Galapagos islands. So, we move from the coast, from the Pacific Ocean, a thousand kilometers west, and we are located now in the middle of the ocean. And I have to say I lived in the Galapagos for five years, from 2010 to 2015. It was a privilege. And when you live there, and when you are able to swim along with sea lions surrounding you, with sea turtles, and even sharks, then something happens in your mind, something changes in your mind and in your heart.

So, when something happens in Galapagos it really is – something bad happens in Galapagos regarding nature, it really is painful because nature is at her best expressions in places like Galapagos. You can really feel the power of nature there. And, it's so close to you that you cannot think otherwise. You are part of nature and not the most important part I must say.

But, there are bad news and the bad news happened in last month – not last month but recently in August. I don't know if you have heard about this shocking case. A huge vessel from overseas was found in Galapagos, in the middle of the archipelago, was detained by Ecuadorian authorities. And, do you know what they found in the vessel's hull? They found 300 tons of fish, and among that amount of fish they found 6,223 sharks. The amount of sharks is immense – 6,000 sharks is incredibly big. Why is that a problem? Because, in Galapagos sharks are absolutely protected species. You can only see sharks in Galapagos. That's the only activity you can – it's full respect to sharks.

So, a criminal case was started because in Ecuadorian law, transportation – not only fisheries – but transportation of sharks, especially the endangered sharks such as the hammerheads, in the picture is a felony, the equivalent of a felony in the U.S. legal system.

We are talking about a huge marine reserve. The Galapagos is not only a national park, the islands are protected, but also the sea surrounding – the oceans surrounding the islands are also protected. And in that area, in the marine



reserve, you find the highest – the scientists call biomass. But basically it's the highest concentration of sharks in the world, in the planet, you find it in Galapagos. So, for Ecuador to detect and to discover a vessel storing thousands of sharks, it was really terrible news.

Just to locate a little bit you have – I cannot stand up I guess – but you have Ecuador at the right side of the slide and to the left you have the Galapagos islands. I don't know if – there is a white line there. Those are the limits of the Galapagos Marine Reserve. It's a vast amount of water.

This is an actual picture. This is how the sharks looked in the hull of the vessel. The sharks are mutilated, taken the fins off to improve storage capacity.

So, what happened in this case is that the case was prosecuted on wildlife charges against the captain and the crew – nineteen people – of the vessel. Defendants argued – and this is really interesting – defendants argued that the sharks were legally acquired, legally bought, outside Ecuador, in the high seas. So, you see the concept of the defense attorney is basically property. "This is my property and I got it outside Ecuador so you have no jurisdiction over my ship, over my vessel."

Ecuador's state attorney, on the other hand, argued that sharks are a protected species in Ecuador so they cannot be seen as property, basically, and that illegal transportation of endangered species is a crime, is a felony. And, if this happens in a protected area, it constitutes an aggravated infraction.

Just to move on towards the end – on August 27, 2017, less than two months ago, a guilty verdict was issued. And, look what the first level judge says in her decision, "The highest duty of the state is to guarantee the effective enjoyment of rights."

Again, we see the same logic already stated by the Constitutional Court. The role of judges is to guarantee the effective enjoyment of wide rights. And, this is important – not only human rights, but also nature rights. And, this is a criminal case.

You cannot be more anthropocentric field of law, right, where the defendant has the reason, et cetera, *pro reo* circumstances. But, the judge here says the highest duty of the state is to guarantee the effective enjoyment of human rights and nature rights as established in the constitution, and human rights treaties, which are the constitutional parameters of this judgment. See how the theory is being slowly, but solidly, integrated in concrete cases. This is really interesting.

And to conclude – it will just take a minute – I would like to refer to this forgotten case I must say, but nevertheless a very important one. Because this is a 2011 case. This case is even – pre-dates the Vilcabamba River case. This case was an opportunity – presented an opportunity for the Constitutional Court to formally acknowledge nature as a party of a case.

The case was not really about rights of nature, because this case was started before the new constitution entered into force. It was about a violation of human environmental rights. But when the case – by the time the case reached the Constitutional Court, the new constitution was entered into force and the judges addressed the case as a rights of nature case.

And the judges, what they did is just to acknowledge a third party in that case – not only the petitioner and the defendant, but water as a party of the case. And the idea that nature can be a procedural party of a case, which was said in this early 2011 action, now became law for civil actions.

There is a new piece of law adopted in 2015, and this is really something that procedural experts, lawyers, experts in procedural law, will maybe rise their eyebrows. The new law says that there are – that nature is a procedural subject for purposes of civil actions.

So, it basically means that anyone can represent nature at a court of law for purposes of restoration. I don't know where Professor Houck is. There, Professor. Professor Houck referred in his presentation in the morning that perhaps the most important issue when we talked about rights of nature is restoration, and I agree with the idea. And this new law, which dates to 2015, is really important because of that, because what it says that nature can actually go to court and ask for restoration. And whoever wants can represent nature. Anybody, not only the state, but anybody can represent nature.

I would like to conclude just by saying the following lines and I am going to read this. Looking back to Professor Stone's visionary proposal on giving legal rights to natural objects, as it was called back in the '70s, it seems it became a reality in Ecuador. And, to date, it is becoming a reality in other parts of the world as well. Nature is going to court and sometimes she is winning the case. Thank you very much.

## THOMAS LINZEY

Thank you, Hugo. So we have two panelists left this evening. Lindsey Schromen-Wawrin next. He primarily works on constitutional law issues concerning the relative power of the people, governments, and corporations. He has defended several ecosystems' ability to be recognized by the courts, the people's power of direct democracy, an activist subjected to domestic military spying. Lindsey earned his J.D. from Gonzaga University School of Law and a B.A. from Oberlin College, where he studied systems ecology, environmental studies, and chemistry. He lives in his hometown of Port Angeles in the Pacific Northwest of North America. Join me in welcoming, Lindsey Schromen-Wawrin.

## LINDSEY SCHROMEN-WAWRIN, COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

Thank you and thank you for the presentations earlier today. I'll try and weave together what we can. But first, I want to tell a few stories about trying to get rights of nature stuff onto the ballot in Spokane. My summer after my first year in law school, I spent most of the summer standing in front of grocery stores asking people if they would sign a citizen initiative. It contained rights of nature as one of the four provisions. And so, I was at the grocery store, trying different things with different people, and this woman walks by, visually she looked like she was native. And I say, "Hey, would you sign a petition and give the Spokane River the right to exist?" She stops, she looks at me – and I'm obviously white – and she says "Oh good. You're finally figuring that out."

So later in that summer I'm at an art festival, there's a lot of people signing the initiative. This guy comes up to me, he's very urgent, he's like, "I need to read the actual text. I need to read what it says." And, so I give him a copy of it, he reads it over. He comes back and he points at this provision. And he's pointing at the second part, the rights of nature part.

It says, "*The right to a healthy Spokane River and Aquifer. The Spokane River, its tributaries and the Spokane Valley-Rathdrum Prairie Aquifer possess inalienable rights to exist and flourish which shall include the right to sustainable recharge, flow sufficient to protect native fish habitat and clean water. All residents of the Spokane possess fundamental and inalienable rights to sustainable access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the city. The City of Spokane and any resident of the city or group of residents have standing to enforce and protect these rights.*"

So he points at that provision, he says, "You realize this is going against 500 years of English Common Law." And I'm like – I pause, right, because I'm like, "I think he is underestimating the number of years." I think it's more than 500 years. But let's not argue semantics, I just say, "Yes." And he says "Good, because this is what we have to change." And he introduces himself, he is an attorney, and he remembers his first day of law school. He remembers property

law. And in the first day in property law, you talk about property as a bundle of sticks, at least in the U.S. context. Who's heard of the bundle of sticks thing? Yes, right?

So property law is a bundle of sticks, and your property professor says, "The property owner has these different rights to property," each one is like a stick. There's the right to use the property. There's the right to possess the property. There's the right to transfer the property to others. You go through this list and the students kind of brainstorm these different rights of property ownership. And then you kind of get to the end, and the professor is like, "Have we gotten to everything?" The students are like, "I think we got the whole thing," and then the professor adds, "Destroy, we have the right to destroy our property, that's a right of property ownership." We have this property, we have the right to destroy it.

That's the story, that's what we are trying to do with the rights of nature. And that's where we are taught as lawyers we have this right to destroy our property, we treat the earth as property. To me, that's the way I explain this when I talk to people for the first time, I don't know where they're coming from. I just explain it like that, that we have the right to destroy our property, we're trying to find a way to not have that be the way that we treat the earth,

So, it's reassuring to know that there are so many people here and around the world who are working on this. I don't think we need to just rely on the lawyers. This is a movement, as somebody said earlier, about cultural change, changing the rules that govern our behavior and that's not just going to happen through lawsuits. Lawsuits are going to be a part of it, but it's going to happen through how we discuss this and how we connect with each other around how our relationship to the earth should actually be.

So, I'm going to talk about some of the cases that I've worked on with representing ecosystems in the United States. And, I'm going to leave the technical parts out. I'll write an article for the Tulane Environmental Law Journal about some of the more technical things. And if anyone really came here to hear about Article 3 of the U.S. Constitution, or the Federal Rules of Civil Procedure, or the Rules of Professional Conduct for attorneys, we can talk afterward if you really want to talk about that.

So, Grant Township – you heard from Stacy earlier. Grant Township originally passed an ordinance that prohibited certain activities, and I'll read some of those as they relate to rights of nature. So, Section 2, Statements of Law, Community Bill of Rights, Sub-Part B is a right to clean air, water, and soil:

*All residents of Grant Township, along with natural communities and ecosystems within the township, possess the right to clean air, water, and soil which shall include the right to be free from activities which may pose potential risks to clean air, water, and soil within the township, including the deposition of waste from oil and gas extraction.*

So that's not only a right of nature, it includes the right to natural ecosystems. There's also human right to clean air, clean water, and soil. So, I just want to acknowledge that because we have talked about that a few times today. There's this discussion of human environmental rights and rights to nature. They're not the same, but they intertwine and they connect and they can be synergistic with each other.

This same ordinance also includes a provision – rights of natural communities and ecosystems. It says, "Natural communities and ecosystems within Grant Township, including but not limited to rivers, streams, and aquifers possess the right to exist, flourish, and naturally evolve."

So, those are the right statements that the supervisors of Grant Township decided to enact into law, and then eventually the people of Grant Township put into law in similar language, in similar language in their Home Rule Charter, so their local constitution as a township.

So, the ordinance also contained a provision that gives instructions on how do those rights actually go. Because one of the challenges we face is that constitutional language, at least in the United States, is not seen to be self-executing, meaning that you can say a lot of great stuff in the constitution, but unless you really put some parameters around it

reports will say, “Well, we are going to wait until the legislature defines what that really means. And we’re not going to look at that as a provision that actually means something until the people’s representatives put some parameters around it.”

And, I think that’s really a cop-out on the part of the courts, and it’s a way for the courts to not really look at the people’s constitutional text as really the source of political authority in the United States. I mean, most state constitutions start with it, the phrase “All political powers inherent in the people,” and that phrase is similar to the Declaration of Independence, there’s argument that it’s similar to “We, the People” in the U.S. Constitution. And so, if really this constitutional text means something, then the courts should say, “Well, yes, we’re going to figure out what that means because we have to interpret it as having meaning.” And, there are many court cases where the courts say every provision of the constitution has to have meaning unless it’s not self-executing and then they just pass the buck.

So, this has something on that. It’s got a section for an enforcement. It says, “Any action brought by either a resident of Grant Township or by the township to enforce and defend the natural rights of ecosystems and natural communities secured by this ordinance shall bring that action in the name of the ecosystem or natural communities secured by this ordinance, the ecosystem and natural communities in court possessing jurisdiction over activities occurring within the township.” I’m sorry, I missed a line.

“They shall bring that action in the name of the ecosystem or natural communities secured by this ordinance – shall bring that action in the name in court possessing jurisdiction over activities occurring within the township.” So, basically, it’s saying bring the action in the name of the ecosystem – that is, the ecosystem going into court with “a resident of Grant Township or the township enforcing or defending that right.”

So, Pennsylvania General Energy company wants to put a frack waste injection well in Grant Township and they want to put all their toxic and radioactive fracking waste into the township. Stacy talked about that already. And so the community passes this law. PGE, the oil and gas company, sues the township. Meanwhile, there’s a community group in town and there’s the ecosystem that has rights under this law, but is not involved in that lawsuit.

So, I represented the community group, East Run Hellbenders Society. Hellbenders refers to a giant salamander, just to be clear. And, as well, as the ecosystem, and we called the ecosystem the Little Mahoning Watershed, because Grant Township, the boundary of the township, is more or less coterminous with the upper part of the Little Mahoning Watershed, and to get there from here you would go up the Mississippi River to the Ohio River, take a right up the Ohio, and then you will eventually get up to this little watershed. And, I don’t think you can get a boat that far up.

So, the Little Mahoning Watershed and the Hellbender’s Society move to intervene into this lawsuit between the oil and gas company and the township. And so, the first question in this case was the intervention standard, and while specifically in this motion can these interveners come into the case. And really the trial court judge, and then the Third Circuit Court of Appeals, the federal appellate court, said, “We don’t think that they can get in because the township adequately represents the interest of these proposed interveners.” So, in other words, “Your government is in the lawsuit already defending your rights and therefore you can’t get into the lawsuit to defend your rights too.” That’s more or less what the court said.

And so, we didn’t really get to the ecosystem rights part, the rights of nature part, because that was kind of a secondary issue. But, we did learn some things about ecosystems going into court.

So, one thing, was in the intervention context we didn’t have to deal with standing. And, standing is this doctrine, Article 3 standing is that a plaintiff needs to be able to have injury, causation, or redressability, and Justice Scalia defined all that for us in the 1990s, and no one wants to change it since then. And it’s a major barrier, as people have mentioned already today, to environmental litigation, because if the environment is the subject of the litigation, who has standing to actually represent – to get into court – and in the traditional context, not represent the environment, represent their own interests and their interests are harmed by the environment being harmed. And Justice Scalia, said, “No, stay out of court.”

And, the Roberts court has really been cited as barring plaintiffs from getting into court, and that's potentially a major theme of the current U.S. Supreme Court is just, "Don't let people in." And, standing is a great way to stop people from getting in.

But, in this context, defending the rights is not something that the plaintiff is trying – the plaintiff is the oil and gas company going after the township. And, the ecosystem is trying to get in to defend its rights there in the lawsuit. So we didn't actually need to deal with standing, because there's case law that says while interveners don't need to independently show standing, or in the ecosystem context we analogized to animal law cases where, for example, a community group and the sea turtles – in this case Hawksbill sea turtles – try and get into court together and the courts have said, "Well, since the community group has standing, we don't really have to figure out if the sea turtles have standing, so we don't need to worry about that."

So, we actually got past the standing issue and that gave us a window into what are some of the other issues that we're going to be dealing with. So young attorneys or attorneys-to-be in the room take note – this is what you're going to have to be dealing with.

So, one of those is the capacity to sue or be sued under federal civil procedure 17. And, that was basically an issue that who can be sued and who can't be sued, who's a legal person? I mean, if we think of personhood fundamentally as the ability to be sued, to sue, to hold property, and to contract, that's kind of what it means in the traditional sense to be a legal person, while who has capacity to sue and be sued in federal court, that's what we were arguing with. And, the federal rules deferred to the law of the state and we said, "Hey, the law of the state includes the local law," which in this case expressly says that the ecosystem has the right to be in court. And the judges just kind of ignored the case law that supported that, of course, and said, "We're not really going to get into that issue."

Another thing that comes up is, "How does the client get represented?" So, this is more of a federal civil procedure question. But, when you're representing an ecosystem, who's the client and who speaks for the client, and how does that all work?

There's a fantastic case, not necessarily fantastic because it gets to the conclusions we want, but actually dives into this issue to some extent. It's called *Cetacean Community v. Bush* from 2005 in the Ninth Circuit Court of Appeals over on the West Coast. And, basically an attorney represented all the cetaceans of the world. Cetaceans are whales, dolphins, and porpoises. And, the cetaceans are suing George Bush for Navy sonar damage. And so, the court says, "Can these whales and dolphins and porpoises sue?" and says, "We don't see a barrier in Article 3 of the U.S. Constitution," the cases and controversies part of whether a court can hear a case. "We don't see that as a problem." I mean ships can sue, corporations can sue, all these other legal fictions can sue, so there's no problem there.

But, the problem for the cetaceans was that they were suing under the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, and the Administrative Procedures Act, and all of those federal statutory frameworks didn't look at the cetaceans, the endangered species itself, actually being the party bringing suit. So the court said, "If Congress really meant to give cetaceans, give animals standing to bring us a lawsuit, a private cause of action under the statute, Congress needed to say so plainly." And, it didn't, so therefore the cetaceans' claims were dismissed.

In this case we're like, "Well, look, we have a statute, an ordinance, that says they have standing to sue." And so that wasn't as much an issue, the Cetacean Community case. But the question becomes, "Well, who do I look to?" and I looked at it based on the language of the statute and it said, "The people who speak for this ecosystem are the people who reside there." It's the residents of Grant Township or the township itself, but the residents of Grant Township are actually part of the ecosystem. And this is something that we need to take home and remember – it's not humans and nature, it's humans and the rest of nature – because we are intrinsically part of the ecosystems we live in, we're a major terraforma in the ecosystems we live in and the global ecosystem. And so, we can't look at ecosystems as being separate from the people who live there.

So, I think the language of the ordinance that I was working with said that pretty clearly that it's the residents of Grant Township who are the speaking agents of the ecosystem, and they can let me know, as the attorney for the Little Mahoning Watershed, what the watershed wants, what's in its interest to be protected within the bounds of this. And, we'll get into all that stuff as we go forward.

But I think we've kind of crossed this line – and I'm being too optimistic here – but the first stage of this in my mind is that there is this question of “Does nature have rights?” And we're here because we think, “Yes,” and we have had a number of judges say, “Yes, there's constitutions around – in Ecuador at least they have said, yes.” I think once the thought is thunk, the revolution is over on that one. I don't think we can go back from this idea that ecosystems should have rights. I mean the analogy of the corporations is just too apropos.

So, then that gets us to the second stage. And I'll say we're still fighting that first stage for sure, and we should not pretend like we're done with that. But, we're also on to the second stage, and the second stage is how does nature have rights, how is it actually represented, how do we decide whether those rights are violated or not?

Is it just enough to say, “Well, the government complied with the Endangered Species Act and NEPA and the Clean Water Act, and therefore nature's rights were not violated.” I mean, I think we need to make sure that we don't just use regulatory environmental law as a proxy for rights of nature. But, that's a risk that we could certainly face. So, the second part is how does nature have rights, and that's where we're heading into. and that's why we need to be in these conversations and figure out how this all fits together.

And then, the third part is how do those rights relate to other rights? And there has been some mention throughout the day of what that means. But, the main thing we're wrestling with right now is how do the rights of nature deal with corporate constitutional rights, the idea that corporations are persons under the 14<sup>th</sup> Amendment, and that specifically is going to ultimately get to takings in the 14<sup>th</sup> Amendment and what that means. At least here in the United States, it's going to get to the 14<sup>th</sup> Amendment.

So, it's important to remember that with emancipation of enslaved peoples in the 1860s, people are wrestling with this and they're actually takings claims brought by former slaveholders for the loss of their property through emancipation. And, there's expressed language in the 14<sup>th</sup> Amendment, Sub-Section 4, that says that there are no takings claims paid for liberating slaves. I mean it does use that language, I can pull it up.

But, they actually had to put it into the federal constitution that emancipation was not a takings. We're going to be dealing with that in rights of nature. That may be twenty years out, but we're going to be dealing with that, and ultimately there's a challenge between the rights of the property owners to compensation for their property and the idea that rights of nature is a regulatory taking. So that's going to be, in my mind, kind of the third stage of this and that's as far as I can think of. I'm sure there's going to be more than that.

So, I would like to end with a little quote. And Justice Holmes, people know the famous line from his book “The Common Law,” that the life of the law is not logic, it is experience? People know that? So, Justice Holmes – he became a U.S. Supreme Court justice. Before that, he wrote a book called “The Common Law” talking about the development of law in the United States. And Holmes is important because he talks about legal realism, the idea that the law is not at any point in time what is true, like what is out there as a logical truth, and judges just find that truth and that's what they do.

Really, instead, judges get a hunch in how they would like to decide the opinion and then they find an argument that seems to make sense to them and they say, “That's the law,” and that's legal realism. And, Holmes is considered one of the fathers of legal realism.

So, he said the life of the law is not logic, it's experience – that's legal realism. He also said in the opening of that book that the substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then under-



stood to be convenient. So, for us recognizing that the earth is property, or treating the earth as property, has been convenient and we're needing to make it more convenient for the earth to have rights.

He goes on to caution people against "supposing because an idea seems very familiar and natural to us that it has always been so. Many things which we take for granted have had to be laboriously fought out or thought out in past times." So that's the process we're engaged, the process is not only thinking out rights of nature, but also finding out rights of nature. And let's not shy away from that fight, because it's going to be a big one. Thank you.

## THOMAS LINZEY

Thank you, Lindsey. One final panelist for tonight, Jason Flores-Williams is an attorney and author. After becoming an attorney in his mid-30s, Jason travelled to post-Katrina New Orleans to represent indigent clients on death row at Angola. He has since run his own civil rights legal practice in Denver, doing landmark constitutional litigation and trial work, while representing political outlaws, dissidents, and the dispossessed.

Most notably he recently sought and earned class certification for thousands of homeless persons whose rights were violated in what has come to be known disgracefully as the Denver "homeless sweeps." He also represents several defendants who were arrested on Inauguration Day in Washington, DC, in a mass prosecution in which the government has charged more than 200 protesters with conspiracy, so that they're now facing more than 75 years each for protesting Donald Trump. He currently serves as the lawyer for the Colorado River in the recently filed case *Colorado River Ecosystem v. State of Colorado*, the first time in American court an ecosystem has pressed a cause of action under federal constitutional provisions. Join me in welcoming, Jason Flores-Williams.

## JASON FLORES-WILLIAMS, JFW LAW, COLORADO

I'm about to tell a story that's going to make me seem like a very small and petty man, and I can hear the word "seem" and you're going to say – can you hear me? Is this better? Okay, so he just mentioned the homeless class action. And the *Colorado River v. Colorado* has gotten a lot of media attention, and that's been part of our strategy from the beginning, and I want you to think about that as we think about rights to enter litigation here in the country.

So, media comes along and they ask me, "How did you think about this Colorado River case? How did you come onto it?" And to be honest with you, I've been sort of lying and try to come up with like a noble purpose for why I've gotten hooked into this thing, when the genesis about my thinking about this comes from a very kind of different place.

I was out there at the beginning of the homeless class action in Denver, Colorado. And, what's happening there is the city is coming by and taking property in violation of the 4<sup>th</sup> Amendment of poor people and the dispossessed out there, pushing them out of the city so that they can build the buildings and sort of get the white affluent thing going on in Denver – standard stuff.

So, I'm out there and I think. "Well here I am, I'm going to try and help these guys out." I take this flyer and I'm going around to the various homeless shelters. I take a flyer and people are standing in lines, here I am thinking about the great liberal lawyer trying to help people out, I'm on the scene doing stuff. And, I'm going on line and I come to a guy who is just kind of eyeballing me in just kind of like real Girl Scout-ish way. "Take our class action, it's a 42 U.S.C. 1983, it's going to be great."

And, he looks at me and he goes, "Why don't you get the hell out of here with your system worship." And inside, because like I said I'm a small and petty guy, just a total non-professional. We started getting involved with each other, just totally not a lawyer in the moment. And then, so I was angry and it got good. And then I got angry about it, and I went home.

And later on that night, I'm diving into some federal rules of procedure thing, rule 26, blah, blah, blah. And it just hit me, after it was building up all day, that dude was right. I took the book out, I just threw it across. You've got to be a moron to study this stuff. And so, it just started me thinking, "What are you afraid of? What is the job of an attorney right now? What is the job of a human being right now?"

Do you know what it is? It's to challenge the system. It's not to facilitate the system, it's to challenge it. You take it on. And what I think that exists for a lot of people, especially attorneys, because in our own way, attorneys, it's institutionalized. There's a lot of system worship in the legal profession in America. That's why you didn't hear anything when the Patriot Act was passed, you didn't hear anything when massive exploitation of justice grows in this country, there's a real deep silence.

So I think it's like a cognitive dissonance in actuality. So everybody sits around talking about how horrible everything is all the time. So here's how I sum it up, the courts are unjust, they're systemically unfair, they're racist, it's a nightmare. How come the judge dismissed our complaint? It's the worst thing in the world. How come we didn't get justice? Oh my God. So it starts to get into this weird cognitive dissidence, where on one hand, we have conferences, we talk about how bad the system is and how unjust it is, and it is. But at the same time, there's this kind of faith in it, like some how it's going to help us out at the end of the day, and we get real bummed out when it doesn't break our way.

So, this is something – and you know I'm a big fan of Bill Kunstler, and this is a guy when I think about – I read one of his books when I was down in Havana representing a guy named Charlie Hill who's the former Black Panther, who is still Black Panther, comes out of New Mexico. And one of the things he said, that really hit me, was that it is the role of the attorney in every pleading, in every filing, in everything you do, to extend the system and in some ways challenge it and attempt to break it.

So, when I filed – when we filed, sorry – when we filed the Colorado River rights of nature, there was concern and there was worry about how this is going to be playing out, because I think I was engaging to a degree in the standardized system worship that exists in the heart of every attorney, because we profit, and in some way engaged with the system, despite the fact that we deeply criticize it and know it's true which is deeply unjust.

So, I filed this thing, and I was wondering how it was going to go. Are they going to come back at me? Am I going to get sanctioned? And I'll say as a general principle, that if you're worried about getting in trouble, you can't do anything. You've got to be able to stand up. You've got to be willing to get into trouble right now.

So, we filed it and I started – either this thing is going to be laughed out of America, or I don't know, I'm probably going to be locked out of America. Those were kind of the two options going on there. It wasn't. It wasn't. Cover of the *New York Times*, everywhere, blah, blah, blah, all the mainstream media outlets, got around all sorts of different places, got covered. And I'm an ego guy, I was checking it out and Google-ing it to see what's going on, and then I was looking at the comments on it. And, I saw that most people understood why we were doing it and they were in support of it.

This idea right now, it's time has come. That's no b.s. This is proven right now. So this isn't some pie in the sky thing. The world is ready for this right now, America is ready for it. And so you think about, "How come they're ready for it?" And so, this is the more – this is the more complex aspect of it – or not complex, but this is I think where it can get somewhat creative here, and I think everybody should have a role in this – is you've got to think about how you're going to be framing this thing. How do you frame it? How do you frame it so that mainstream media will accept it because – for lack of a better term, a unicorn ride is great, but they can only take you so far. You've got to be able to crack these big boys out there who control the public consciousness, not for better, but for worse, and you've got to get in there. And the way you frame it, and the way everybody understands this right now, is freaking corporations have rights, how come nature doesn't have rights?

Corporations have rights – that sticks in the American craw. Even for the – I can't go down that road. But even for them, them – even for them it's a problem, it's a problem. They don't get it. Corporations are way too powerful. And, I know I'm shocking everybody with that statement here today.

So, if framed this way – corporations have rights, why won't the river upon which Nestle and all corporations depend, and states depend, and urban centers depend, and the U.S. and human beings depend, have rights? Why would there such be a massive gradient between the rights and resources available to corporations, while the resource itself which is Mother Nature and the Colorado River, has no resources and no rights. So, it's about balancing the playing field, and about equaling the playing field, so we'll have better outcomes in a country where corporations dominate everything. That's the framing.

Now, the reason I got to that framing is because I screwed up in doing about 30 hours worth of interviews with media, until I finally realized that's where you're going to break it down into a ten-second bit. Equal the playing field with corporations – that's it.

So now the next move. What is the next move? Well here's what has to happen and you saw this right here. This is an Edward Abbey quote. It says, "Without courage all other virtues are useless." And just notice the fine effort I put into this PowerPoint slide right here, bringing it out for everybody. You really feel it.

So, look, it's like we can sit around here and have all of the greatest sentiments, wonderful ideas, but they're useless unless we step out of this little box, get out of here like an army, and go attack the courts, attack the system with the rights of nature litigation and that's how this is going to change.

So, Thomas and I disagree about this a little bit, and I'm glad we do, because disagreements are going to give rise to a more effective strategy. But, in the end – I don't know why I say these little tight phrases. So, Thomas, this lawsuit wouldn't be happening without CELDF, wouldn't be happening without Lindsey and Ecuador, everything you guys are doing over there it wouldn't be happening without you guys either. I have Google, I have Googled you guys down there, I see what's going on.

So what it comes to is that we're focused on the litigation itself – all those fun rules and all that Federal Rules of Civil Procedure book that I threw across the apartment that one day. But, at the same time, what we are also doing is – okay, that's one part of the strategy, but the second part of the strategy – and this is kind of where the disagreement lie – is that I really believe that what you should do, and the way that we're going to get the courts to acknowledge this doctrine, and give birth to this doctrine, which just has to happen right now and not tomorrow, is by everybody going out there and filing these complaints. It's called *Colorado River v. Colorado*, it's a good template. Thomas and a guy named Will Falk and people from Deep Green Resistance helped write it. I like to take credit for it, but let's be honest about it. It's just my name on it basically at the end of the day.

That's a great template, take it, think about all of the ecosystems out there that are tied into the public consciousness of the country – Shenandoah, Mississippi – all the rock star ecosystems that are out there that everybody knows about and thinks about that has like a – for lack of a better term – spiritual connection with. The Everglades, the Redwoods – why not tomorrow are we not filing those five lawsuits in federal court? Just go do it. And then those courts will start to look at each other – because that's the way judges work – and say, "Well, I'm going to hang off until they decide." And, eventually we're going to actually get somebody who took the bench, who has their eyes open, and thinks about the environment and knows what we face, and who's going to have the courage to do something about it. And, along the way, we're going to be tied in together like a family going forward and changing the world. Thank you.