

# The Attorney Who Almost Got Away

Photo: Peter Truoney

Nicole Sasaki, an undergraduate at UC Berkeley, was watching the news one day in 2007 when she learned about Baykeeper. A cargo ship named *Cosco Busan* had spilled more than 53,000 gallons of oil into the Bay, killing wildlife and closing beaches. Nicole was impressed by Baykeeper's immediate response to hold both polluters and cleanup agencies accountable. She was also pleased to see that Baykeeper's executive director and lead attorney were both women.

In that moment, Nicole set her sights on one day joining the Baykeeper team. She went on to study environmental law at Pace University in New York, and she spent time as a law clerk for the Pace Environmental Litigation Clinic, Earthjustice, and our sister organization, Hudson Riverkeeper, where she advocated for the protection of New York City's watershed and defended public parkland.

After graduating at the top of

her class, it felt like fate when Baykeeper posted an opening for an associate attorney. She immediately applied, feeling confident she'd at least hear back. But Nicole almost didn't get called in for an interview. It was only when one of her law professors called Baykeeper to recommend her to the hiring committee that we discovered there was no application for her on file. It had gotten redirected to a junk folder by our email spam filters.

But for that lucky call—and nobody emptying the spam folder—Baykeeper might have missed out on one of the most talented environmental attorneys in the field!

This past year, Nicole secured a big win in federal court in *San Francisco Baykeeper v. Environmental Protection Agency*.

Nicole and our allies were up against Trump's EPA, who were attempting to convince the judge

that the South Bay salt ponds were actually land and didn't merit Clean Water Act protection. The purpose of their nonsensical argument was to make it easier



Photo by Robb Most

for the ponds, owned by corporate giant Cargill, to be sold and paved over for development.

The judge sided with us and the Bay, ruling the ponds are wet, therefore water.

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## Baykeeper in Action

This past February, I was in the middle of a Zoom meeting when my cell phone started buzzing. Texts were coming in from Richmond residents alerting us to an oil spill near Chevron's tanker wharf. I quickly wrapped things up and called our field investigator—and happily discovered he was already on his way, because someone had also notified our hotline.

He was first on the scene, and deployed Baykeeper's new drone before the response agencies arrived. Our drone (thank you for the generous donation, Autonomous Imagery!) was able to capture high-resolution imagery



A still of Baykeeper's drone footage of Chevron Richmond's spill in February.

Chevron and state agencies produced an update on joint letterhead that proclaimed the response was perfect.

The Richmond City Council held an inquiry, where our staff attorney asked hard questions: Why was Chevron alerted to the spill by a local resident, rather than its

happening, and also prepare for a future that no longer relies on dirty fossil fuels.

We can have both a healthy economy and environment if we create a thoughtful plan to move to clean energy, train workers for new opportunities, prepare cities for different economic realities, protect the environment from outdated infrastructure, and put the health of frontline communities first.

That's why Baykeeper and our partners will continue to raise the alarm and advocate for justice. Together, we can take action for a Bay Area that's free of dirty oil and healthier for everyone.

Wishing you—and the Bay—good health,

A handwritten signature in black ink, appearing to read "Sejal Choksi-Chugh".

Sejal Choksi-Chugh,  
Executive Director



***This spill made clear that we need to... prepare for a future that no longer relies on dirty fossil fuels.”***

of the spill, which we shared with both news media and regulatory agencies in real time.

I love stories like this of Baykeeper in action!

Unfortunately, the spill also revealed something disturbing. Our footage showed that Chevron's initial response had failed. Oil had breached the company's small yellow boom, and a rainbow sheen had spread to public beaches and sensitive eelgrass beds. Nonetheless,

own monitoring system? Why did the response agencies and the polluting company present a joint update, rather than an independent agency report that the public could better trust? How can we be sure that Chevron will maintain its infrastructure so it doesn't pollute the Bay again? He concluded that this could have been a bigger disaster, but Chevron and the Bay just got lucky.

This spill made clear that we need to prevent accidents like this from

## Last Gasp for the Longfin Smelt

Sometimes justice delayed is justice denied. And so it could be with the Bay's longfin smelt.

This native fish population has declined 99.9 percent since the late 1980s, signaling widespread decline in the larger San Francisco Bay ecosystem. Identifying this fish as a federally endangered species—something Baykeeper has sought since 1992—is long overdue.

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***“Unless something changes, the Bay’s longfin smelt will be wiped out.”***


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Like many of the Bay's native fish and wildlife species, longfin smelt are sensitive to the amount of fresh water that flows into the Bay from its tributaries. “When too much fresh water is diverted to industrial agriculture and urban water users, the Bay's longfin smelt population suffers. Unless something changes soon, they will be wiped out,” noted Baykeeper Senior Scientist Jon Rosenfield, PhD.

Longfin smelt throughout California have been on the state's endangered list since 2009. But the state has repeatedly failed to improve Bay-Delta water quality standards, which would protect longfin smelt and many other native fish species. And Governor Newsom continues to block updates to those standards.

That's why Baykeeper sued the Biden administration in early April to list the longfin smelt as a federal endangered species.

A federal endangered species listing would force the US Fish and Wildlife Service to develop guidelines for the fishes' protection, which would necessarily include increased fresh water flow into the Bay during winter and spring months.

“The federal government and the state of California both have a responsibility for the extinction of the species that's happening in the Bay right now, and that's why we had to take legal action,” said Staff Attorney Ben Eichenberg. 

## Up for a Challenge?

Join Baykeeper's campaign to stop trash in San Francisco Bay!


We're seeking volunteers to hold neighborhood cleanups, and help track and stop trash pollution all around the Bay.

To register, visit:

[baykeeper.org/cleanups](https://baykeeper.org/cleanups)

### ***The Attorney... (continued from Page 1)***

And since they're connected to the Bay, they most definitely should be protected under the Clean Water Act. Now thanks to Nicole and our co-counsel's hard work, those 1,400 acres can continue providing habitat for wildlife, have the potential to be restored as wetlands, and provide a natural buffer to protect against climate-driven sea level rise.

Nicole's day-to-day work entails making sure that polluters live up to their obligations under the Clean Water Act and their legal settlements with Baykeeper. And right now, she's also preparing for her first case before the Federal Ninth Circuit Court of Appeals. Stay tuned for news about that one! 

## Baykeeper is your fierce champion for San Francisco Bay.

Help keep us on patrol, on the job, and in the courtroom—holding polluters accountable and protecting the Bay for all.



Use the attached envelope or visit [baykeeper.org/donate](https://baykeeper.org/donate) to make your gift.


## SPRING/SUMMER 2021 BAYKEEPER NEWS

### The Case of the Missing Birds

Not long ago, paddlers at Aquatic Park in Berkeley noticed something strange. The birds had disappeared. The water had a nasty smell. There weren't many fish.

Baykeeper received several pollution hotline tips, and we worked with recreation groups and the City of Berkeley to pinpoint the culprit. What we found came as a surprise: tubeworms (*pictured, below*) had clogged the tide tubes connecting Aquatic Park to the Bay, and the tubes themselves were crumbling, creating stagnant conditions.



So the City cleaned and renovated the tubes—a low-cost solution that has made all the difference in the world. Now the Bay's tides freely circulate through Aquatic Park, clearing out the smell and the scum and welcoming paddlers, fish, and birds back to this beloved part of the East Bay. 



Above: Rowers and a Great Egret enjoying Berkeley's Aquatic Park.  
Photo by TJ Gehling, Flickr/CC.

Left: Tubeworms clogging tide tubes at Aquatic Park.  
Photo courtesy of the City of Berkeley.

