

The Public Trust Doctrine: The White Bear Lake Case

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Public Trust Doctrine

- State holds submerged lands under tidal/navigable waters in trust for citizens and future generations
- *Illinois Central RR v. Illinois*, 146 U.S. 387 (1892)
 - Legislature cannot convey submerged lands under navigable waters to private parties
 - Must preserve them in trust for state citizens for fishing, navigation, and commerce
- Joseph Sax, *The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471 (1969)
 - Influenced common law public trust doctrine
 - Urged adoption of state legislation giving citizens private right of action to require states to protect public trust resources

Nat'l Audubon Soc'y v. Superior Court, 658 P.2d 709 (Cal. 1983) ("Mono Lake")

- Mono Lake – 2nd largest lake in CA; near Yosemite NP; fed by five, non-navigable freshwater streams
- Los Angeles received permits from state water agency to appropriate all water from the streams for domestic uses
- Water diversions began and lake began to dry up, impacting migratory birds, scenic, recreational and aesthetic values
- P sued on grounds lake was protected by PTD
- state argued it had to allow diversions because water code held highest use of water was for domestic purposes; also argued fact that streams were non-navigable meant PTD didn't apply

Nat'l Audubon Soc'y v. Superior Court, 658 P.2d 709 (Cal. 1983) ("Mono Lake") (cont.)

- Court found PTD applied and state must protect the lake
- “[B]oth the public trust doctrine and the water rights system embody important precepts which make the law more responsive to the diverse needs and interests involved in the planning and allocation of water resources. To embrace one system of thought and reject the other would lead to an unbalanced structure, one which would either decry as a breach of trust appropriations essential to the economic development of this state, or deny any duty to protect or even consider the values promoted by the public trust.”

MERA (1971) -- Purpose

The legislature finds and declares that each person is entitled by right to the preservation and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.

Minn. Stat. § 116B.03

Any person may maintain a civil action in state district court for declaratory and injunctive relief in the name of the State of Minnesota against any person “for the protection of the air, water, land, or other *natural resources* located within the state, whether publicly or privately owned, from *pollution, impairment, or destruction.*”

Natural Resources under MERA

Natural Resources include: “all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational, and historical resources,” as well as any “[s]cenic and esthetic resources . . . when owned by any governmental unit or agency.”

“Pollution, Impairment or Destruction”

(1) any conduct that “violates or is likely to violate, any environmental quality standard, limitation, rule, order, license stipulation agreement” of the state or state agency or political subdivision; or

(2) any conduct that “materially adversely affects or is likely to materially adversely affect the environment.”

MERA: “Material Adverse Effect”

Factors:

- the quality and severity of any adverse effects of the proposed action;
- whether the natural resources affected are rare, unique, endangered, or have historical significance;
- The long-term adverse effects on natural resources;
- whether the proposed action will have significant consequential affects on other natural resources;
- whether the affected natural resources are significantly increasing or decreasing in number.

Application of MERA by MN Courts

- Used to protect birds, trees, view from state forest, quietude in residential areas, drinking water wells, wetlands, marshes, wildlife areas, historic buildings
- Used to enjoin highway projects, gravel pit, jail, radio tower, tree harvesting, etc.

County of Freeborn v. Bryson (MN 1973)

“Times change. Until [MERA] was passed, the holder of the power of eminent domain had in its hands almost a legislative fiat to construct a highway wherever it wished. . . . However, a consequence of such construction has been the elimination or impairment of natural resources. Whether for highways or for numerous other reasons, including agriculture, it is a well-known fact that marshes have been drained almost indiscriminately over the past 50 years, greatly reducing their numbers. The remaining resources will not be destroyed so indiscriminately because the law has been drastically changed by the Act. Since the legislature has determined that this change is necessary, it is the duty of the courts to support the legislative goal of protecting our environmental resources. . . .”

County of Freeborn v. Bryson (MN 1973) (cont.)

“To some of our citizens, a swamp or marshland is physically unattractive, an inconvenience to cross by foot and an obstacle to road construction or improvement. However, to an increasing number of our citizens who have become concerned enough about the vanishing wetlands to seek legislative relief, a swamp or marsh is a thing of beauty. To one who is willing to risk wet feet to walk through it, a marsh frequently contains a springy soft moss, vegetation of many varieties, and wildlife not normally seen on higher ground. It is quiet and peaceful—the most ancient of cathedrals—antedating the oldest of manmade structures. More than that, it acts as nature’s sponge, holding heavy moisture to prevent flooding during heavy rainfalls and slowly releasing the moisture and maintaining the water tables during dry cycles. In short, marshes and swamps are something to protect and preserve.”

MERA v. Public Trust Doctrine

- Lots of MERA cases in the courts since 1971
- NO public trust doctrine cases to protect environment EXCEPT:
 - Lawsuit to prevent DNR from selling part of state wildlife area to window manufacturer (involved land)
 - Lawsuit to force MN to address climate change (involved atmosphere)
- Other public trust cases in the courts are old and involve property ownership issues
- WHY? – Better litigation strategy to use clear statute rather than vague common law doctrine

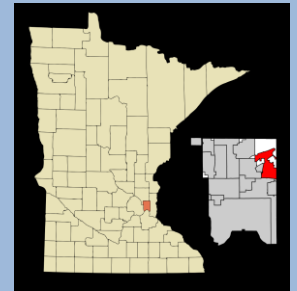


White Bear Lake, MN



White Bear Lake, Minnesota

- From 2003-2011, precipitation was at or near 30-year average but water levels in WBL dropped as much as 5 feet to their lowest recorded levels.
- Lake is 2,400 acres – one of largest in Twin Cities metropolitan area.
- In 2011, the USGS found that decline in lake levels was due to increased GW pumping from growing municipalities in the area. But DNR continued to grant new GW extraction permits to cities.



White Bear Lake District Court Orders (2014, 2017)

- Plaintiff brought claims under MERA and public trust doctrine
- In summary judgment order in 2014, court found lake and lakebed were public trust assets protected by PTD. Disputes of fact over whether state violated PTD and MERA.
- After 3 week trial in March 2017, in 140-page order, court found violation of PTD and MERA. In its order it:
 - prohibited DNR from issuing additional appropriation permits until state conducted cumulative analysis of all permits issued to date within 5 mile radius of the lake
 - set minimum elevation for the lake; ban on residential irrigation when level falls below the minimum elevation
 - directed action to be taken to shift cities to surface water supplies and to set new water conservation goals

Court of Appeals Order and Supreme Court Review

- Court of Appeals Reversed District Court on both MERA and Public Trust Claims (2-1 decision) (April 2019)
- Ps sued under wrong section of MERA
- PTD does protect the lake but DOES NOT protect groundwater under existing Minnesota case law
- PTD is NOT preempted/subsumed by MERA (see MERA savings clause)
- Found Ps claim is really about protecting groundwater, not surface water of the lake
- Strong dissent by Judge Bratvold
- Supreme Court granted review of the case in July 2019 on MERA and PTD issues

Can a State Legislature Override PTD?

- MN legislature enacted law in 2018 to prohibit DNR from enforcing court-imposed restrictions on cities until July 2019. Legal?
- Case law indicates legislation cannot override the PTD because doctrine is an attribute of statehood:
 - Illinois Cent. R.R. v. Illinois, 146 U.S. 387 (1892)
 - Ariz. Center for Law in the Public Interest v. Hassell, 837 P.2d 138 (Ariz. Ct. App. 1991)
 - San Carlos Apache Tribe v. Superior Court, 972 P.2d 179 (Ariz. 1999)
 - Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 671 P.2d 1085, 1088 (Idaho 1983)
- Court, not the legislature, has the final say on PTD
- The so-called “common law PTD” is not “common law” in the same way as other types of common law that can be overridden by statute

Public Trust Doctrine v. MERA

- Benefits of MERA:
 - Covers broad range of natural resources
 - Clear standards for plaintiffs and strong case law
- Limits of MERA:
 - Can be amended/repealed by legislature
 - No claims against farming operations
- Benefits of Public Trust Doctrine:
 - Flexibility; resistant to legislative repeal
 - Potential application to agricultural pollution
 - State can use defensively to regulate to protect the environment
- Limits of Public Trust Doctrine:
 - Limited case law in MN
 - Historically limited to submerged lands and water

International Applications

- India
- Philippines
- Kenya and South Africa
- Laws in other countries that have incorporated public trust-like concepts into statutes
- International Treaties

See Sagarin & Turnipseed, *The Public Trust Doctrine: Where Ecology Meets Natural Resources Management*, 37 Ann. Rev. Env'tl. Res. 473 (2012)

Further Reading

- Alexandra B. Klass, *The Public Trust Doctrine in the Shadow of State Environmental Rights Laws: A Case Study*, 45 Environmental Law 431 (2015)
- Alexandra B. Klass, *Renewable Energy and the Public Trust Doctrine*, 45 U.C. Davis Law Review 1021 (2012)
- Alexandra B. Klass, *Modern Public Trust Principles: Recognizing Rights and Integrating Standards*, 82 Notre Dame Law Review 699 (2006)