

Unfungible? Land swaps, mitigation banks, and indigenous activism in Los Angeles

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Intro

Just days ago, the media reported another massive oil spill off the coast of southern California. 130,000 gallons of oil have inundated beaches and wetlands, including the wetlands which are the subject of this paper, choking plants, killing birds and threatening the health of ecosystems.¹

It was just such a spill, in 1969 in Santa Barbara, that led to the 1976 California Coastal Protection Act, which created the Coastal Commission, whose job it has been to project the coast of the US ever since.

Our story begins here, at the Coastal Commission, with a “land swap” they approved in December 2018, But the Coastal Commission now figures more as villain than hero: today the projects they approve and the growing system of mitigation-based solutions they manage and support, serve just as much to maintain the risks and dangers of ecological and cultural devastation as they do to avert them,

Mitigation schemes today are complex technically and legally, and depend on scientific and technical capacities to predict harms in the future, what Chiapello et. al. call the production of “environmental intangibles” (Chiapello and Engels, 2021). As Carse (Carse, 2021) points out, this system analytically chooses between three options (avoid, minimize, or mitigate), but practically speaking almost all current development is engaged in some form of the third, compensatory mitigation, which are increasingly complex, expensive, and ultimately uncertain in their capacity to mitigate. As he concludes “If the mitigation is half the cost of the infrastructure project, you may want to reconsider the project itself.” (532)

Whether cap and trade for carbon, or conservation of endangered species, or wetland restoration, the system has a surprisingly simple framework. Any future development will cause harm to the environment, and so any such development must also improve the environment in return to achieve “no net loss” of environmental intangibles. Although we are focused in this panel on fungibility—i.e. the question of whether one salt marsh is as good as another—it is also important to recognize the *temporal* aspect of this system. At no point does any system for producing environmental intangibles concern itself with *past* harms to the environment which might need repair or restoration, and it cannot accommodate them. This fact is nicely illustrated by the case we present here.

The story of the land swap is the following:

¹<https://www.latimes.com/california/story/2021-10-03/what-caused-the-massive-oil-spill-off-h>

The Los Cerritos Wetlands are located in the Southern California cities of Long Beach and Seal Beach at the border between Los Angeles County and Orange County. Since 1926, these wetlands, located atop the Seal Beach Oil Field, have been the site of continuous oil drilling by various oil companies and consolidations, significantly degrading the surrounding wetlands in the process. What has not been degraded has been built on (mostly housing developments), and as a result a small patch of land connected to the San Gabriel river is all that remains which might reasonably be called a wetland.

Since 2016, the main oil drilling site on the wetlands has been owned by Beach Oil Minerals, LLC. With much of the oil on the site already extracted, the oil company has sought to gain access to a popular pumpkin patch and Christmas tree sales site and a small bit of public land previously intended for ecological restoration. Underneath sits an estimated 200 million barrels of oil the company will access through a mix of direct drilling, horizontal drilling, and fracking (so-called “well stimulation”).

The California Coastal Commission granted the land swap which permits BOM access to the new oil drilling sites in exchange for restoring 30 acres of the Los Cerritos coastal wetlands. Funding for restoration of the wetlands would come from a mitigation bank, allowing other polluters in the area—which include the Port of Long Beach, several oil refineries, and other related industries—to purchase mitigation credits to offset their pollution which in turn, allows funding for wetlands restoration.

Mitigation banks arose in the late 1980s in California as part of wetlands restoration projects, and continue to be used as part of California’s increasingly problem-ridden cap-and-trade program (LA times article). A complex array of entities come together in our story as a result: oil companies, property owners, the cities of Long Beach and Seal Beach, the Wetlands Authority created by a mixture of local and state governments, as well as a network of engineers, scientists, experts, and tribal leaders from an array of recognized California tribes. The Los Cerritos Wetlands authority (LCWA) created a conceptual restoration plan for the site in 2015, conducted a CEQA Environmental Impact Review of the site in 2017-2019, and issued a final plan in 2021. Restoration of this tiny wetland has yet to begin, even as we watch the oil from another place—a drilling rig 9 miles off shore, dumps oil into it.

A peculiar feature of the story is the appearance around 2018 of the Puvunga Wetlands Protectors, a mixed group of environmentalists and indigenous activists who argue that the “land swap” is merely a ploy by a petroleum company and its government accomplices to “greenwash” their oil drilling expansion project. PWP argues that government agencies should not link the goal of wetlands restoration with an oil company’s desire for more profits. They argue that expanded oil drilling is unnecessary, illogical, and dangerous, in light of the deleterious impacts of oil drilling and burning for local human health, for exacerbating seismic activity in a region that sits atop the Newport-Inglewood earthquake fault line, and for oil burning’s contribution to global heating, sea-level rise, and other impacts of the climate crisis.

They also make a powerful case for why the wetlands are not fungible or interchangeable in any way. Rather they are the “Puvunga” wetlands, a shared Tribal Cultural Landscape and Sacred Site, named after an ancient Tongva village that included the wetlands and other parts of present-day Long Beach, CA. They are culturally specific sites with both sacred functions (the site of both Tongva and Acjachemen origin stories) and ecological/economic ones (salt pannes that were part of regional trade).

In a letter to the CA Coastal Commission, Tongva and Acjachemen elders expressed their adamant

opposition to the land swap. Chief Anthony Morales, the Tribal Chair of the Gabrielino/Tongva Band of Mission Indians, criticized the Coastal Commission for “a lack of proper tribal consultation.”

He stated that Puvungna has served as “a spiritual gathering place for many tribes, birthplace of Chingishnish, lawgiver and god.” Moreover, Gloria Arellanes, a member of the Gabrielino/Tongva Band of Mission Indians, pointedly asked, “What is the purpose of the Coastal Commission if not to protect the coast? Long Beach now smells like oil.” She also recognized the ecological and spiritual importance of keeping oil and other fossil fuels in the ground by comparing oil to blood: “As blood runs through our veins, oil runs through the Earth.” Finally, Arellanes identified the Puvungna Wetlands as the Indigenous people’s house of worship: “The Los Cerritos Wetlands is our church. This is where we pray. This is where we go to remind people of who we are.”

In 2020 PWP brought suit against the Coastal Commission charging that they abused their responsibility to protect the coast, including sacred indigenous sites, in granting the permit for the land swap. In March 2021, a judge denied the petition on the grounds that this particular group was not involved early or often enough in the process to merit bringing suit. In part this is based on the fact that as part of the process of granting the permit, the LCWA had in fact consulted with many tribal leaders, though only as part of the formal CEQA process. PWP, which is led by Native Americans from other non-California recognized tribes, neither existed at that time, nor would it have been so consulted.

John McKeown, the CEO of Beach Oil Minerals, framed his company’s actions in altruistic terms, stating, “It’s one thing to leave the wetlands alone, not touch them. . . It’s another thing to restore them, to actually spend money restoring and bringing back [the] habitat.” The city of Long Beach, which also approved the land swap, has insisted that the intended land swap is “an opportunity that occurs once in a lifetime,” and that the benefits of saving wildlife and restoring habitats in the already degraded site “far outweighs the oil production” that would substantially increase in the other sites.

In other words, the oil company *could* simply profit from expanded oil drilling, where allowed, and not invest any money in ecological restoration of the wetlands they have already degraded– i.e. just move on and let them be. But a restoration project of this sort provides an added incentive because, having already degraded the wetlands, BOM can now take advantage of the mitigation system to generate revenue for restoration *in the future*. That is, under no existing legal regime could BOM, or its predecessors, be fined for the damage *already done*, nor expected to pay for what the damage caused by them or their predecessors. Rather BOM can generate revenue and good will by using the mitigation system to *support further drilling* in exchange for fixing what they have already degraded.

This is, not to put too fine a point on it, a kind of temporal pyramid scheme which designers of mitigation schemes probably did not intend. But it is a clear outcome of the fact that mitigation schemes are inherently future focused, not backwards looking: they privilege constraints on future action, not accountability for past actions. There are good reasons for this, to be sure, but as this story illustrates, there are also bad outcomes.

If one looks at these wetlands with the eyes of the various indigenous activists in our story, it is hard not to see them as a living and dying record of various settler colonial degradations which have never been mitigated. Socio-ecological relationships that Tongva and Acjachemen peoples had developed over centuries

with the wetlands and other ecologies of Southern California had been violently disrupted, as Spanish settler-colonial ideologies devalued the ecological and economic practices of the Indigenous peoples by imposing a political-economic and infrastructural system of missions, pueblos, and ranchos on Indigenous lands. Beginning with the US annexation of Alta California in 1848, the US federal and California state governments imposed a suite of policies encouraging agricultural production, real-estate development, and, beginning in the 1920s, extensive oil drilling in Los Angeles and Orange counties, further marginalizing the Indigenous nations.

Nonetheless, Indigenous peoples of Southern California have persevered in the face of settler-colonial rule. Tongva, Acjachemen, and members of Indigenous nations from other parts of the United States (who now reside and/or grew up in Southern California) continue to participate in annual pilgrimages and other ceremonies at culturally significant sites—including the locations of ancient Indigenous villages, ceremonial sites, and burial grounds—in the Puvungna Wetlands as well as other parts of the Southern California coastline. Indigenous people continue to engage in prayer, ceremony, healing, and communal gathering in honor and remembrance of the Indigenous ancestors that have lived in the California coast for millennia. One Acjachemen woman, Rebecca Robles, has even referred to the effort to protect the wetlands as “our Standing Rock.”

Consultation with tribal leaders is a required part of California environmental impact reviews, and it was duly carried out in this instance. Many tribal leaders were contacted, requested consultation, gave consultation, and had an effect on the proposed restoration plan. But consultation is all that is required; no shared administrative control or procedural authority is granted to any tribe or tribal leader in California for such projects. It is entirely at the discretion of the “lead agency” whether to consider the consultations as having any binding effect. And the promises of settlers are not real promises, as history all too clearly shows.

The CEQA process can trigger requirements for mitigation in the case of Native American tribal and cultural resources. However, these resources are defined primarily as existing in the past—e.g. *material* archaeological elements. So in the case of the wetlands EIR, the only things that trigger this are the presence of, for instance, shell middens that are evidence of pre-colonial use, and not the stories and practices of current day Tongva or Acjachemen people.

As we have suggested above, the trigger for mitigation in most cases is proof of ongoing and future harms to an ecosystem. Here, future harms can only be understood as harms to the future discovery of facts about an archaeological past, not the future harms to existing Native Americans or their lives and entanglements with current wetlands or any other part of LA (although the two are clearly related). Whether it’s drilling or ecosystem restoration, the proposed futures cannot accommodate harms to existing *or future* Native Americans—only to the evidence of their past. The irony, of course, as we point out here, is that mitigation systems are not designed to compensate either nature or humans for *past* harms only future ones.

Even given all this, and to be fair, the current restoration plan does in fact recognize these shortcomings, and in some ways does its level best to make some gesture towards improving it, but in the end it is all done in the name of ecological restoration with a gloss of cultural sensitivity— LCWA has no illusions

about either leaving the wetlands alone, or giving authority to any tribal representatives.

Conclusions

It might seem obvious to point out that the existing neoliberal mitigation framework governs only the future and not the past. Governing the past is not something the system was designed to do, and in fact, probably sounds impossible or illogical to most ears. But the production of environmental intangibles, as Chiapello call them, is already a fantastic and speculative endeavor, but one backed up by an immense labor of legal, financial and political work that has been now 50 years in the making. The decision to focus on the future instead of the past arises solely out of an assumption about the nature and direction of progress so central and so deep in our political and economic system that it appears almost impervious to change.

Which is why it is not an accident that the current mitigation system is probably better understood through the lens of settler colonialism, and to understand the critiques of Indigenous activists not only as an alternative interest in a particular patch or land or set of ecological relations, but also as an expression of a world that is almost literally impossible to hear from the perspective of the present.

Hearing this critique requires more than simply including excluded voices. In Southern California, the Tongva, Acjachemen, Chumash, and other Indigenous nations have obviously and clearly protested centuries of colonialism since the 18th century, under successive Spanish, Mexican, and US governments. And as Potawatome Scholar Kyle Whyte notes, the process of settler colonialism not only erodes the economic, political, and cultural autonomy of Indigenous peoples, but it also “violently disrupts human relationships with the environment” (2018:137).

Hearing this critique would also involve imagining what a world of mitigation would look like that could account for the past. It probably sounds horrible to even suggest it, but one could imagine a mitigation system that produced intangible goods that valued past harms in ways that created reparations or transferred wealth based in the establishment and measurement of such histories. We *could* create such a system, given that we have already demonstrated our ability to do it with the future.

At the very least, it raises an interesting question to imagine such a system: would it constrain the actions of economic actors? Would it generate forms of punishment that violate not only Euro-American notions of justice and responsibility but indigenous notions as well? Would it be gamed in the same ways, or ways even more horrible?

Would the oil continue to spill under such a system, or could it stop it flowing?

References

Carse, Ashley (2021). “The Ecobiopolitics of Environmental Mitigation: Remaking Fish Habitat Through the Savannah Harbor Expansion Project”. In: *Social Studies of Science* 51.4, pp. 512–537. DOI: 10.1177/0306312721992541.

Chiapello, Eve and Anita Engels (2021). “The Fabrication of Environmental Intangibles As a Questionable Response To Environmental Problems”. In: *Journal of Cultural Economy* 14.5, pp. 517–532. DOI: 10 . 1080/17530350 . 2021 . 1927149.

Images

Oil Spill

Los Cerritos Wetlands images

Puvunga Wetlands Protectors Website

Maybe diagram past/future relations