



The Long View

Beside the Blue River: An Ethic of, and for, the Earth

By Kathleen Dean Moore

This much seems clear: The old ethic – the ethic that allowed us to ransack the world – has been a failed experiment. To believe that humans are separate from and superior to the rest of the world, to believe that the Earth and all its lives have value only for their usefulness to human ends, to believe that any act is permissible if it maximizes human benefit – this worldview has led



us to life-destroying and ultimately self-destructive lives. Based on a now outdated scientific view of a mechanistic Earth, the worldview is inconsistent with emerging ecological and evolutionary understandings of a wildly creative planet.

Contemporary science (and almost all the religions of the world) tell us that humans are members of complex communities of interdependent parts and achieve their full humanity in relation to others. Because the well-being of the whole depends on the thriving of the parts, all parts have value. We are dependent on the Earth, and the Universe is dependent on us, we creatures of consciousness and conscience, through whom the universe reflects on its own meaning and celebrates its beauty.

Can we imagine a new ethic based on our expanded understanding of the Earth? That's the challenge that the Spring Creek Project took on this year, when we called together twenty-five visionaries from the worlds of ecology, philosophy, fiction, social science, forestry, theology, indigenous wisdom and literature. Under ancient cedars along the Blue River in Oregon, we set about our work: From all the ideas emerging in our various fields, we sought to find a common vision of who we are, we human beings, and how we ought to live in a world that is interconnected, interdependent, finite, resilient, and heart-breakingly beautiful.

Here is an excerpt from The Blue River Declaration. The full document can be found at:

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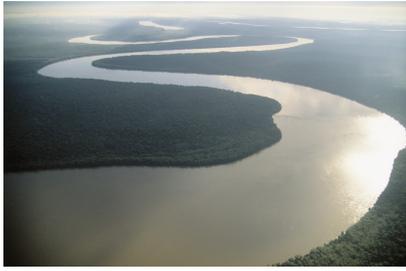
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Editor's Note:

With the publication of the widely read Moral Ground in 2010, co-edited by Kathleen Dean Moore from Oregon State University, Kathleen has become a national spokesperson for the moral call to humans living at a time of advanced ecological degradation. We asked Kathleen to give us her sense of that call.



www.springcreek.oregonstate.edu/documents/BlueRiverDeclaration.2012.pdf.d

The Blue River Declaration: An Ethic of the Earth

A truly adaptive civilization will align its ethics with the ways of the Earth. A civilization that ignores the deep constraints of its world will find itself exactly where humanity is now, on the threshold of making the planet inhospitable to humankind and other species. The question for our time is, How might we create a concordance between ecological and moral principles, and thus imagine an ethic that is of, rather than against, the Earth

Given that life on Earth is interconnected, an ethic of the Earth affirms the need to foster the mutual flourishing of all life and honor our obligations to present and future generations of all beings.

Given that humanity is inescapably dependent on the Earth for gifts both material and spiritual, we humans are called to be grateful and humble. A new ethic calls us to defend and nurture the regenerative potential of the

Earth, to return Earth's generosity with our own healing gifts of mind, body, emotion, and spirit.

Given that the Earth's resources and resilience are finite, human flourishing depends on embracing a new ethic of self-restraint to replace a destructive ethos of excess. Limitless economic growth as a measure of human well-being is inconsistent with the continuity of life on Earth. It should be replaced by an economics of regeneration.

Given that life on Earth is resilient, humanity can take courage in Earth's power to heal. We can find guidance in the richness of diverse cultures and ecosystems. Respect and justice are necessary conditions for civilizations that endure. To damage the natural sources of resilience — oceans, atmosphere, soil, biodiversity, cultural diversity — is both foolhardy and an offense against the future.

An ethic of the Earth thus calls into question current capitalist economic systems, educational systems, food production methods, and systems of land use and ownership. It calls for a re-examination of what it means to be happy, and what it means to be smart. This questioning will release the power and beauty of the human imagination to create more collaborative economies, more mindful ways of living, more deeply felt arts, and more inclusive processes that respect the ways of life of all beings. In this sheltering home, humanity can begin to restore both the natural world and the human spirit.

Kathleen Dean Moore is Distinguished Professor of Philosophy at Oregon State University and co-founder and Senior Fellow of the Spring Creek Project for Ideas, Nature, and the Written Word. An environmental philosopher, Moore writes about moral, spiritual, and cultural relationships to the natural world.

Oregon State Bar Partners in Sustainability

Your law office can become an Oregon State Bar Partner in Sustainability!

The OSB/Sustainable Future Section *Partners in Sustainability Program* recognizes Oregon law offices of all sizes that adopt certain practices to reduce the energy, resources, and harmful chemicals used in their operations.

Submit verification of compliance with the Program criteria today!



Find the criteria, access the certification form, and review the benefits of becoming a Partner at www.osbsustainablefuture.org.

NOTE: The criteria for the Program has been clarified as follows:

Office policy calls for individual computers and printers to be turned off at the end of each day, with exceptions allowed for standard maintenance **and when sleep or restart mode is required for updates and maintenance after normal working hours.**

Sustainable Law Office Leadership Award

Nominations Due!

The Sustainable Future Section of the Oregon State Bar is pleased to be accepting nominations for the Section's 2012 Sustainable Law Office Leadership Award. In its third year, the SFS Sustainable Law Office Leadership Award seeks to focus its recognition on law offices that demonstrate leadership by adopting practices along the path toward sustainability.

Recognition of the honoree will occur at the in the fall. Prior recipients include Ater Wynne and Schwabe Williamson & Wyatt.

Nominations due July 16, 2012

Please visit our web site, www.osbsustainablefuture.org for the nomination form and additional information.

Seeking a New Jurisprudence... for Earth Matters

By Pat Siemen, JD, OP

What is Earth Jurisprudence?

Earth jurisprudence is an emerging field of law that encompasses both environmental ethics and legal practices. It builds on the pioneering work of Christopher Stoneⁱ, Aldo Leopoldⁱⁱ, and Thomas Berryⁱⁱⁱ, as well as indigenous traditions^{iv}. Thomas Berry, a priest, cultural historian, scholar, and self-described "geologian" first used the term "Earth jurisprudence." In April 2001, Berry presented his outline of "The Origin, Differentiation and Role of Rights," an articulation of the quantitative rights of nature that has been foundational in shaping the field of Earth jurisprudence. This document, later revised as "Ten Principles for Jurisprudence Revision,"^v continues to provide critical conceptual foundation for the advancement of a "rights-of-nature" movement. In it, Berry sets forth his assertion that the rights to exist, flourish and fulfill one's purpose in the Universe are not only innate to humans, but also apply to the nonhuman world because the rights are grounded in the Universe, rather than any of human law.

Earth jurisprudence examines the "wisdom or philosophy of law" for the sake of the viable functioning of the Earth community. Recognizing that we face unprecedented ecological



Consider This...

The "greatest good for the greatest number" applies to the number within the womb of time, compared to which those now alive form but an insignificant fraction. Our duty to the whole, including the unborn generations, bids us restrain an unprincipled present-day minority from wasting the heritage of these unborn generations. The movement for the conservation of wild life and the larger movement for the conservation of all our natural resources are essentially democratic in spirit, purpose, and method.

~ Theodore Roosevelt, 1916

challenges that impact the physical and spiritual health of both humans and the larger natural world, Earth jurisprudence calls for a major shift in consciousness. It requires an understanding of humanity's integral relationship with larger, interdependent natural systems, and therefore, the recognition that laws, policies and economics need to be designed to protect the natural systems, species and entities that sustain life. In Earth jurisprudence, the natural world is not just property to be used, it also has inherent value. Earth jurisprudence assumes that humanity is an integral part of the interdependent Earth and Universe community with correlative responsibilities and obligations to protect and sustain a viable Earth community for current and future generations. To paraphrase Thomas Berry, one cannot have well humans on a sick planet.

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OSB Partners in Sustainability Program

Founding Partners



The Sustainable Future Section would like to recognize the Founding Partners in the Oregon State Bar Partners in Sustainability Program. These Oregon law offices have shown commitment to operating sustainably and provide valuable leadership to others as law offices throughout the State move toward office practices that conserve resources and reduce waste. These law offices are the first to join the Program, and the Section is looking forward to seeing many more law offices certify and become Partners in Sustainability.

Law offices ready to become Partners can find information on the Program at www.osbsustainablefuturesection.org, and any questions regarding the Program may be directed to osbsustainablefuture@gmail.com.

Ater Wynne, LLP, Portland office

Bend Oregon Lawyers, LLC

Barry T. Woods, Attorney at Law, LLC

Office of General Counsel for Beau
Delicious! International, LLC franchisor of
Café Yumm!

Diane Henkels, Attorney at Law

Gaddis Law LLC

Gund Law PC

Intelekia Law Group, LLC

K&L Gates, Portland office

Kennedy & Kennedy LLP

Lane Powell, PC, Portland office

Lindsay Hart Neil & Weigler LLP

Markowitz Herbold Glade & Mehlhaf, PC

Merrill Property Law, LLC

Metcalfe & Peterson LLC

Michelle Slater Law, LLC

Northwest Business Law Group

Office of Washington County Counsel

Rizzo Mattingly Bosworth PC

Schwabe, Williamson & Wyatt, PC, Portland office

Stoel Rives, LLP, Portland office

Earth jurisprudence believes that a truly sustainable future must be based on healthy ecosystems. It posits that the dominant legal system is inadequate to address the ecological tipping points facing the global community. For example, United States' laws and regulations routinely apply a cost-benefit analysis that uses an economic measure to prioritize short-term human interests over the undervalued, externalized benefits of living ecological systems. Statutory and common law are both premised on property law concepts that generally fail to consider the rights and necessities of ecosystems that sustain thriving life processes. Current laws seldom consider the true welfare or common good of future generations.

Development of Earth Jurisprudence

The concepts of Earth jurisprudence articulated by Berry have given birth to a growing international movement with various labels: Earth jurisprudence, wild law^{vi}, rights of nature^{vii}, Earth law^{viii}, Earth democracy^{ix}, community ecological governance^x, “*vivir bien*”^{xi} and other expressions of indigenous and tribal peoples' customs. The adoption of the Universal Declaration on the Rights of Mother Earth^{xii} at the World Conference on Climate Change and the Rights of Mother Earth held in Cochabama, Bolivia in April, 2010 was a momentous event for the Earth jurisprudence movement. The Declaration looks to the experience and traditions of indigenous and native communities in demonstrating the capacity to “*vivir bien*” – (i.e., to live well), in part through the recognition of the rights of nature. This Declaration also was present-

“For a truly sustainable future, laws, governance and economics must adopt an Earth or eco-centric framework that recognizes the limited carrying capacity of nature.”

ed in the form of a resolution at the United Nations in April 2011. Although the resolution was not adopted, its concepts are working their way into various UN commissions addressing ecological sustainability and climate change and in the UN Permanent Forum on Indigenous Issues.

For a truly sustainable future, laws, governance and economics must adopt an Earth or eco-centric framework that recognizes the limited carrying capacity of nature. It is essential for future guardians and trustees of nature to partner with scientists, conservation biologists and ecologists in order to give a voice in legal proceedings. Strategic alliances with community groups who care deeply about their local economies, cultures, ecosystems and watersheds are also required.

To that end, The Center for Earth Jurisprudence was founded in 2006. Since that time, there has been significant expansion of community-based organizations and legal initiatives integrating legal protections for bio-diversity and natural systems into laws. For example, in September 2008, Ecuador became the first country to acknowledge the rights of nature in its newly-adopted constitution, stating that “*nature in all its forms has the right to exist, persist, maintain and regenerate its vital cycles.*”^{xiii} People in Ecuador now have the legal authority to bring enforcement actions on behalf of ecosystems. The ecosystem is given standing by the constitution and can therefore be named as a plaintiff in a claim.^{xiv} Last spring, an Ecuadorian provincial court in Loja, ruled in favor of the Vilcabamba River, upholding the first challenge under the Ecuadorian constitution of the right of a river to be free from road construction debris.^{xv} Other universities and law schools are beginning to adopt programs and courses exploring Earth jurisprudence and rights-of-nature theory and practice.^{xvi}

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RFPs for Legal Services Adopt Sustainability Criteria

By Jennifer Gates

Law firms responding to requests for proposals for legal services (“RFPs”) are encountering a new area of inquiry by potential clients: the law firms' commitment to sustainability. The following is a report from a subcommittee of the Sustainable Future Section that was created

to research and study this development.

Over the last five years, and particularly in the last two years, law firms responding to requests for proposals must provide information concerning their sustainability policies, practices and experience. In some cases, the subject matter of the representation sought is unrelated to

any type of sustainability considerations; rather, it appears that the sustainability questions seek to identify firms with a culture in common with the potential client.

Based on a survey of Portland area firms, the RFP issuers most likely to include sustainability criteria are large corporations

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and small companies whose business concerns or relates to energy, the environment or sustainability. RFPs issued by public entities also sometimes include sustainability questions, although the State of Oregon and the City of Portland generally do not (though both the State and the City employ sustainability-related vendor policies for other goods and services).

Topics traditionally seen in RFPs for legal services include:

- a description of the firm and the key attorneys who would be responsible for the client,
- a description of the firm's and key attorneys' experience in the subject matter of the representation
- the proposed fee structure,
- potential conflicts of interest,
- unique features of the firm that bear on the representation, and
- the firm's efforts to create diversity.

Sustainability-related questions now being seen in RFPs for legal services seek descriptions of:

- firm practices that show a commitment to sustainable operations or environmental stewardship,
- any sustainability policy and what topics it covers,
- support or services the key attorneys have provided to organizations whose mission involves or relates to sustainability, climate change or environmental protection,
- the firm's core values and how they are consistent with the potential client's core value of environmental protection/sustainability/resource conservation, etc.,
- the firm's supply chain policies and practices intended to insure environmentally conscious purchasing,
- paper and energy use policies and practices,
- efforts taken to reduce greenhouse gases associated with firm travel and transportation,
- any audit of resource use the firm has conducted, and awards or recognition received.

While these questions are diverse, the RFPs typically fall into two categories: those that seek to identify common

values and evidence of a legitimate commitment to sustainability, and those that seek detailed information about specific actions in key areas of resource conservation. The latter perhaps is more typical of companies with strict supplier/vendor guidelines of their own, while the former looks for a shared culture or shared values. Some RFP issuers and proposers analogize the growing desire to obtain information about and thus encourage sustainability commitments through the use of RFPs to the use of diversity-policy questions that became commonplace in RFPs in the 1980s and 1990s.

Evaluation of Law Firm Responses

Companies using sustainability criteria in evaluating proposals for legal services are reluctant to comment in detail on how the information obtained is included or weighed in the context of the overall evaluation of proposals and the ultimate selection of legal representation. To some extent, the responses (or lack thereof) to the sustainability questions are used either as a first cut (to exclude those proposals with little or no sustainability commitments from all others) or as a tiebreaker among the finalists. One issuer specified that the sustainability information would be worth 10% of the total score when the proposals were evaluated (for comparison, the category

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Jennifer Gates is an attorney at Landye Bennett Blumstein LLP, and a member of the Executive Committee of the Sustainable Future Section.

RFPs for Legal Services Adopt Sustainability Criteria

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ries of experience/expertise and cost were weighted at 20% each by this company).

Law firms generally were unable to comment on how their responses were viewed, because in most cases the only feedback on a proposal a firm receives is the retention (or not) of the firm. Several lawyers indicated that, after being retained and becoming familiar with the client, the client's sustainability interests and goals became a subject of discussion even if that was not the subject matter of the representation. This suggests that the identification of common core values or cultures through the use of RFPs may allow the lawyer and client to broaden their relationship beyond the initial legal needs that prompted the RFP.

Companies indicated that they do not view green washing in law firm proposals as a problem at this time. Those consulted for this article did not find it difficult to segregate substantive commitments to sustainable operations from superficial efforts. Most law firms committed to sustainability tout their efforts on their websites and in other marketing materials, so to some extent potential clients are able to supplement information contained in proposals with their own research.

Are small firms at a disadvantage in responding to these RFPs? Large firms may have sustainability infrastructure where small firms do not, meaning that not only have some firms adopted sustainable office practices, but they also have policies in place to guide numerous aspects of their operations as well as attorneys and staff specifically identified to lead the effort. Two smaller companies that have issued RFPs with sustainability questions indicated that while the scope of the efforts of some large firms are impressive, the evaluation of the proposals takes into account the bigger picture, such as whether the key lawyers have performed significant pro bono work related to sustaina-

bility or environmental protection and whether a firm has made a commitment and is making progress toward goals.

Do These RFPs Prompt Change?

In addition to the primary goal of finding legal counsel with common values, the secondary goal of including sustainability questions in RFPs for legal services is to signal the marketplace of lawyers and firms that their commitment to sustainable operations is valuable to clients, and thus encourage more and deeper commitments to sustainability. It is unclear whether this goal is being met – the use of sustainability criteria is relatively new, is not occurring broadly across industries or practice areas, and rarely is occurring with sufficient regularity to impact any given firm.

For smaller companies whose business relates to sustainability, energy or environmental matters, lawyers and firms that work in those practice areas and would respond to an RFP often already are committed to sustainable operations and green or sustainability-related pro bono.

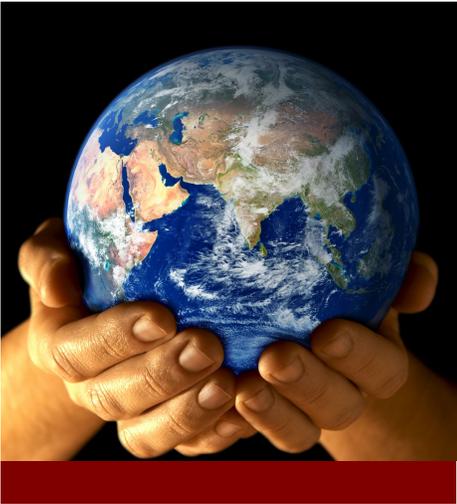
Change may be more likely for firms competing for clients who have detailed vendor/supply policies and seek the same from their lawyers. In this circumstance a sustainability policy and even initial steps toward more sustainable operations may not be sufficient. As some of the questions noted above indicate, detailed policies on paper use, energy, transportation and waste, and a way to measure improvements, may be necessary to satisfy the client's vendor requirements, let alone stand out among other proposals.

As sustainability criteria in all types of legal service RFPs become more common, change should follow as more practice areas and thus more firms will be responding. Perhaps the biggest impact lawyers can make in the short term is by advising their clients to include these types of questions in the client's RFPs and/or to adopt and apply sustainable vendor policies to law firms where no RFP will be issued.



Earth Jurisprudence *(continued)*

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End Notes

ⁱ In 1972 Christopher Stone wrote a law article, “Should Trees Have Standing? – Toward Legal Rights for Natural Objects.” Shortly thereafter Justice Douglas cited it in his notable dissent in *Sierra Club v. Morton*.

ⁱⁱ Aldo Leopold. *A Sand County Almanac*, “The Land Ethic”. Oxford University Press, 1949, 201.

ⁱⁱⁱ Thomas Berry co-authored *The Universe Story* with Brian Swimme and wrote *The Dream of the Earth* (1989), *The Great Work* (1999), and *Evening Thoughts* (2006). He has played a significant role in shaping the field of Earth jurisprudence, and has been a mentor for the Center for Earth Jurisprudence.

^{iv} Many native and indigenous peoples continue to practice a cosmology that evidences a deep understanding of their core relationship with the natural world, or Mother Earth. This was particularly evident in the adoption of “The Universal Declaration of the Rights of Mother Earth.”

^v See, Thomas Berry, *Evening Thoughts*, Sierra Club Books, 2006, 149.

^{vi} See Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice*. Chelsea Green Publishing, Second Edition, 2011.

^{vii} See Global Alliance for the Rights of Nature at www.therightsofnature.org.

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Within the United States and elsewhere, the Community Environmental Legal Defense Fund^{xvii} (CELDF) has led the way in creating working examples of Earth jurisprudence by working with local organizing committees to insert rights of nature language into city ordinances. In addition, the Rights of Nature campaign organized by Global Exchange is working with CELDF to extend the adoption of ordinances protecting the rights of ecosystems into laws of the United States and internationally.^{ixx}

Another example of Earth jurisprudence in action is the resolution adopted in January 2012 by the Santa Monica City Council. The resolution supports a Sustainability Bill of Rights that guarantees citizens a series of ecological rights based on sustainability. An excerpt^{xviii} of that resolution provides:

*“The right to clean, affordable and accessible water from sustainable water sources for human consumption, cooking, and sanitary purposes; the right to a sustainable energy future based on sustainable renewable energy sources; the right to a sustainable natural climate unaltered by fossil fuel emissions * * * the right to clean indoor and outdoor air, clean water and clean soil that pose a negligible health risk to the public; and the right to a sustainable food system that provides healthy, locally grown food to the community * * *.”*

Conclusion

The field of Earth jurisprudence is expanding at the same time that we are reaching significant ecological and economic tipping points. Each variation of Earth jurisprudence, be it Earth law, Earth democracy or the Rights of Nature, articulates a concrete approach to reframing legal protection for the environment and its natural functions. Different strategies and approaches are needed to best respond to the unique factors of bio-diversity and cultural diversity. Each strategy shares the common goal of building a framework supporting nature’s inherent rights to co-exist, thrive and evolve. This framework is essential to weigh and balance the competing and cooperative interests of the various inhabitants of the Earth community. It will require the creativity and resiliency of all – lawyers, engineers, educators, economists, scientists, artists, media, social networking gurus and politicians – to develop the capacity to reinvent a less anthropocentric paradigm. Earth jurisprudence would have us remember that we are “kin” to all that exists and that we have an appropriate and critical role to play in repositioning ourselves in relation to the larger community. Thomas Berry says that we must reinvent ourselves at the species level and enter into mutually-enhancing relationships with the Earth community. Law is one way for us to give this concrete expression to what we value as a society and culture.

Patricia Siemen is an attorney and the Director of the Center for Earth Jurisprudence, which was founded in 2006 at two law schools in Florida. Siemen was personally influenced by Thomas Berry who first used the term “Earth jurisprudence” in 2001. The mission of the Center is to advance legal principles, laws, economics and governance that reflect a transformative Earth-centered legal system that supports the viability and well-being of all members of the comprehensive Earth community. See www.earthjuris.org.

The Long View

Photo by J. Michael Mattingly

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Announcements

SFS Special Program—National Leadership Series

The National FoodCorps – Advocates for Children and Earth

Tuesday, September 4, 2012, Noon to 1:15

Curt Ellis, the co-creator of the documentary *King Corn* and co-founder of **FoodCorps**, will share his vision in co-founding FoodCorps as an antidote to the commercial promotion of highly processed food products laced with corn syrup, salt, and transfat. In partnership with Americorps, FoodCorps is mobilizing young adult leaders to implement a three-ingredient receipt for kids in limited resource communities: (1) deliver hands-on nutrition education, (2) build and tend school gardens, and (3) bring high-quality local foods into public school cafeterias.

Watch your inbox for more details...

Earth Jurisprudence...

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^{viii} See Linda Sheehan at the Earth Law Center at www.earthlaw.org.

^{ix} See Vandana Shiva at Navdanya at www.navdanya.org; also *Earth Democracy: Justice, Sustainability and Peace*, South End Press, 2006.

^x See Liz Hoskens and Carine Nadal at Gaia Foundation at www.earthjurisprudence.org.

^{xi} See the cosmivision and inclusion of “living well” in the Universal Declaration of the Rights of Mother Earth adopted at the World’s People Conference on Climate Change and the Rights of Mother Earth, April 2010 at <http://pwcc.wordpress.com/2010/04/24/peoples-agreement/>.

^{xii} See <http://therightsofnature.org/universal-declaration/>.

^{xiii} Constitution of the Republic of Ecuador, National Assembly Legislative and Oversight Committee, published in the official register, October 20, 2008, Title II, Chapter 7, Article 7.1.

^{xiv} See <http://therightsofnature.org/ecuador-rights/>.

^{xv} See <http://www.pachamama.org/news/first-successful-case-enforcing-rights-of-nature-in-ecuador>.

^{xvi} See Southern Cross University, Earth Laws Research Network, Lismore, Australia and Vermont College of Law summer offering of Earth Law course, July 2012.

^{xvii} See www.celdf.org, Co-founder Thomas Linzey and Mari Margill continue to advise various community initiatives in advancing a bill of rights for communities that include the rights of local environmental communities. Linzey was instrumental in advising the Ecuadorian Constitutional Revision Committee in its inclusion of a “rights-of-nature clause” in its 2008 constitution.

^{xviii} See <http://www.scpr.org/blogs/environment/2012/02/06/4560/santa-monica-signs-resolution-towards-sustainability/>.

^{ixx} See Shannon Biggs at <http://www.globalexchange.org/communityrights/campaigns/rightsofnature>.

Editor’s Note:

Thank you for reading *The Long View*.

Feedback and suggestions are welcome.

E-mail your comments to:

michelleslaterlaw@gmail.com or

osbsustainablefuture@gmail.com

Michelle Slater, Editor

Calendar

◆ **Certifications to be a Founding Partner in the OSB Partners in Sustainability Program due June 30**

◆ **Nominations for the Sustainable Future Section Sustainable Law Office Award due July 16**

◆ **Nominations for the OSB President’s Sustainability Award due July 16**