

*from “A Legal History of the Los Angeles Aqueduct”*¹

Introduction

Several times each spring, the Owens Valley, a narrow and semi-arid gorge between the Sierra Nevada and the Inyo-White Mountain ranges in eastern California,² is visited by strong southerly winds. On those occasions, a motorist passing down the length of the valley, returning, say, from a ski weekend at Mammoth to his home in Los Angeles, will travel through what appears to be a dense, dry fog. He will be unable to see the 10,000' escarpments rising to Mt. Whitney on the west and White Mountain Peak on the east; he will miss the small alfalfa ranches, the basaltic outcroppings, the extinct volcanic cones, the sage and rabbitbrush; he will pass by the county road leading to the world's oldest living things³ and America's oldest experimental college;⁴ in towns with names like Bishop, Lone Pine and Independence he will see many of the residents, natives as well as Southern California transplants who have migrated in search of clean air, breathing through bandanas or surgical masks. Finally, as he reaches the southern end of the valley, the air will suddenly clear, and a few miles down the road, if he stops to look back, he will discover the source of this 100-mile fog: he has just passed what was once Owens Lake, and from its now-dry bottom, driven by the wind, rises a tower of alkaline dust that engulfs the entire Owens Valley.

If the hypothetical tourist continues his trip south; if he notices the aqueduct that parallels the highway into Los Angeles; and if, when he arrives home, he turns on the tap water, swims in his pool, washes his car, or hoses the leaves off his lawn, he will have witnessed and participated in a legal battle that reaches back at least to 1880,⁵ and which shows in microcosm some of the major trends in American legal history. For Owens Lake was not always dry. Less than a century ago, two steamboats carried silver from the mines at one end to the railhead at the other.⁶ Since

that time, under the rubric of “public benefit,” with the blessing of courts and legislatures, the water that once flowed into Owens Lake has been diverted to Los Angeles reservoirs.

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Conclusion

The fate of the world does not depend on whether the Supreme Court of California decides to preserve a suitable environment for brine shrimp. Compared to the threat of nuclear war, the threat of a desiccated Mono Lake and a parched Owens Valley seem trivial. The disputes that have surrounded California water law and the Los Angeles Aqueduct are meaningful not because they have shaped history but because they have reflected it. If that reflection is not warped, then the last two centuries have witnessed one profound transformation in the legal conception of property, while the next century may witness another. As America changed from a rural, agricultural nation to one consecrated to the gospel of urban, capital-intensive, heavy industrial, resource-exploitative growth—a nation whose cultural hero was first Natty Bumppo, then Horatio Alger, and finally Lee Iacocca—so the legal idea of property changed from private static rights to public, dynamic ones. Now, as we enter an age of limits, chastened by knowledge that the earth is exhaustible, perhaps the legal idea of property is once again changing, this time to something more compatible with survival. If Owens Valley alfalfa and Mono Lake brine shrimp can pull through, perhaps the rest of us can, too.

¹ law school paper, University of Oregon, 1982

² Owens Valley proper extends from Owens Lake on the south to Crowley Lake on the north, a distance of 75 miles. The next geographical unit is Mono Basin, which extends north another 25 miles. In water disputes, these two regions are often treated as one, and that is how I will refer to them.

³ Bristlecone Pines grow in the White Mountains 23 miles north-east of Big Pine, California.

Several are more than 4000 years old. G. Schumacher, *Deepest Valley* 52 (1969).

⁴ Deep Springs College, founded 1917. See D. Schuman, "Education and Solipsism," *Co-Evolution Quarterly* 94 (1981).

⁵ *Los Angeles Water Company v. Los Angeles City*, 55 Cal. 176 (1880).

⁶ R. Laedabrand, *Owens Valley* 97 (1972).