

Tribunal Considers Rights of Nature in Imperiled San Francisco Bay-Delta

By Dan Bacher

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Gary Mulcahy, Winnemem Wintu Tribe, one of the judges of the tribunal, asked a question of witness Roger Mammon. Photo by Dan Bacher.

Many people have opined about Governor Jerry Brown’s environmentally devastating Delta Tunnels Plan, but nobody, including the Brown and Obama administrations promoting the project, have asked the alleged “beneficiary” of this plan — the San Francisco Bay-Delta Ecosystem - what the estuary has to say about the tunnels.

That all changed on April 30, 2016, when a panel of judges convened in Antioch to consider the question: “*What would the San Francisco Bay-Delta Ecosystem say?*” when examining a case brought before them in the first-ever Bay Area Rights of Nature Tribunal. The event was based on an [international rights of nature tribunal held in Paris](#) during the Paris Climate Talks last December.

“The rights of nature have been inherent from the beginning of time,” said Gary Mulcahy, Winnemem Wintu Tribe, one of the tribunal judges. “We need to get rid of the concept of dominion over the Earth. We — the salmon, the water, the trees, the spiders — are all one

thing. The more pieces you take from the whole, the closer you come to becoming extinct. Just like the salmon that my people depended upon.”

The Bay Area Rights of Nature Alliance, Restore the Delta, and Move to Amend held their “Rights of Nature Tribunal” regarding Governor Brown's proposed Delta Tunnels proposal, recently renamed the California Water Fix, at the Nick Rodriguez Community Center in Antioch, in the heart of the West Delta, from 9:30 am to 3:30 pm.

The tribunal took place at a critical time for the Delta, its fish and wildlife, and its people. “The San Francisco Bay-Delta lies polluted and suffering in a state of perpetual, human-made drought,” according to a statement from the three groups. “An estimated 95 percent of the historic Delta natural habitat has been lost. Between 2.1 million to 6.9 million acre-feet of water is exported from the Delta every year. Numerous Delta species face extinction, including the Delta Smelt and Winter-run Chinook Salmon. Marine species that depend on Delta fish for food, such as the Southern Resident Killer Whale, are also imperiled by failing Bay-Delta ecological health.”

The event organizers noted, “Dozens of U.S. and international laws have begun recognizing rights and legal standing for ecosystems and species as a new framework for environmental protection, including for the beleaguered Delta. These laws and tribunals are inspired by the [Universal Declaration of Rights of Mother Earth](#).”

“This is the first local nature’s rights Tribunal based on the extraordinarily successful International Rights of Nature Tribunal held in Paris during December’s climate talks,” said Linda Sheehan with the Earth Law Center.

The tribunal addressed alleged violations of nature’s rights and human rights posed by state and federal water management decisions and by Governor Brown’s proposed Delta Tunnels, a multi-billion dollar project that will significantly reduce flows needed for Delta waterways and fish.

The construction of the tunnels would hasten the extinction of a multitude of fish species, including Sacramento River winter-run Chinook salmon, Central Valley steelhead, Delta smelt, longfin smelt, green sturgeon and other endangered fish. The tunnels would also export water from the Trinity River, the largest tributary of the Klamath River, imperiling the salmon, steelhead and lamprey populations that play a big role in the culture and food supply of the Yurok, Hoopa Valley and Karuk Tribes.

Tribunal judges included: Idle No More SF Bay co-founder Pennie Opal Plant; London-based Gaia Foundation Director Liz Husked; government liaison for the Winnemem Wintu Tribe Gary Mulcahy; Movement Rights director Shannon Biggs; and Delta water expert Tim Strohane.

The Bay Area Rights of Nature Tribunal “explored ways to confront a system of law that harms people and nature, identified new strategies to protect nature’s and human rights and to begin the process of healing the Delta. Judges considered water diversions from the Delta not just under existing environmental law, but from the perspective of the inherent rights of ecosystems and species, including the inherent right of the Delta to flow,” according to the groups.

Alison Ehara-Brown, co-founder of Idle No More SF Bay, and Osprey Orielle Lake, from the Women's Earth & Climate Action Network, International, opened the tribunal. They were followed by witnesses including Roger Mammon, Delta resident, duck hunter, and fisherman; Barbara Barrigan-Parrilla, Executive Director of Restore the Delta; Ixtzel Reynoso, resident of Clarkburg; and Ryan Camero, Stockton artist and activist.

Expert speakers testifying include Darcie Luce, Friends of the San Francisco Estuary; David Cobb, Move to Amend; and Chris Tittle, Sustainable Economies Law Center.

“Sadly, I have watched this magnificent ecosystem slowly die over the past 30 years,” said Roger Mammon. “When I first began fishing in the Delta, I was amazed watching salmon jump out of the water on their way to the Pacific. I look at the Delta as a huge lung that inhales and exhales twice a day through natural tidal movement. A huge weight has been placed on its chest and this once mighty estuary is now gasping for breath.”

“The Delta and the San Francisco Bay are one big estuary,” stated Darcie Luce. “There are now 13 fish species listed as threatened or endangered in the Delta. More than 40 percent of water is diverted, when scientists tell us at least 75 percent of the fresh water should flow through the estuary to be fully protective of fish and wildlife. With the Delta Tunnels, the amount of diverted water will remain the same or be increased. We need more freshwater flows to save the Delta, not less.”

Barbara Barrigan-Parrilla testified, “What does it mean to destroy the Delta ecosystem? Four million rural and urban residents live in the five Delta counties. The proposed Tunnels would destroy these communities that depend on a healthy delta, and their sustainable ways of life.” The judges also commented on the assault on the Delta by the state and federal governments, corporate agribusiness, Southern California water agencies and others.

Shannon Biggs, Movement Rights director, said, “I have watched the harms to the Delta increase my entire life. The Delta is so polluted that it is now unsafe to eat more than one fish a month. Who decides which communities are to be sacrificed? Which fish? The Delta has been violated, raped. There is another way.”

“We find state and federal water agencies guilty of promoting a tunnel project that would enlarge harm to the beleaguered, Delta,” said Tim Strohane, Delta Water Policy Expert. “These difficulties arise because water is being treated as a commodity, which a water industry seeks to profit from.”

Linda Sheehan, serving in the role of Prosecutor for the Earth, said at the conclusion of the Tribunal, “The rights of people and nature to life-giving water are fundamental rights, and they must be recognized and protected. I urge you to reject the destruction of the Delta and Delta communities, and to call for solutions that respect the laws of nature.”

Ecuador under President Rafael Correa is the first county to recognize the Rights of Nature in its Constitution, rewritten in 2007-2008. The people of Ecuador ratified the Constitution in 2008. ([therightsofnature.org/...](http://therightsofnature.org/))

In Bolivia under President Evo Morales, the Plurinational Legislative Assembly in December 2010 passed the Law of the Rights of Mother Earth (Ley de Derechos de la Madre Tierra). The law defines Mother Earth as "a collective subject of public interest," and declares both Mother Earth and life-systems (which combine human communities and ecosystems) as titleholders of inherent rights specified in the law.

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