



**Closing Remarks of Linda Sheehan, Prosecutor
Bay Area Rights of Nature Tribunal:
“What Would the Delta Say?”
Antioch, California, April 30, 2016**

Esteemed members of the Tribunal: We are convened here today to address the health of the Delta and its people. I ask that you begin by reflecting on the Delta’s ancestry. The Delta was once the West Coast’s largest wetland system, with over a half million acres of perennial wetlands, as well as seasonal wetlands, willow thickets, lakes, oak woodlands, and broad savannas. This rich Delta ecosystem supported flourishing life, including 300,000 indigenous residents. One pre-Gold Rush visitor wrote that the Delta “abounds in fish,” with Delta salmon “the largest and fattest I have ever seen.” When the Spanish arrived, they found deer and tule elk trails so extensive they thought they were from domesticated cattle. The Delta of the past also was home to massive bird populations; even today, half the migrating waterfowl in California still move through the Delta. California grizzly bears also made the Delta home, but they were hunted to extinction. Today they can only be found on the California state flag.

Today’s Delta has been fundamentally transformed. California water authorities have allocated at least five times more water on paper statewide than actually exists, and the numbers in the Delta are even worse. From the San Joaquin River, which is critical to Delta health, people have rights to nearly nine times more water than flows down from the Sierra. We have diked and drained the historic wetlands until they have virtually disappeared, with only about three percent remaining. Once-abundant fish like Chinook salmon and Delta smelt are now endangered and face extinction. The elegant Greater Sandhill Crane is threatened with extinction as well, its habitat directly in the way of the massive Delta Tunnels. We must ask ourselves: are we to be the generation that finally, irrevocably turns the once-thriving Delta to a silent bog?

The impacts of our actions extend well beyond the Delta. Even prior to the proposed Delta Tunnels project, scientists warned that the ongoing collapse of Delta salmon populations may push the Southern Resident Killer whales into extinction. Picture that if you will – these beautiful, giant creatures that ply the ocean waters from Oregon to British Columbia may disappear forever, because of our actions in the Delta.

This is not mere supposition. Our State Water Board has issued a skyrocketing number of waivers of water quality standards in the last two years in order to prop up a water rights system that destroys ecosystems and rewards privatization. Some of the top water policy leaders in this state are now pushing water policies that would affirmatively give up on species just to continue the status quo of water grabs and privatization. These experts say we need to consider “endangered species triage,” and they criticize the Endangered Species Act for failing to include management

programs that allow species go extinct. The same experts say that we should set up “conservation hatcheries” to preserve fish that are going extinct in the wild, rather than even question the water rights system we have today. Do you know what “conservation hatcheries” are? Fish zoos. That is not our charge. We must aim higher. We must establish and act on a vision of “right relationship” with water.

The Delta and its species will continue to fail unless we provide more flow. Yet the Delta Tunnels proposed by our state government will provide less. They will pull out up to half or more of the flow of the Sacramento River, the main supply of fresh water in the Delta, and channel it for 30 miles underground before sweeping it away toward water-intensive growing in unsustainable desert soils.

The commodification and privatization of water must give way to a recognition of the fundamental nature of water as life-giving and belonging to all of us: humans, Delta and Delta species alike. It is not private, and it is not for sale.

The majority of our current laws, however, accept without question the idea of water as a commodity. They also accept without question the myth of infinite growth on a finite planet, fueled by endless natural “resources.” Even newer ideas like “sustainable development” that are supposed to help us are still premised on *development*. The Delta is more than just a resource to make a few wealthy at the expense of the many. We must reject that impoverished vision, and create a better one.

A critical first step is to fully recognize in our laws the inherent rights of Delta ecosystems and species to exist, thrive and evolve. We assume that we humans all have such fundamental rights – not because a government leader gave them to us, but simply because we are born on this planet. The same logic applies to nature, with which we co-evolved. In April of 2010, tens of thousands of representatives from 140 countries adopted a Universal Declaration on the Rights of Mother Earth, which you have before you. This Declaration says that the Delta has a right to water as a source of life. Dozens of local and national governments around the world, including here in California, have adopted such nature’s rights into their laws, recognizing that we do not have the right to deny ecosystems and species the water they need to survive.

At minimum, we must recognize in law waterways’ inherent rights to flow, and the rights of fish to swim. These legal mandates must be fulfilled first and foremost, before we even think about sending life-giving water away for stolen profit.

The rights of nature go hand in hand with other fundamental rights, such as human rights, the rights of indigenous peoples, and community rights. For example, the Delta Tunnels will increase pollution of municipal water and wells for Delta residents, violating the human right to water for basic needs, a right recognized by both the United Nations and the California Legislature. As you have heard, the Tunnels will also force people from their homes and create contaminated, water-poor soils, which means family farmers and farm workers will lose their livelihoods. Those dependent on subsistence fishing additionally will face uncertain and potentially toxic food

supplies. These too are violations of rights under the United Nations-adopted Universal Declaration of Human Rights.

The extinction of salmon from water over-diversion also impacts indigenous peoples' rights, as described in the U.N.-adopted Declaration on the Rights of Indigenous Peoples. Salmon are intimately tied to the culture, life and livelihoods of California tribes. The elimination of salmon populations violates these tribes' rights to exist and flourish.

The Tunnels proposal also violates community rights. When we established this nation, we did so with a Declaration affirming that governments derive their just powers from the consent of the governed. Delta communities do not consent to their homes, environment and livelihood being desecrated by the Tunnels project. Their voices must be heard.

Ladies and gentlemen of the Tribunal – I put before you that the testimony today describes ongoing and serious violations of the Delta's fundamental right to exist, thrive and evolve. This testimony also implicates related violations of human rights, indigenous people's rights, and the rights of communities. I urge you to condemn these violations and call for accountability and justice for the Delta and Delta communities.

I further urge you to call for a new vision for the Delta, one that recognizes that water is life-giving, not profit-generating. A vision that water is to be shared, not hoarded for greed. You must call for water solutions consistent with this vision and with fundamental rights. There are many such solutions, but they all center on recognizing our connection with the place in which we live. We are living too far from the Earth; we do not feel the impacts of our actions, and so we and the Earth suffer for it. We must use the water we have wisely, rather than wastefully. In each of our communities, we must become more self-sufficient with and respectful of water.

Finally, we must make amends to the Delta by beginning to restore it to health. Though the Delta of the past is irrevocably altered, its hydrologic processes still influence the land, and many of its native species exist and seek to live and thrive. We can begin to bring these natural processes back to flourishing life, and we can reinvigorate and connect lost habitats in ways that support the Delta's resilience and future well-being.

In summary, we have heard today that what we need is system change. This is your primary charge. The rights of people and nature to water are fundamental rights, and they must be recognized and protected. They cannot be balanced away against so-called rights of fictitious entities like corporations, who blindly seek profit where we seek life. I urge you to reject the destruction of the Delta and Delta communities, and call for solutions that respect the laws of nature.

Thank you.