William O. Douglas

Justice Stanley Mosk
Supreme Court of California

On the editorial page of the Los Angeles Times the day after Justice William O. Douglas' retirement, the brilliant cartoonist Conrad sketched the trunk of a huge fir tree and titled it, simply, "Douglas."¹ There could be no more apt juxtaposition of the majesty of nature and this giant of the law.

To the legal community, Justice Douglas is known as a civil libertarian, a First Amendment absolutist, a protector of the right to dissent, a foe of bigness in government, business, and labor in the Brandeis tradition. His contributions to the development of the law in those and countless other fields will be catalogued and recounted for decades to come.

But to those who in recent years have become alert both to the wonders of unsullied nature and to the imminent dangers to our environment, William O. Douglas—the man and the judge—holds special admiration. His is the voice heard above the din of bulldozers and

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Jackhammers; his are the literary portraits of forests and streams and beaches that loom infinitely more attractive than blueprints of subdivisions and refineries and canyons of concrete.

John Muir once declared, "In God's wildness lies the hope of the world—the great fresh unblighted, unredeemed wilderness. The galling harness of civilization drops off, and the wounds heal ere we are aware." Like Muir and Thoreau, Douglas wrote of his affection for nature's beauty in places where he walked, described vividly in his book, *My Wilderness: The Pacific West*. He defined his Goose Prairie home environs and the nearby lakes as "hallowed country where one walks softly... Nursery of splendid trees. Garden of brilliant flowers. Abode of birds without number. Greenhouse for succulent mushrooms. Gateway to wild and high country..." With insatiable capacity to explore other Western wilderness areas, he wrote of Brooks Range, Hart Mountain, Mount Adams, Goat Rocks, Glacier Peak, Olympic Mountains, the Middle Fork of the Salmon, the High Sierra. And, of course, his travel stories of distant exotic lands are classics of their genre.

Few contemporary scholars can express their love of nature—and fear of its desecration—as ingenuously as Bill Douglas. He wrote of exchanging whistles for hours on end with hoary marmots—"these charming creatures"—on Glacier Peak. He recalled a sunset in the Wallowas: "[A]bove me came the sweetest song I know. Audubon's hermit thrush sang over and over again. Its music is to me a haunting melody. It means the Wallowas, and lengthening shadows, and a sanctuary that greedy men must never destroy." He told of discovering high lakes that are "jewels," a pristine meadow "revealing all the glory that God has bestowed on it." He would absorb these scenes and muse that their "wonder, their glory, their excitement are one of our priceless assets—worth more than timber prices or market quotations for copper."

In that context one can understand his dissent in *Sierra Club v. Morton* in which he declared:

The voice of the inanimate object... should not be stilled.

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4. See *West of the Indus* (1958); *Russian Journey* (1956); *North from Malaya; Adventure on Five Fronts* (1953); *Beyond the High Himalayas* (1952); *Strange Lands and Friendly People* (1951).
6. Id. at 164, 165.
These environmental issues should be tendered by the inanimate object itself. Then there will be assurances that all of the forms of life which it represents will stand before the court—the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams.\footnote{7}

The concept of a tree or an animal with judicial standing furnishes ready material to the nation's humorists. But is it utterly ludicrous? As Attorney General of California (1959-64) I represented the state Fish and Game Commission when we proceeded against a bay-polluting chemical company for killing thousands of striped bass; our theory could have been described as a wrongful death action on behalf of the next of kin of the fish.\footnote{8}

Professor Christopher D. Stone has published a small book arguing for trees, animals, bodies of water, deserts, swamps, etc., to be accorded rights separate and distinct from those rights and interests of human beings who might be affected.\footnote{9} As quoted by columnist Charles McCabe, when a colleague challenged him for advocating standing to natural objects on the ground that a tree can't talk, Stone replied, "[I]f you listen very, very closely, a tree will make the exact same sounds as a corporation."\footnote{10} Stephen I. Burr advocates legal rights for animals.\footnote{11} As sentient living creatures they are more than lifeless objects, and for injuries inflicted upon them, according to Burr, they deserve access to courts through legal representatives—much as corporations, ships, and governmental entities.

Respect for the beauties of nature induced Justice Douglas to rail against littering, "a commonplace phenomenon that affects every person, almost everywhere." One whose river is polluted, or whose air is permeated with sulfuric acid smog, has standing to sue. "I think it is equally obvious that any resident of an area whose paths are strewn with litter, whose parks, or picnic grounds are defaced by it has standing to tender his complaint to the court."\footnote{12} Thus he agreed with the majority which quoted from Sierra Club v. Morton that "Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environ-

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\item \footnote{7} 405 U.S. 727, 749, 752 (1972) (Douglas dissenting) (footnote omitted).
\item \footnote{8} The company settled the case, so no details appear in published reports.
\item \footnote{9} C. STONE, SHOULD TREES HAVE STANDING? (1973). This essay first appeared in Stone, Should Trees Have Standing?—Toward Legal Rights for Natural Objects, 45 S. CAL. L. REV. 450 (1972).
\item \footnote{10} S.F. Chron., Nov. 20, 1975, at 43, col. 5. Professor Stone observes there are many unambiguous ways in which natural objects communicate. See Stone, supra note 9, at 24.
\item \footnote{11} Burr, Toward Legal Rights for Animals, 4 ENV. AFFAIRS 205 (1975).
\item \footnote{12} United States v. SCRAP, 412 U.S. 669, 703 (1973) (Douglas concurring).
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mental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process.”

Space limitations permit only these paltry few indicia of Justice Douglas’ devotion to nature and wilderness, a devotion I have always equated with his indefatigable determination to preserve, in Constitutional terms, the individual’s “penumbral rights of ‘privacy and repose.’”

The departure of Justice Douglas from the judiciary leaves a gaping void. It is difficult today to sight on the horizon his successor as our premier environmental protector. In view of the mounting pressures from land developers, oil companies, public utilities, and government energy officials, those like William O. Douglas who place a priority on environmental protection may be the latest endangered species.