

# Nature vs US Government.

From the article below, *The Public Trust Doctrine at Mono Lakes*, the Public Trust Doctrine (**Law of Nature**) over-ruled a decision by the US Government. If the **Law of Nature** can over-rule the US Government, then surely it can over-rule the New Zealand Government and its racist Bill.

*“By the law of nature these things are common to mankind -the air, running water, the sea and consequently the shores of the sea”*

- Institutes of Justinian 500AD

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# The Public Trust Doctrine at Mono Lake

## The Public Trust Doctrine

*Trust: an arrangement whereby a person (a trustee) is made the nominal owner of property to be held or used for the benefit of one or more others.*

A grasp of the ancient public trust doctrine is fundamental to understanding how Mono Lake's status changed from doomed to saved. In 1983, early in the battle to save Mono Lake, the Supreme Court of California ruled that Mono Lake has "public trust values" that must be considered in any decisions about the lake's water. Water diversions from Mono Lake were reconsidered in light of the Court's decision, leading to the lake's ongoing recovery. Since the California Supreme Court's decision in 1983, which is considered one of the top ten environmental law cases of the 20th century, the public trust doctrine continues to be used to protect natural resources in the United States.

## Brief History

*"By the law of nature these things are common to mankind –the air, running water, the sea and consequently the shores of the sea"*  
– Institutes of Justinian

The essence of the public trust doctrine has existed since Roman times, and was first articulated in the laws of Emperor Justinian. In its early form, the idea of the public trust sought to protect the public's rights to access certain resources, particularly navigable bodies of water. Public uses of water resources were to be protected by the state, which, as a trustee, could not grant exclusive rights to any single individual or entity. Giving ownership or rights to an individual would infringe on the public's right to access and use the resource.

The public trust doctrine was inherited by the England's legal system, and emerged in 1215 as part of the Magna Carta, the document which sought to limit the power of the king. The Magna Carta specifically condemned interference with public access to navigable bodies of water, and prevented the king from giving favored noblemen exclusive rights to hunt or fish in certain areas. Though the king was understood to own the land, he had an obligation to protect it for the use by the general public.

As the public trust doctrine moved into US common law, many questions remained about its scope. Could it protect natural resources, including non-navigable waters, or was it limited to shores and large water bodies? Some states incorporated the doctrine into their constitutions; one manifestation exists in rules about the California coastline. As emphasized in Roman law, the land exposed between high tide and low tide is open to everyone – no individual can own this land, or prevent others from walking along it. Throughout the 20th century, the public trust doctrine was referenced in several cases, but much more attention was turned to the doctrine after Joseph Sax wrote an article in 1970 applying the public trust doctrine to natural resource management.

## The Public Trust Doctrine at Mono Lake

*"The public trust...is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands...."*  
– Supreme Court of California, 1983

As researchers studied the ecology of Mono Lake and activists sported "Save Mono Lake" bumper stickers, a few minds were hard at work digging up theories that could save the lake. UC Berkeley student Tim Such, influenced by Joseph Sax's article, was the first person to suggest using the public trust doctrine in court; the law firm of Morrison and Foerster, which worked on the Mono Lake case, found this idea the most powerful among the theories considered. In 1979, the National Audubon Society and the Mono Lake Committee filed a law suit against Los Angeles, and the crux of this suit was the public trust doctrine.

While the law suit was going on, Harrison Dunning, a Mono Lake supporter and a law professor at UC Davis, organized a conference in 1981 called "The Public Trust Doctrine in Natural Resources Law and Management." During the conference, he challenged the participants to consider several questions, among them: Is there a single public trust doctrine? Is the doctrine applicable to any natural resource? What kinds of public uses are protected by the public trust doctrine? The conference also considered to what degree the public trust doctrine threatened established water rights that were historically understood to be difficult to challenge. While the conference left many questions unanswered, it raised awareness about the public trust doctrine and foreshadowed its ultimate use in the decision about Mono Lake.

In February of 1983, the California Supreme Court announced that the public trust doctrine applies to Mono Lake, a victory for advocates of the lake. Expanding the ancient doctrine to include recreational and aesthetic values and the importance of the lake to wildlife, as earlier decisions had established, the Court decreed that Mono Lake has "public trust values" that the state has an obligation to maintain. The Court ruled that the predecessor to the State Water Board had not taken these values into account when allowing Los Angeles to divert water from the Mono Basin, and that the water rights of Los Angeles and the public trust values of Mono Lake had to be more fairly balanced.

It took another 11 years for this ruling to be enforced, which came in the form of the California State Water Resources Control Board's Decision 1631 in 1994. This decision, which took into account many studies about the lake, mandated a lake level of 6392 feet above sea level. This level would protect the public trust values and ecology of the lake while still allowing some water to flow to Los Angeles. Without the 1983 ruling that public trust values must be considered in conjunction with water rights, a cooperative decision that protects the health of the lake and still allows moderate diversions to Los Angeles would not have been possible.

## The Public Trust Doctrine after the decision at Mono Lake

Though many questions remain about applying the public trust doctrine in other cases, the Mono Lake case clears up some of the it's ambiguity. In earlier court cases, particularly Marks v. Whitney, the public trust doctrine had been understood to protect more than simply public access to certain resources; it also protects recreation, aesthetic values, and ecology. This interpretation was reinforced by the Mono Lake decision. The Mono Lake decision also provided another interpretation of the doctrine, one that gives it considerable force. Water rights in the West had been nearly invincible; the public trust doctrine, however, can insist that these rights be changed to protect resources belonging to the public, and the water rights holder will be given no compensation.

Mono Lake supported a revival of the venerable public trust doctrine, giving environmentalists a reminder of a powerful force for protecting our land and waters. As the Mono Lake case demonstrated, it is possible to call upon the government to protect values inherent in the natural places that belong to everyone.

## References:

Arnold, Craig Anthony. "Working Out an Environmental Ethic: Anniversary Lessons from Mono Lake." Wyoming Law Review, Vol. 4 No. 1, 2004.  
<http://www.monobasinresearch.org/images/legal/arnoldethic.pdf>

Dowie, Mark. "In Law We Trust: Can Environmental Legislation Still Protect the Commons?" Orion Online. July/August 2003.  
<http://www.oriononline.org/pages/om/03-4om/Dowie.html>

Dunning, Harrison C. "California Instream Flow Protection: Then and Now." McGeorge Law Review. McGeorge School of Law, University of the Pacific, 2005.  
Hart, John. Storm Over Mono. University of California Press: Berkeley, 1996.

"The Mono Lake 'Public Trust' Decision of the California Supreme Court." February 17, 1983. Reprinted by the Mono Lake Committee.

"The Public Trust Doctrine in Natural Resources Law and Management: Conference Proceedings." Harrison C. Dunning, editor. The Regents of the University of California, 1981.

The One New Zealand Foundation believes this Bill must be amended to read:

**The Crown must retain the Foreshore and Seabed in trust for all the people of New Zealand but any area that a group of New Zealand Citizens can prove to be of significant wahi tapu/sacred value must be respected by the public and protected by the Crown.**

The End.

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