

The public trust and the Mono Lake story

by Geoffrey McQuilkin

The Clean Water Act. The Clean Air Act. The National Environmental Policy Act. The Endangered Species Act. These laws are seen as some of the foremost expressions of our public desire to protect natural resources and the environment we live in. By and large, they have been formulated in the last 30 years. But just because these key environmental laws are relatively new doesn't mean the concept of protecting public resources for all generations is new itself. Indeed, the legal doctrine known as the public trust, dating back to Roman times, has articulated that concept for centuries.

What is the public trust? Author John Hart broadly describes it as "the concept that certain lands and resources belong to the whole people and that the government, which serves as guardian, has an inescapable duty to manage these properties well." In California, the public trust is incorporated into the state constitution, with a particular focus on water.

The public trust duties of the state, however, have not always been in the minds of resource managers. The excessive diversion of water from Mono Lake clearly illustrated this point: the state allowed water diversions to the detriment of the public trust values at the lake and its tributaries. In fact, when water rights were issued to Los Angeles in 1940, the responsible agency felt powerless to do anything else: "It is indeed unfortunate that the City's proposed development will result in decreasing the aesthetic advantages of the Mono Basin," it observed, "but there is apparently nothing that this office can do to prevent it."

As Mono Lake advocates know, lawsuits on the Mono Lake matter went to the California Supreme Court, and a landmark 1983 decision revitalized the concept of the state's continuing responsibility for public trust protection. The public trust, as the court wrote at the time, is an "affirmation of the duty of the state

to protect the people's common heritage of streams, lakes, marshlands, and tidelands."

The public trust is, in truth, a remarkably broad-minded concept. Well before talk of ecosystem management and ecological thinking, it recognized that there are certain parts of the natural world that no one can own individually, that benefit us all, that we must all be the caretakers of. It recognizes our common heritage and places on us a duty for our common future.

In balancing water rights with the state's duty to protect the public trust, the court underscored that that duty of protection can *never* be abandoned, writing, "The state is not confined by past allocation decisions." Despite the decisions made in the 1940s, the state still bore the responsibility of protecting the public trust at the lake, and it did so in 1994 through the State Water Board decision.

In the future, the public trust will be even more critical as we strive to protect our common natural heritage while our state population grows by a projected 20 million individuals. As at Mono Lake, the public trust can inspire us—and has the potential to force us—to examine difficult situations, such as balancing the water needs of people and the environment, well before we bankrupt our natural wealth.

Other paths are out there as well. Idaho has charted a different course. In 1990s the legislature passed a law specifically stating that the public trust should *not* be taken into account in the granting of water rights. Hawaii, on the other hand, went farther than California, ruling that the public trust protections there apply to groundwater as well as surface water.

As always, the support—and voices—of the people of this great, diverse, naturally rich, environmentally threatened state will be the force that keeps the public trust energized in public policy. 🏔️

Geoff McQuilkin is the Committee's Executive Director of Operations. He's ready to ski—he waxed his skis in August!

Public Trust timeline	
1977	Mono Lake Ecological Study completed by a group of U.C. Davis undergraduate students
1978	Mono Lake Committee formed
1979	Mono Lake Committee, Audubon Society, and Friends of the Earth combine forces with Morrison & Foerster Law firm to begin the public trust case
1980	First Mono Lake Bike-a-thon
1981	California created Mono Lake Tufa State Reserve Supreme Court accepts public trust case and begins hearings
1982	Lake hits historic low at 6,372 ft.
1983	National Audubon Society v. Los Angeles decision reinvigorates the state's duty to protect the public trust particularly in regard to Los Angeles' water licenses
1984	National Forest Scenic Area created by Congress as wet weather puts flows, and fish, down streams
1985	First stream lawsuits filed to sustain flows and viable fisheries
1989	AB444 funds \$60 million for water conservation and reclamation to offset Mono Lake diversions Preliminary injunction mandates the temporary halt of water diversions
1990	Water Board begins the Mono Basin EIR
1993	40+ days of hearings on Mono Lake include public trust values analysis
1994	Water Board decision mandating restoration and target lake level of 6392