



Groundswell

The Practice of Ecosystem Rights

In a recent conference on California's ongoing water challenges, a panelist representing water purveyors voiced concerns about "regulatory" water shortages causing difficulties in his industry. He decried court-mandated cutbacks in human uses in order to protect endangered fish, describing them as futilely propping up species disappearing "through no fault of our own." The scope of this abdication of human responsibility is, sadly, increasingly commonplace. We treat the natural world as a combatant in our escalating struggle over water, energy and food. Without intervention in the form of a daily practice of asserting legal rights for the natural world, this struggle - and the number of its victims - will only expand with the growing scarcity of the essential elements of life.

To date, intervention often has come in the form of throwing money at the problem - in California, billions for new dams, canals and massive projects to "restore" affected ecosystems. But the scramble for water and the disappearance of fish and other species testify to the need for a way of living that respects the rights and limits of all the Earth's inhabitants.

Our legal system - including but not limited to environmental laws - fails to reverse these declines because it ignores the equal partnerships between humans and the water, air, land and life around us. The Endangered Species Act, which at best snatches back species teetering on the precipice, has become a lightning rod for criticism by people who want "their" water, or land, or oil, and who will not consider the larger responsibilities inherent in these asserted "rights."

A comprehensive system of legal and economic governance is needed that recognizes the rights of both people and ecosystems to have a fighting chance to be healthy, thrive and evolve. The challenge is that, as the vitality of the natural world on which we depend

fades, our grasp on it tightens, and our pressures on it increase, further limiting our ability to implement foundational legal and economic changes to reverse ecological declines. Advocates for the rights of all Earth's inhabitants must intervene now to build the needed systemic changes.

This pattern is playing out now in California. Years of damming, diking, diverting and despoiling the state's waterways have resulted in plummeting fish populations and have prompted Endangered Species Act lawsuits. Court-mandated water releases to rivers have sputtered on and off like a broken faucet as affected groups win and lose successive challenges around the status of the species, the integrity of the Act, the jobs at stake and the waterways' needs. Following past practice, the governor and legislature have put on

"It is wise to bring some water, when one goes out to look for water." Arab proverb

California's November ballot an \$11-billion bond "solution."¹ However, rather than drawing a new path away from the missteps that led to the denigration of the state's once-great ecosystems, the bond reinforces that misdirected path, setting it in concrete. Without charting a new route to sustainable, respectful living with the natural world, this bond too will fail both to restore the health of formerly thriving rivers and wetlands and to provide the reliable water that humans need.

It is said in California that "water flows uphill to money," and the November bond is no exception. Billions are allocated to set the state on the road to constructing more dams and canals, which to date have supported wasteful and unreasonable uses of water contrary to state law. Billions more are 1 SB X7 2 (Cogdill 2009), "Safe, Clean, and Reliable Drinking Water Supply Act of 2010," http://info.sen.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sbx7_2_bill_20091109_chaptered.pdf.

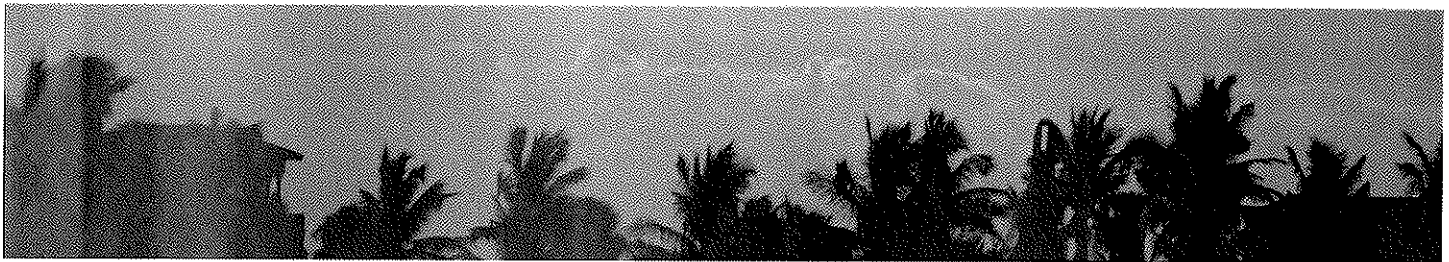
allocated to environmental projects, in part to soften opposition and in part to attempt to mitigate environmental destruction. However, past billions spent unsuccessfully on projects to restore the San Francisco Bay-Delta Estuary - the largest on the West Coast of North America - illustrate that without simultaneous, systemic changes in our legal and economic systems, money poured into waterways generally washes away, to little overall effect.

More disturbing about the bond "solution" is a little-noticed provision that allows power over water to be concentrated in the hands of the few, over the basic needs of people and the natural environment. Politically and financially powerful interests increasingly recognize the opportunities to benefit from essential life elements such as water. Following another well-worn California water adage -

"if you don't have the water, you won't need it" - the bond would allow private corporations to own, operate and profit from reservoirs and other taxpayer-funded projects to store and use the Earth's waters. Such water privatization further debases the already deteriorating legal, economic and ethical relationships among people and the natural world. This affects not only the environment, but also people who are losing access to clean water for their most basic needs.²

Voices for change can and must be raised. We must develop legal, economic and governance systems that reflect the interconnected relationships between people and the natural environment. We can oppose short-sighted proposals such as the California water bond, but we also must offer and apply meaningful solutions. For example, with respect to

2 Last fall, the Governor vetoed AB 1242 (Ruskin 2009), which would have declared it a basic policy of the state that each person "has the right to clean, affordable, and accessible water for human consumption, cooking, and sanitary purposes" See http://gov.ca.gov/pdf/press/2009bills/AB1242_Ruskin_Veto_Message.pdf.



Photos by Mark Israel

waterways, we can advocate for legal rights for rivers to have clean flows sufficient to meet the needs of the waterways' inhabitants and to ensure ecosystem health. With respect to people, we can support legal recognition of the need for local access to clean, affordable water for basic human needs. And we can

use opportunities such as the proposed bond measure to outline sustainable, cost-effective alternatives to dams, such as water conservation, storm water collection and reuse, and water recycling. Many ways exist to acknowledge and realize our responsibility to respect our interconnectedness with each other and

our environment. We must each develop a practice of articulating and carrying out such initiatives, thoughtfully and daily, to see results.

- **Linda Sheehan** is an attorney and executive director of the California Coastkeeper Alliance.



There must be a more sensible way to feed the world – better than one-size-fits-all solutions that assign more weight to corporate profit than to small-farmer despair,¹ and leave many unable to pay for patented seeds and the complex fertilizer and pesticide protocols that accompany them. There must be a way to meet the food needs of individuals globally without agricultural methods so intensive that they strip soils of nutrients and disrupt the food chain, while assigning heirloom varieties adapted over millennia to the dustbin. Safer means must exist than the mass production that leaves consumers wondering what toxins their highly processed and elaborately packaged food may hold.

These are among the themes explored at a conference and dinner hosted by the Center for Earth Jurisprudence, titled "**Ecological Integrity: Reconnecting Humans, Health and Habitat,**" **Tuesday, July 13, 2010.** For decades, the keynote speaker, environmental hero **Dr. Vandana Shiva**, has devoted her energy to investigating such issues. A particle physicist by training, in 1982 she founded an independent institute, the Research Foundation for Science, Technology and Ecology, to investigate ecological and social issues in partnership with local communities. In 1991, she created Navdanya, a network of community seed banks and small-scale organic farmers.

Experts who direct their talents to similar endeavors join Dr. Vandana Shiva at the conference. Her sister, physician and public health activist **Dr. Mira Shiva**, has an outstanding record of activism on the social determinants of health problems among the disenfranchised. As director of the Initiative for Health Equity and Society, she has dedicated her professional life to issues of primary health care and infant and child mortality amongst the poor, and to promoting the right to health, food and essential medicines. **Léonie Hermantin**, deputy director of the Lambi Fund, applies her skills to helping individuals in her native Haiti to define effective means of increasing family income, providing food security and protecting the environment using such tools as micro-credit, reforestation, seed-keeping and honey production – against a backdrop made more pressing by the devastation and displacement of the recent earthquake.

From a more industrialized perspective, **Dr. Mahadev Bhat** examines urban agriculture and agro-ecology for sustainable, healthy, local food; he is an associate professor at Florida International University's Department of Earth and Environment and co-director of the agro-ecology program. **Susan Luck** is a registered nurse, founder and president of the EarthRose Institute, a not-for-profit organization that educates individuals, families and diverse communities about the environmental links to women and children's health; she will examine the impact of our modern food supply on the environment and human health.

Those now turning to organic and fair trade products may do so initially through concern about the foods we consume and feed our children, but the trend is fuelled by a burgeoning awareness of the terrible social and environmental costs of mass methods of production and distribution. To join the discussion, visit <http://earthjuris.org/events/>.

Because surely human ingenuity and determination can sort out ways to meet global food needs and yet allow even the most vulnerable among us a life of dignity.

Who's Next? (And What Will We Leave Them?): In March, lawyers and law students met at the Barry University School of Law in Orlando, Florida, to consider current efforts to preserve the Earth for future generations of humans and nonhumans alike. As recent events illustrate, our social and economic choices come at an environmental price - a price that will be paid also by our children and our grandchildren. Among the presenters who explored themes of interdependence and sustainability were Keith R. Fountain, director of protection in Florida for The Nature Conservancy; James Sellen, executive vice president of planning and design for MSCW Inc., a firm involved in the design of sustainable communities; and Karen Z. Consalo, Esq., founder and principal attorney of Karen Z. Consalo, LLC. Alyson Craig Flournoy, director of the Environmental & Land Use Law Program at the University of Florida Levin School of Law, delivered the keynote address. Their presentations are posted at <http://earthjuris.org/events/past-cej-events/whos-next/>.

¹ Notably, 199,132 farmers committed suicide in India from 1997 - 2008, according to India's National Crime Records Bureau; see www.indiatogether.org/2010/feb/psa-suicides.htm