

The Legal and Ethical Case for a Conservation Pool for Great Salt Lake

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“Conservation pool”

- Minimum water levels necessary to support and maintain important public resources such as navigation, ecosystem components and services (including fish and wildlife), recreation, and aesthetic values.



Source in Roman Law

“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 2.1.1

Illinois Central RR v. Illinois

“It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry commerce over them, and have liberty of fishing the State may grant parcels ... so long as [they] do not substantially impair the public interest
The control of the State can never be lost

”

....

Mono Lake Decision

(Nat'l Audubon Soc. v. Superior Court)

“The principal values plaintiff’s seek to protect ... are recreational and ecological – the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds.... it is clear that protection of these values is among the purposes of the public trust.”

Mono Lake Decision

“This authority bars ... any ... party from claiming a vested right to divert the waters once it becomes clear that such diversions harm the interests protected by the public trust.”

Owens Lake



Owens Lake



Utah Constitution, art. XX, §1

State lands “are hereby accepted, and declared to be the public lands of the State; and shall be held in trust for the people.”

Coleman v. Utah State Land Board

“The essence of this doctrine is that navigable waters should not be given without restriction to private parties and should be preserved for the general public for uses such as commerce, navigation, and fishing.”

795 P.2d 622 (Utah 1990)

National Parks and Conservation Association v. Board of State Lands

“[T]he ‘public trust’ doctrine ... protects the ecological integrity of public lands and their public recreational uses for the benefit of the public at large.”

869 P.2d 909, 919 (Utah 1993)

Main Clean Water Act Goal

- “The objective of this [Act] is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

1972 Senate Report:

- “Maintenance of such **integrity** requires that any changes in the environment resulting in a physical, chemical or biological change in a pristine water body be of a temporary nature, such that by natural processes, within a few hours, days or weeks, the **aquatic ecosystem** will return to a state **functionally identical to the original.**”

1972 House Report:

- “The word **"integrity"** as used is intended to convey a concept that refers to a condition in which the **natural structure and function of ecosystems** is maintained.”

CWA section 101(a)(2)

- “... it is the national goal that wherever attainable, an interim goal of **water quality** which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.....”

CWA section 303(c)(2)

- “... water quality standards shall consist of the **designated uses** of the navigable waters ... and the **water quality criteria** for such waters based upon such uses.”

CWA Anti-degradation Rule

- “Existing ... water uses and the level of water quality necessary to protect those uses shall be maintained and protected.”

GSL Designated Uses

- Primary and secondary contact recreation
- “waterfowl, shorebirds and other water-oriented wildlife including their necessary food chain”

PUD No. 1 of Jefferson County v. Washington Dept. Ecology

- “... A water quality standard must ‘consist of the designated uses of the navigable waters involved *and* the water quality criteria for such waters based upon such uses.... The language of §303 ... require[s] that a project be consistent with both components, namely, the designated use and the water quality criteria.”

*PUD No. 1 of Jefferson County v.
Washington Dept. Ecology, 511 U.S. 700
(1994).*

- Argument that “the Clean Water Act is only concerned with water ‘quality,’ and does not allow the regulation of water ‘quantity’ ... is an **artificial distinction**. In many cases, water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses, be it for drinking water, recreation, navigation or, as here, as a fishery.”

Aral Sea

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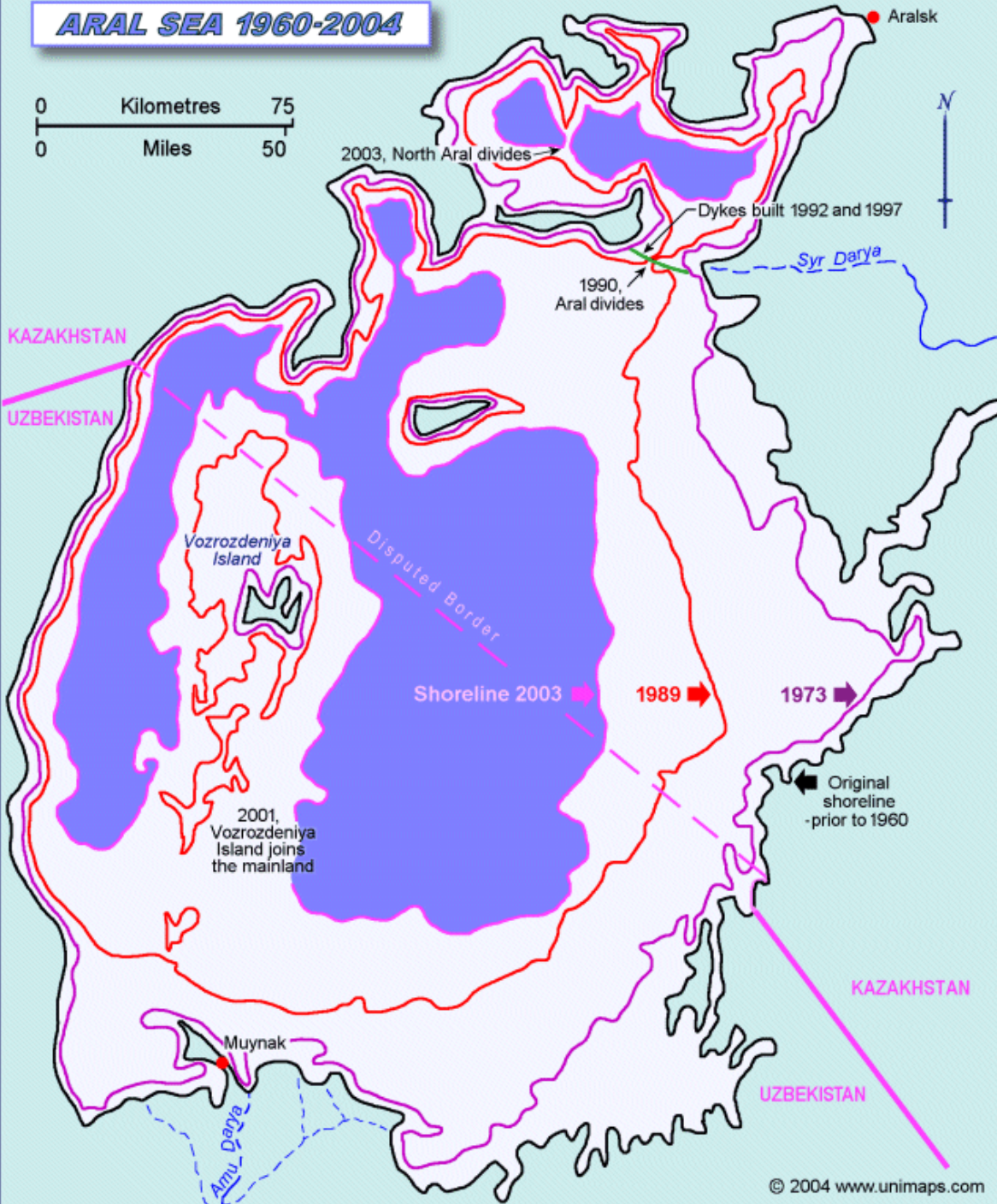


Aral Sea



ARAL SEA 1960-2004

0 Kilometres 75
0 Miles 50



ESA §4(a)

- “The Secretary [of Interior] shall by regulation ... determine whether any species is an endangered species or a threatened species because of any of the following factors:
 - (A) the present *or threatened* destruction, modification, or curtailment of habitat or range;
 - ...
 - (D) the inadequacy of existing regulatory mechanisms; or
 - (E) Other natural or manmade factors affecting its continued existence.”



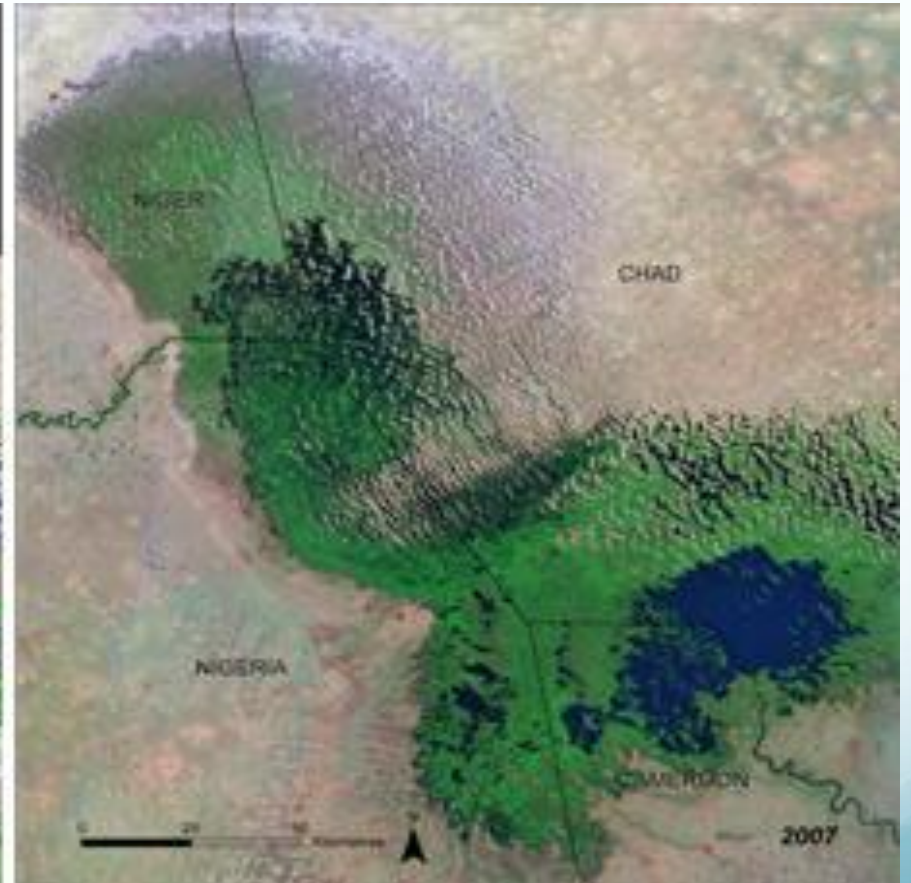
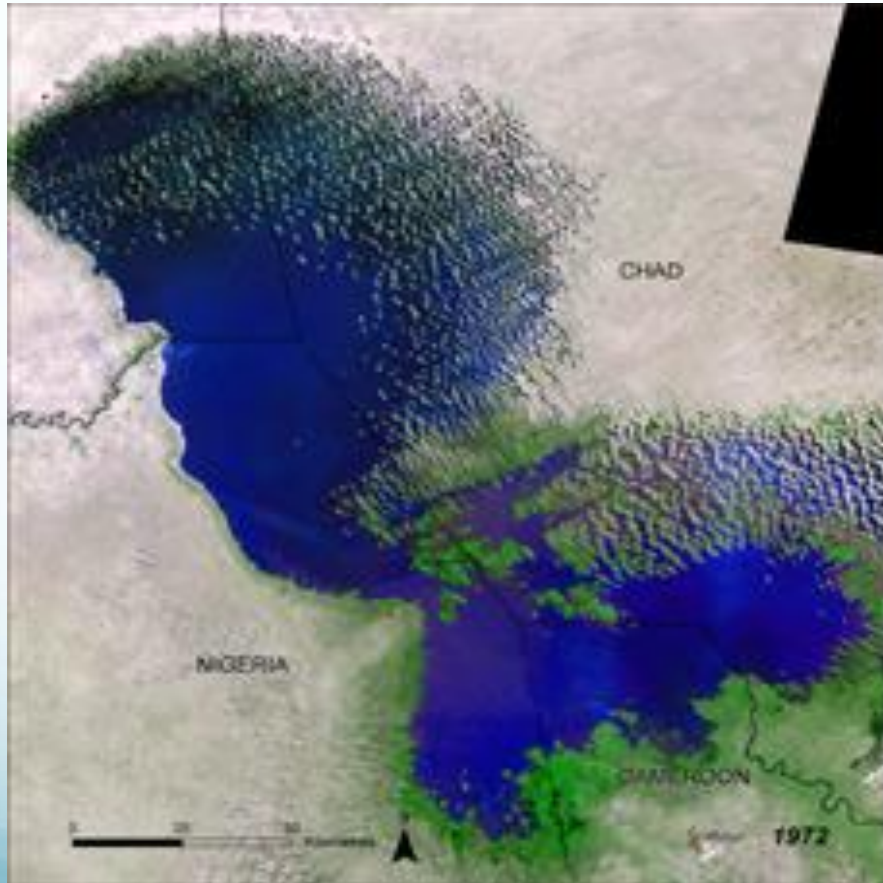
Winters v. United States

- “... it would be extreme to believe that ... Congress destroyed the reservation and took from the Indians the consideration of their grant, leaving them a barren waste—took from them the means of continuing their own habits, yet did not leave them the power to change to new ones.”

Cappaertv. United States

- “This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation.”

Lake Chad 1972-2007





Henry Beston

The Outermost House

- “As well expect Nature to answer your human values as to come into your house and sit in a chair. The economy of nature, its checks and balances, its measurements of competing life – all this is its great marvel and has an ethic of its own.”

Ralph Waldo Emerson

Nature

- “Miller owns this field. Locke that, and Manning the woodland beyond. But none of them owns the landscape.”

Loren Eiseley

The Immense Journey

- “If there is magic on this planet, it is contained in water.”

Aldo Leopold (*The Land Ethic*)

“The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals; or collectively, the land.”

Barry Lopez

The American Geographies

- “If a society forgets or no longer cares where it lives, then anyone with the political power and the will to do so can manipulate the landscape to conform to certain social ideals or nostalgic visions.”

Rachel Carson (*Silent Spring*)

- “Of all our natural resources water has become the most precious. ... In an age when man has forgotten his origins and is blind to even his most essential needs for survival, water along with other resources has become the victim of his indifference.”

Wallace Stegner

The Wilderness Letter

- “Save a piece of country like that intact, and it does not matter in the slightest that only a few people every year will go into it. That is precisely its value.”

Albert Einstein

- “Not everything that counts can be counted and not everything that can be counted counts.”

John Haines

Moments and Journeys

- “There are places that take on symbolic value to an individual or a tribe, ‘soul-resting places’ ... symbolic of that hidden, original life we have done so much to destroy.”

E.O. Wilson

The Bird of Paradise

- “The role of science, like that of art, is to blend exact imagery with more distant meaning, the parts we already understand with those given as new into larger patterns that are coherent enough to be acceptable as truth.”

Wendell Berry

The Making of a Marginal Farm

- “The true remedy for mistakes is to keep from making them. It is not in the piecemeal technological solutions that our society now offers, but in a change of cultural (and economic) values that will encourage in the whole population the necessary respect, restraint, and care.”