

# INTRODUCTION

## DEVELOPMENTS IN THE PUBLIC TRUST

Forty-five years ago the late Professor Joseph L. Sax, the father of the modern public trust doctrine, published his seminal article, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*. The article laid out an outline and argument for a strong public trust doctrine. In Sax's view, the public trust doctrine had the potential to provide a comprehensive approach and solution to natural resource management problems.

Forty-five years later there is more of a need than ever for a comprehensive approach to pressing environmental concerns. As society confronts a changing environment and the pressures and constraints of limited natural resources, there is a need for local, national, and global solutions. Perhaps more than anything else, there is a need to recognize the underlying principle of the public trust doctrine—that our natural resources should be used for the good of all and are not to be exploited by the few. Recent developments in the public trust doctrine may provide much needed answers. Hopefully these developments can help ensure that the beauty and plenty of our natural world can be protected for generations to come.

To contribute to this ongoing development in some small way, Lewis & Clark Law School hosted a symposium entitled *Developments in the Public Trust*. Many of the nation's leading scholars on the public trust doctrine were in attendance. Additionally, many prominent scholars wrote articles for publication in this 2015 symposium edition of *Environmental Law*. The following articles represent some of the ideas presented at the symposium.

Professor Mary Christina Wood and Dan Galpern argue that by recognizing an atmospheric trust the public trust doctrine can be used to hold major fossil fuel corporations liable for the damage they have done to the atmosphere through the production of greenhouse gases. James L. Huffman, Dean Emeritus of Lewis & Clark Law School, critiques the modern public trust doctrine as divorced from its historical roots and argues that modern public trust theories go against the constitutional separation of powers, the rule of law, due process, secure property rights, and the economic prosperity on which environmental protection ultimately depends.

Professor Gerald Torres looks back on Professor Sax's contributions to property law and theory and the implications they have on democratic political theory. Professor Michael C. Blumm and Lynn Schaffer critique the recent D.C. Circuit opinion in *Alec L. v. McCarthy*, arguing that the public trust doctrine is an inherent limit on all sovereign authority, including that of the federal government. Professor Alexandra B. Klass examines the intersection between state environmental rights statutes and the public trust doctrine, as well as the reemergence of the public trust doctrine in Minnesota. Professor John C. Dernbach discusses the origin of Pennsylvania's Environmental Rights Amendment, the reasons why it lay dormant for so long, the recent Pennsylvania Supreme Court decision *Robinson Township v. Commonwealth*, its aftermath, and suggestions for how current issues resulting from the opinion may be resolved. Professor Robin Kundis Craig uses Professor Sax's public trust doctrine to illuminate structural and analytical problems with the regulatory takings doctrine. Finally, Professor Erin Ryan recounts the story of Mono Lake and how it was saved by a pivotal court case invoking the public trust doctrine.

*Environmental Law* would like to thank the authors who contributed to the symposium edition, the symposium presenters and participants, and the planning committee for their time and hard work. Hopefully the symposium will contribute to the ongoing dialogue surrounding the public trust doctrine and help forward the development of this important doctrine. Only with a strong legal framework can we confront the complex and critical environmental concerns of our time.

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Symposium Editor