

TRANSCRIPT

INTERVIEWEE: Ilan Levin

INTERVIEWER: David Todd

DATE: May 30, 2020

LOCATION: Austin, Texas, by telephone

TRANSCRIBER: Trint, David Todd

REEL: 4015

FILE:

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Google Voice [00:00:00] This call is now being recorded.

David Todd [00:00:04] Ilan.

Ilan Levin [00:00:05] Hello. Hello, David.

David Todd [00:00:07] Good morning.

Ilan Levin [00:00:09] How are you?

David Todd [00:00:11] I'm fine. And it's great to hear your voice. You sound like a radio broadcaster. Loud and clear. Love it.

Ilan Levin [00:00:18] Good. Well, I'm on my cell phone and which is our only option right now. I hope. Hope, hope it comes through OK.

David Todd [00:00:26] Yeah. You know, I think we'll, we'll be good. You know, if you can stay close to a good signal, then I think we will hear you loud and clear. But thanks for thinking of those things.

David Todd [00:00:40] So, I, with your indulgence, I'd like to kind of set out what we are hoping to do this morning and see if this might be acceptable to you.

Ilan Levin [00:00:54] OK.

David Todd [00:00:54] Have a little bit of recitation here.

Ilan Levin [00:00:57] OK.

David Todd [00:00:58] So with your approval, we are planning on recording this interview for research and educational work on behalf of the Conservation History Association of Texas, for a book and a Web site for Texas A&M University Press, and for an archive at the Briscoe Center for American History at the University of Texas at Austin. You have all equal rights to use the recording and I wanted to make sure that's OK with you.

Ilan Levin [00:01:34] Yes.

David Todd [00:01:36] That's great. Well, maybe I can explain who and what and where. It's May 30th, 2020. And my name is David Todd and we are conducting an interview with Ilan Levin, who is an environmental attorney of many years, and most currently working as

associate director of the Environmental Integrity Project. He's based in Austin. This interview is being done by telephone.

David Todd [00:02:08] And today, I think we'll talk mostly about his role, some 20 years ago, in the permit application that SMRF, the San Marcos River Foundation, filed with the Texas Natural Resources Conservation Commission to attempt to set aside unclaimed water in the San Marcos and Guadalupe systems for environmental purposes. So that's the goal.

David Todd [00:02:35] And I thought that as a place to start maybe we could talk (you could talk, I'll try to be quiet). Tell me something about your background and your interest in environmental law and conservation more generally.

Ilan Levin [00:02:50] Sure. And thanks, David, for this opportunity.

Ilan Levin [00:02:59] My interest in conservation and my sort of work and interest in environmental law are kind of different, to me. I kind of have always thought of myself as a conservationist, even when I didn't know what that word meant. You know, as a, as a kid, because I loved, loved and adored animals as a kid and spent a lot of time outside exploring where I grew up, which was Cape Town, South Africa, which is a physically beautiful place. And spent, we spent a lot of time, my brothers and I, on beautiful beaches near our home when we were kids. And I remember how I would just get lost sort of in my own mind, you know, for hours playing in tide pools on the beaches of Cape Town, South Africa. And just checking out of all the amazing critters in those Indian Ocean and Atlantic Ocean tide pools and beaches that that I'd spent time on.

Ilan Levin [00:04:25] And so and so my love for nature and for the natural world was just something that was part of me, ingrained in me, I think, you know, from early on. But, but when I think of environmental law and my environmentalism, to me, that was something that that was developed a little bit later in my life as a college student at the University of Texas and then at law school at UT, and that was more about my interest in, you know, kind of social justice and environmental justice, which was not not a term I think I knew at the time. But, but my environmentalism is more of an advocacy and something that comes out of, more out of my political beliefs and in my interest in social justice and in, you know, kind of working for causes that I consider to be kind of underdog causes. And so when I went to law school, I didn't think I was going to be an environmental lawyer. And I think I almost could have just as easily fallen into some other area of law that maybe would have been criminal justice or poverty law or housing or any, you know, something that kind of I think, you know, would have, would have appealed to, to my kind of advocacy beliefs. So, you know, that's my background, I guess, on that.

David Todd [00:06:31] Well, that's interesting. And I can sort of see the connection because of, you know, a lot of environmental pollution, is wreaked on underserved communities, poor, minority neighborhoods. And so there's a certainly justice aspect. And I I would imagine that there's one too with wildlife, where they often don't have the voice that they, they deserve.

David Todd [00:07:03] You know, I was wondering if maybe you can go from that and talk a little bit about the aspect of conservation that touches on water and particularly the San Marcos and Guadalupe systems and you know, what, what do you think is important about keeping water in those, those river systems?

Ilan Levin [00:07:34] Well, you know what I've learned, over the course of my life and career, about, about the bays and estuaries and especially, you know, Texas Gulf Coast bays and estuaries, is that the bays and estuaries along the Gulf Coast serve a really important ecological function, or many ecological functions. They, they act as filters for pollutants, sediment, things like that, that are washing, washing down our rivers and going into the ocean. And that same kind of filtering function is also providing a lot of nutrients for the little critters that live and grow in those bays and estuaries and, you know, shrimp and fish and crabs. And they all, many, many of them, all start their lives in those in those in those bays. They're kind of nurseries for, you know, for a lot of fish and creatures. So the rivers have to flow in order for, in order to have a healthy ecosystem. And they need to flow into those bays and estuaries which are then, you know, breeding grounds, nurseries for important fisheries.

[00:09:40] And, you know, getting, of course, I guess to the issue at hand, the San Marcos River Foundation's interest back in the late 90s, there were, there were a couple of droughts in the mid-90s and then around around 1999, 2000, we had a couple of droughts. I'm not sure they would be considered, you know, major droughts like we've had in Texas. But, but they were, they were droughts. And at the same time, we had growing, thirsty cities in Texas, especially San Antonio. And so there was real concern that those rivers, that the fresh water inflows were under severe strain and were not flowing into the bays and estuaries.

Ilan Levin [00:10:48] So, that's where, you know, conservationists, and especially San Marcos River Foundation in central Texas, began to see the connection between you know, thirsty inland cities and the health of of the bays and the estuaries and, you know, and then, of course, like, you know, magnificent birds like the whooping crane.

Ilan Levin [00:11:24] So, I think that's, you know, is that, am I on track, David?

David Todd [00:11:31] Oh, absolutely. Yes, yes. Please go ahead.

Ilan Levin [00:11:39] So I think, you know, I think that's it. You know, blue crabs especially are kind of one of the main, main part of the diet for the whooping crane. And when when those, when the rivers are not flowing and when those inflows are not coming into the bays, bays are not healthy, then the main, the main source of nutrition for the whooping cranes is, you know, goes away. And then that, and that is what, part of what, resulted in pretty dire conditions for, for the whooping crane population that winters there in the Aransas, San Antonio Bay Area. And they were down, you know, the numbers were really down. I don't remember the exact numbers, but just a few, you know, just a handful of breeding pairs of whoopers, as the folks call them, down there. So they were just on the brink of, of, of extinction.

Ilan Levin [00:12:52] And that's when, you know, that's when some really brave and smart folks in San Marcos, Texas, came up with this amazing and simple idea to use the, to use the rules that were all on the books for many years. You know, rules that water developers and people who were making money selling and moving water to big cities. You know, they, the San Marcos River Foundation said, well, we need to use those same rules to try to keep water in the river to protect these valuable, you know, the valuable ecosystem and to protect and try to help, you know, save this endangered, amazing bird.

David Todd [00:13:56] So it sounds like that was some of the thinking behind the board at the San Marcus River Foundation, that there was this combination of drought, low inflows, claim losses, growing water demand for San Antonio, and other central Texas cities, and so

they chose to use, as I understand, the existing water code and water rights system to try to set aside waters. Is that right?

Ilan Levin [00:14:37] Right. Right. For many years, the rules and laws in Texas and elsewhere in the western part of the U.S. Had always been that people could take water for, you know, what the law calls beneficial uses and beneficial uses include things like water for people and water for industry, water for farming and agriculture. And, but but over, over time as, as people came to understand the science of, you know, these bays and estuaries as, as it became clear that that water flowing in rivers and and draining into the sea, it is, is also a beneficial use. In other words, that that that healthy ecosystem down at the coast, is, is a value not just, you know, aesthetic and spiritual and environmental value to have, to preserve the land and to protect animals, critters, but, but there's economic value there as well. People, people, Texans came to understand really clearly that if we don't let the rivers flow into the sea, people who make their money off, of like shrimping or selling seafood, or whatever, were gonna be hit hard. So there was there was this very clear understanding, you know, in the 1960s and 70s and on into the 1980s, that that water flowing in the rivers is not, is not wasteful. And it's you know, it's not just there for for pleasure. It's important economic and cultural value.

Ilan Levin [00:17:14] And so the San Marcos River Foundation, the small group, that group that started in, you know, central Texas with, with really a local, a local perspective about kind of preserving their little strip of river, the spring-fed San Marcus River, which is a tributary to the Guadalupe River. You know, they, they gradually understood that their goal, you know, to protect their slice of the river was, was connected and just that you couldn't take it, tear apart. It was connected to the overall health of you know, this ecosystem. And at the same time, you know, what was going on in, with groundwater was, was very much kind of coming into play because it was in the, in the 90s that the Sierra Club brought some lawsuits to try to force regulation of groundwater pumping in the Edwards aquifer. The city of San Antonio had been for years just taking water out of the aquifer. And others, of course, were also, ranchers and farmers, were pumping water out of the aquifer. And so those series of lawsuits that were endangered species cases the Sierra Club brought in the 90s is what forced the state of Texas to finally begin to start gently regulating groundwater taking. But that, that put more pressure on the, you know, on the rivers and on the surface water.

Ilan Levin [00:19:33] And so, when the folks at the San Marcos River Foundation started to see these developers, water, water developers, you know, eyeing all this river water to build reservoirs and dams and to, and to channel water long distances to, you know, growing cities and so forth, they, they started to look at ways to protect the system.

Ilan Levin [00:20:05] And then, you know, I think it was, as I heard it, and just to be clear, I didn't lead any of this stuff. I was a young lawyer who went to work for an amazing, legendary Texas lawyer named Stuart Henry, whose memory is a blessing. And I was just fortunate to be in the right place at the right time, I think, and to sort of have this opportunity to come in and work with and learn from the San Marcos River Foundation and other folks who are working on these issues.

Ilan Levin [00:20:44] So I know I'm not an expert and I never was an expert. I don't claim to be in any of this. But I'm just conveying to you today what I recall and you know, what I remember from my work as a as a lawyer representing the San Marcos River Foundation for just a short period of time when I went to work for Stuart Henry around 2001. This was right after the San Marcos River Foundation had filed their their application.

Ilan Levin [00:21:22] And the story that was told to me by Stuart Henry was this: that a very smart lawyer, he may have been a retired water lawyer at the time, I don't remember much about his background. A gentleman by the name of John Hohn, who was active in the San Marcos River Foundation, really kind of pushed the idea that, that it was high time that conservation groups used the same rules that the water developers and those that were trying to make money off of selling water, the same rules that they were using to divert and take water out of the streams for their, what they called, their beneficial uses, that conservationists could do the same thing.

Ilan Levin [00:22:24] And they just kept cobbling together at the time, I think it was about twenty five thousand dollars. So not an insignificant fee. But that was the permit fee that they could, you know, put together this application asking the state environmental agency, the TNRCC, which became the Texas Commission on Environmental Quality, that we know today, the TCEQ. They put together this application where they quantified the amount of unappropriated water that was left in that basin. And they were able to quantify the flows, the river flows. And they just filed their application saying, we want this much water. And it was something over a million acre-feet a year of water, which was what the science at the time showed was needed to sustain the bay, Aransas Bay, this important term wintering site for for the for the whooping cranes.

Ilan Levin [00:23:46] And so back sometime around 2000. And again, this is as it was relayed to me by by Stuart Henry. They called they called around looking for help, legal help, to represent them. Stuart wisely told the San Marcos River Foundation, "Don't hire a lawyer and don't put my name, Stuart Henry's, name on any of this just yet, because it'll send up a lot of red flags and the state agency is going to kill this thing. They're not going to process this thing." He suggested that they just on their own, just San Marcos River Foundation, just a little old local conservation group, that they sort of quietly, with a check in hand and a complete application, just march up to the clerk's office at the state agency and file that thing.

Ilan Levin [00:24:56] And they did it. And the important thing about that was, under the Texas law, that date with the application for the water rights, just the complete application for the water right, when that was what the state agency called the administratively complete, that was an important date. By law, they call the priority date, which in water law is, is a really important concept. It means that anyone who comes after you, after you, is in line behind you. So just requesting that water and, you know, crossing all the T's and dotting the I's and paying the filing fee and making that request and doing it formally with an application and getting a stamp from the state agency that had a date on it, really gave this little central Texas conservation group quite a bit of leverage and and got the attention of powerful interests across the state.

Ilan Levin [00:26:21] But it was, I think it took a lot of people by surprise when they found out that this little central Texas group had filed an application and actually had a priority date. It didn't mean that the state was set to approve it or issue a water right. Of course, the state of Texas did, you know, bent over backwards to try to not process the application, but, but the San Marcos River Foundation got their foot in the door and got, I think caused, caused quite a stir. And of course, things, you know, from there just snowballed in a way. And there was some legislative action and other action that I think as a result of this, the SMRF water right application.

David Todd [00:27:28] Well, maybe, let me see if I can kind of summarize what you've been telling me. So in July of 2000, SMRF filed for the 1.1 million acre feet of water from the San Marcos and Guadalupe Rivers. And then December of 2000, TNRCC said, "Yep, this is administratively complete. The application does have this priority date." But then it sounds like nothing happened for a while. There was a lot of, I guess, in the backrooms, a lot of political strategizing. My understanding is that it wasn't till 2003 that Lieutenant Governor Dewhurst got the Legislature to try to, I guess, reconsider this, this petition. Is that accurate?

Ilan Levin [00:28:33] You know, I'm going to trust you on that. It was, that's, that sounds right. That's what I recall. And, you know, I don't I don't I. I didn't. I don't have the exact dates in front of me, David. But that is, that is, that is what I recall. That sounds exactly right. And I think what was interesting, one of the interesting things to me, from my sort of perspective as a young lawyer who had, I had been working at the state capitol in the Legislature for a few years. Right. And I made it, I made that transition to work for Stuart Henry and to represent, you know, farmers and ranchers and conservation groups mostly on, on, on water rights issues for a couple of years at that point. And, and what was interesting to me about that is a couple of things. I remember the, the state agency, the TNRCC at the time, you know, not wanting to move the application forward. They didn't want to process the application, do what they call the technical review.

Ilan Levin [00:29:50] And, and I remember the, the executive director of the agency at the time, a guy by the name of Jeff Saitas who was called to testify at the Legislature and I just don't recall, David, if this was the 2001 or the 2003 legislative session. But in any event, this hearing in front of the House or Senate Environmental Committee that was taking, that was considering some legislation to essentially stop SMRF. And that's really what the law, they had they tried for a couple of legislative sessions to kill the SMRF application. And as I recall it, the opponents failed. They weren't able to pass legislation the first time around. they were able to pass legislation the second time around so that your your dates are probably, well your dates are right. And and they square with what I remember. But I, but I'm remembering Jeff Saitas testify in front of the legislative committee at the state capital. And he said he said he said, under my rules, under, under the rules that he was bound to follow at his state agency said, under my rules, I have to process this application. That was a powerful statement and it really hit me. It really summed up what the, to me, the genius of this San Marcos River Foundation, you know, really, and this water right application was all about. It was, you know, using the rules that the water developers, those that want to make money off of selling and moving water, using the rules that they had really, mostly been written and been using for many, many years to take water out of streams and build dams and reservoirs and so forth.

Ilan Levin [00:32:08] And, and, and SMRF used those rules for conservation purposes. And so there was the director of the state environmental agency explaining to these state legislators that under the laws on the books at the time, he had to process the application. It was a legitimate application. The definition of beneficial use had at that point for many years in Texas, included instream flows and, and bay and estuary flows, freshwater inflows into the, into the sea. And because the law had had recognized that that was valuable, SMRF simply filed an application the way anybody who would build a dam or a reservoir would file an application and just explain that they were requesting all this water for the beneficial use, of the valuable use of it flowing into the sea.

Ilan Levin [00:33:22] And to hear the state agency head get up there and say, I have to process this application. He was asking. He was, he was putting it on, you know, right on, squarely on on the Legislature to say, you know, you got to change the law if you if you don't

want these guys to get water for conservation. And that's exactly what the Legislature then tried to do.

Ilan Levin [00:33:53] And as I said, it was a couple of legislative sessions. And then at some point they, you know, they did pass some legislation and I wasn't involved after about 2003, I really again, I was just fortunate to kind of be a soldier in this, you know, in a long battle, and I was I was in in that, you know, in the thick of it for just a couple years at that time, in that 2001 to 2003 time. Yeah.

David Todd [00:34:34] Well, can you talk a little bit about that, that period that you were engaged with it, who were some of the allies and opponents, aside from SMRF, of course, you know, the other players in this, what became, an increasingly political controversy over issuing water rights for instream flows.

Ilan Levin [00:35:02] Yeah, well, the opponents were, the opponents were, you know, industry and, and the river authorities primarily, river authorities, the cities. There were a lot of opponents, a lot of powerful opponents. And, you know, the lawyers and the lobbyists who represent those interests were just vehemently opposed to any environmental group, you know, getting a water right? You know, it was they saw it as a, as a threat to, you know, everything that they thought was, was good and right.

Ilan Levin [00:36:01] The allies were, there were major environmental groups that were important allies for the San Marcos River Foundation. And as I, as I'm remembering, you know, Environmental Defense Fund and the National Wildlife Federation and the Sierra Club were, I think, the key environmental groups that had a long and deep kind of connection and, you know, were, were very much, were very much leaders in the Texas environmental community for many, many years. And they were critical allies, and they were kind of very much involved after, you know, after the San Marcus River Foundation quietly marched up to the TCEQ, the TNRCC at the time, and filed their water right application. Then, then I think there was a lot of coordination and strategizing. You know, I was, I was involved in a lot of those discussions with the environmental groups and with the SMRF.

Ilan Levin [00:37:18] Texas Parks and Wildlife Department, which I think at the time, and probably still today, could never publicly kind of be on the side of the environmental group just for you know, it's just Texas and for political reasons, they just couldn't. But they, their science, was, was really key. And I think that they certainly, you know, top to bottom, from the leadership on on down to all the staff, you know, scientists, biologists and so forth that work there at the Texas Parks and Wildlife Department, I think they were what I would call critical allies. Again, just recognizing that they that they never, never took any position, publicly or privately, you know, to sort of be supportive, or out, outwardly supportive of San Marcos River Foundation just because they, they would have gotten in too much trouble with the Legislature, and it just, it just wasn't, just was not, not okay for a Texas state agency to, to to sort of stand with an environmental or conservation group on something like this, which was seen as bold and aggressive, but Parks and Wildlife was just so critical, I think, as an ally.

Ilan Levin [00:39:02] And then as things developed, other local Texas conservation groups, it, that, who focused on their rivers and their river basins, also came to understand that they could kind of take a page out of SMRF's playbook and try to apply for water for instream flows and fish and wildlife in their, in their river basins. And so up in East Texas, the Catto Lake Foundation, I'm sorry, the Catto Lake Institute, in the Cypress basin in East Texas, on the border with Louisiana, they became very involved and asked us to put together a water right

application similar to the SMRF's application for their basin. And we did that and we filed that. And then, other groups along the Texas Gulf Coast, the Matagorda Bay Foundation and the Galveston Bay Foundation, also started looking at, you know, how much water was sort of left unappropriated in their river basins. And they started they began to put together applications similar to the SMRF application.

Ilan Levin [00:40:41] And at the time, I, I remember, you know, a lot of debate within our community, within the environmental community, about, about whether or not filing some more of these water rights applications would help or hurt. And it's kind of hard to say. You know, some people had the view that if other groups came in and filed similar applications, that it would hurt SMRF's chances of ever setting aside the water, which is what the goal was to just set aside the water for, for environmental purposes. But, but ultimately, those other groups, Catto Lake Foundation and those Galveston and Matagorda Bay Foundation folks did ask us to put together similar applications, and we did file them. And whether, whether that helped or hurt is hard to say. But at that point, the, the word was out.

Ilan Levin [00:42:00] The opposition was strong and focused to try to stop this from happening. And I think that the consensus, at least within the environmental community and among those kind of key principals, those key players - National Wildlife Federation, EDF, Sierra Club and others - was that, you know, if other conservation groups want to use, want to follow the law and use the rules that are on the books to try to protect their, you know, their, where they live, that they that they should do it, and that, that, you know, we're, we're sort of better and stronger, unified and not kind of split up. And so others kind of came in and filed those applications.

Ilan Levin [00:43:04] And I and I, I remember vividly that certainly, that with respect to the Catto Lake Institute's water right application, someone who who was one of the forces behind that, that East Texas group, conservation group, was Don Henley from the band The Eagles. And I remember Don Henley coming to Austin during what would have would have been the 2001 or the 2003, I don't remember, legislative session where we all sat around with folks from Environmental Defense Fund and National Wildlife, Sierra Club, San Marcos River Foundation. We all, you know, had a hammering out a press release and preparing for a press conference at the Texas capital the next day. And that was a kind of a highlight for me, because now I can because I sat around a table with about twelve other people, wordsmithing a press release with Don Henley. I can now claim that I have co-written with Don Henley, which is kind of cool for any, for any old fart who actually knows who the band Eagles are.

David Todd [00:44:34] You'll have to set it to music!

Ilan Levin [00:44:38] Yeah, I don't, it wouldn't have been a very good song, but, but, you know, we got the attention of the Legislature and lieutenant governor and, you know, the leaders of the House and the Senate, we certainly got their attention. And that was, you know, whether, whether that strategically made a lot of sense or whether it was good or bad, I don't know. I don't know. I think that, I think that the San Marcus River Foundation was, you know, very much targeted. There was a strong and organized effort by the river authorities and others who developed water for sale to, to kill that San Marcos River Foundation application and to stop this from ever happening in. So, in my view, I don't I don't think that we get ourselves any disservice by, by kind of bringing in these other groups and filing those additional water rights applications, because it was already, it was already kind of a big political issue at that time.

David Todd [00:46:02] So my understanding was that the Legislature, on the second round of trying to kill the application basically excised the idea of estuarine and instream flows being a beneficial use. Was that what undercut the application or was there other changes?

Ilan Levin [00:46:27] I think. David, I think that's right. And I just really a my work, my legal work ended up, frankly, you know, we ended up moving to Washington, D.C. for other reasons for a couple years, and I have been working on air pollution ever since then. And I haven't been engaged, involved in this, you know, in this issue. And so I honestly, you know, as we got into the subsequent legislative sessions, Senate bill 3 or 7 or whatever, whatever, those major water bills that were, that were passed in those sort of subsequently, I don't, I just don't have a lot of experience. I don't remember anything about that. I didn't really work on it, but just in general, yes. The Legislature did, finally, change the law, or tweak the law. And to do just that, to stop conservation groups from, from applying for, for water rights, for instream flows.

Ilan Levin [00:47:56] You know, at the time. The whole plan and the intention of the San Marcos River Foundation was to get that water right and then to essentially donate it to the state of Texas. There was a water trust that was set up for this purpose, for the purpose of, of, oh, allowing people to donate or set aside water, you know, to be, to be used for, to stay in the rivers. And at that time, in 2001, when I was involved, I don't recall that there was much, if any, you know, water that had been set aside into that Texas trust.

Ilan Levin [00:48:48] And so the intention, you know, the plan was that San Marcus River Foundation was going to pay for and get the water right for the, you know, for environmental purposes and then just set them aside in trust with the state, you know, in perpetuity. And that was the plan with these other groups that I mentioned, Catto Lake Institute and the Galveston and Matagorda Bay folks. That was the plan.

Ilan Levin [00:49:21] So there were there were, you know, provisions in the Texas law. Maybe many of them are still intact today. And I'm just not involved in in water law anymore. But there were other provisions in the law that, that allowed for the setting aside of instream flows, and bay and estuary flows. And that, you know, those, those, I think came, came about, you know, as the sort of consolation prize or the fallback, if you will, for the environmental community, the conservation community. So that even though they, you know, even though the powerful interests ultimately succeeded in in, in, in killing, you know, stopping the water rights from being granted for these purposes, I think, and I believe, that that some of the compromises were made. And so, you know, I'm not sure if if that's maybe a little Pollyanna. And again, I'm not, just I'm not steeped in water law at all anymore. I just was fortunate to be involved in this for just a couple of years. And, and that was that was how I think it played out.

Ilan Levin [00:50:57] So, you know, ultimately, I don't think that, you know, I don't think that the laws were great. But, but at least the environmental conservationists had some leverage and some power that allowed us to perhaps not get completely steamrolled by the powerful interests that control Texas politics.

Ilan Levin [00:51:31] Yeah, you know, that's the same thing. You know, really the - I'm sorry to butt in - but it, you know, the same thing had happened with the regulation of groundwater again in the 90s, mid 90s, where when Sierra Club brought those lawsuits against pumpers in, of water from the Edwards aquifer, including the City of San Antonio. They did, they ultimately may not have won those Endangered Species Act lawsuits, but, but the Legislature, in order to make, make those go away, did begin to regulate groundwater. So even though we have a very imperfect system of not, not-so-great groundwater regulation today in Texas, I

think that the fact that we have something and that we got, began to take ground water regulation at least seriously in Texas in the late 90s, I think that that was a direct result would not have happened, but for the legal action that the Sierra Club took, and same thing with San Marcos River Foundation.

Ilan Levin [00:52:57] You know, I think it was, I think it was always kind of seen as as maybe a long shot, just because I think SMRF and SMRF's allies always knew that the Legislature, you know, the powers-that-be in Texas would, would not allow it, ultimately would not allow environmental groups to set aside water that moneyed interests were, were after. But, but I think it gave us some power to either make some of those subsequent water bills less bad or at least try to get some protections for, you know, for, for instream flows and for freshwater inflows.

David Todd [00:53:58] That's interesting. So, if I got a sense of what you're saying, that the legal struggles and the political struggles, both in the case of surface water and groundwater regulations in trying to provide water that can be assured for environmental reasons were not successful, certainly, but they might have provided some kind of educational values, kind of a teaching moment, where the state saw that these were finite resources that had to be protected at some level.

Ilan Levin [00:54:41] Yeah, I think so. I mean, even more than I think educational value or teaching value, although that is a big part of it, I think it gave the environmental community and you know, some leverage, some, some muscle that we we did not have and would not have had, absent the, the filing of that water rights application. Because, again, even though the state of Texas very clearly and very openly said, you know, we're not going to keep processing, we do not want to issue this application, are very clear about it. And we, and we, in fact, had to file a lawsuit on behalf of the San Marcos River Foundation to try to push the, we call it TCEQ, to, to process the application. And it was a lawsuit that I think we filed. I don't know that that it ever really moved, but we were trying to light a, light a fire under the state agency to say you can't just sit on this application forever.

Ilan Levin [00:56:01] But even while they were sitting on it, waiting for the Legislature to change the law, to kill the SMRF application, this priority date, again, that that filing of the application under the law, on the books at the time, that are still around today, that kind of go, go back to the mining laws in the 1800s, that became the priority date, was always hanging out there. And so any big city or any water developer that had any plans to take water out of the Guadalupe basin, they knew that until that SMRF application was killed and voided and just, you know, buried, they knew that they had this problem hanging over them.

Ilan Levin [00:56:59] So it I think it provided the education and the teaching value for state policymakers and politicians. But it also gave a voice and I think some muscle to the environmental community as well, to at least have a seat at the table in some of those legislative negotiations.

David Todd [00:57:28] This is great. Really learned a lot.

David Todd [00:57:29] Well, let's do one last question, if, if you don't mind, you know, when you look back on this course of litigation over Texas water rights, you've taken some lessons and I think you've described them. Could you sort of apply those and and tell us what you foresee for the future of the whooping crane and other wildlife that may be relying on the water inflows to Aransas Bay, and more broadly, Texas.

Ilan Levin [00:58:09] Try! Good hard question. Guess I could kind of take it maybe two separate parts. I'm not sure if that's exactly what you were asking, but the lessons that I learned and this is coming from, I think, the perspective of an environmental lawyer who works in Austin. The lessons that I learned, first of all, are that you know, quick, any time I've been involved in a lot of different campaigns on air pollution and water pollution over the years and the SMRF application was kind of the first time I, this, this really hit, hit home to me, what I'm about to say.

Ilan Levin [00:59:01] But the lesson is to me was that there's no there are no quick victories. There are no easy victories, when we're working on anything related to protecting the environment in Texas. You know, any any quick victory or easy victory is not a victory at all. And we, we kind of have, we always, we make incremental progress. But that's the lesson I was really thinking about, was that when we, we know we're being successful, and we know we are doing the right thing, when the legislature changes the rules on us. It's happened to me a couple times over my career so far, and SMRF was the first time that I saw this, that that when we use the rules that are on the books, that are mainly, not always, not entirely, but largely written by lawyers and lobbyists for powerful and moneyed interests, and when we use those rules to protect vulnerable people or critters that don't have moneyed interests in the state capital, then they change the rules on us, which is frustrating, but it, to me, it shows that we're we're doing the right thing and that we're, we're being smart about, about our advocacy, and that's, that's one of the lessons I guess I learned as a young lawyer at that time from, from my work on this, on this on the SMRF application and on water rights.

Ilan Levin [01:00:58] And then your harder question, which I don't even think I could answer, about the future of the whooping crane. I don't, you know, I don't have a crystal ball. And I, and I'm, I've been I think I've been accused of mainly being a cup half-empty guy. And I don't, and I don't base what I'm about to, I think that I don't know what the science would say and what the experts would say about the future of the whooping crane in Texas. But, you know, as I sit here today in, you know, May of 2020 and the cranes have made a remarkable recovery in, in the Aransas National Wildlife Refuge and in that part of Texas. So, you know, up, up to and again, I'm not the expert and I'm not, really not, not a wildlife expert at all. But at the time that I was involved in this, it was, they were down to a handful. And I don't remember the number, but down to maybe 15 at one point - pairs, you know, breeding pairs. And they've made a remarkable recovery today. Again, I don't know what the details and I don't know the ins and outs of what's happening right now, but they are so resilient. And I guess I'm beating around the bush - long-winded way of saying that I think that I think the whooping cranes are more resilient than perhaps humans. And, and so I guess it's just an article of faith, almost a religious belief maybe that I have that, but they'll be around a lot longer than, than we will. They'll be around after we're long gone. And so that's really what I believe.

Ilan Levin [01:03:16] Yeah, so that's it.

David Todd [01:03:20] Great. So interesting. Thank you. Is there anything you'd like to add, before we wrap things up.

Ilan Levin [01:03:32] I don't, I don't know that there is. I hope I've answered some of your questions, David. And I also hope that I've been really clear in this interview that we're talking about something that I was. You know, I'm, I feel kind of humbled and fortunate. I was fortunate to be involved in this long and still ongoing struggle. And even though my work changed, many years ago, into a different area of environmental law, so that I'm not at all

steeped in any of this water, water law today and haven't been for quite some time, I just wanted to share with you what I, what I remember and what I learned about this, you know, my very small role and work on, on, on this, you know, on this case. So I'm definitely not the expert.

Ilan Levin [01:04:47] And, you know, it was a lot of really smart and brave people, including Dianne Wassenich, and Tom Wassenich, and the leaders of San Marcos River Foundation, you know, who kind of did something that the major environmental groups, you know, did not do, and for very various reasons, were not were not able to do. But they they were a small group that was fed up and they knew that they had to do something and they took action and, and they and they, you know, they certainly made a massive impact on Texas water policy for, you know, and will never be forgotten. So I just you know, I just wanted to make sure that I was, that I'm really clear, since you are recording this for posterity, that, that I played a minor supporting role for a short time in this big and ongoing battle. And I hope that a few of my thoughts are, you know, valuable. But, but, you know, I'm certainly no expert. So, anyway, thanks a lot for, for interviewing me.

David Todd [01:06:16] Oh, my pleasure, honor, privilege. Thank you so much for taking time to talk about this, and to remember, you know, what was happening then and and being a witness to it. So thank you so much. I hope you have a good day and hopefully we can meet again real soon, virtually or in person.

Ilan Levin [01:06:40] Thanks, David. Same here.

David Todd [01:06:41] All right. Take care.

Ilan Levin [01:06:43] Take care. Talk to you soon. Bye bye.

David Todd [01:06:45] Bye bye.