

## ABSTRACT

### **THE PUBLIC TRUST DOCTRINE, PRIVATE WATER ALLOCATION, AND THE MONO LAKE STORY** Cambridge University Press (forthcoming, 2019)

-- Erin Ryan, Elizabeth C. & Clyde W. Atkinson Professor of Law, Florida State University

This book recounts the epic tale of the fall and rise of Mono Lake—the strange and beautiful Dead Sea of California—which fostered some of the most important environmental law developments of the last century, and which has become a platform for some of the most potentially important developments in the new century. It shares the backstory and legacy of the California Supreme Court’s famous decision in *National Audubon Society v. Superior Court*, 658 P.2d 709 (Cal. 1983), known more widely as “the Mono Lake case.” Inspired by innovative legal scholarship and advocacy, the decision spawned a quiet legal revolution in public trust ideals, which has redounded to other states and even nations as far distant as India.

The Mono Lake dispute pitted advocates for the local ecosystem and community against proponents of the continued export of Mono Basin water to millions of thirsty Californians hundreds of miles to the south. The controversy itself spanned decades, but the story leading up to the litigation stretches back more than a hundred years, adding depth and dimension to the tale that is easily missed on a casual reading of the *Audubon Society* decision itself. It is a case study on the challenges and possibilities for balancing legitimate needs for public infrastructure and economic development with competing environmental values, all within systems of law that are still evolving to manage these conflicts. And at this particular moment in time, commemorating the hundredth anniversary of the Los Angeles Aqueduct that would threaten the lake and the twentieth anniversary of the State Water Board’s ultimate decision to save it, the Mono Lake story is especially worth revisiting.

After explaining its significance for water policy conundrums worldwide, the book introduces the primary legal doctrines around which the Mono Lake story unfolds—the public trust doctrine and prior appropriations doctrine of private water allocation. It recounts the Californian water struggles leading up to the case, focusing on the early history of the Los Angeles Aqueduct and the local consequences for the Owens River Valley. It then reviews the extension of the Aqueduct to the Mono Basin, exploring the impacts of water diversions to the local ecosystem and economy, and the political movement that emerged to challenge them. In discussing the litigation and subsequent administrative proceedings, it considers the doctrinal innovations in the case and their intellectual aftermath, including criticism by advocates for property rights, environmental protection, and the constitutional separation of powers.

The book concludes with attention to unfolding doctrinal developments and parting reflections about unresolved questions that the Mono Lake story leaves us to ponder, including whose interests count when we talk about the “public” trust, how they differ from aggregated private interests, and which to account for when balancing the competing considerations in public trust conflicts. It considers the extent to which the doctrine creates substantive or procedural obligations, and the responsibilities of different legal actors in implementing them. The contested answers to these questions are what make the public trust doctrine so fascinating, so powerful, and so critical as we confront the inevitable conflicts over natural resource values.