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# **Instream Flow Council**

**Biennial Meeting  
Columbia, Missouri (April 5, 2022)**

## **Public Trust Doctrine**

**Richard Roos-Collins  
Water and Power Law Group PC**

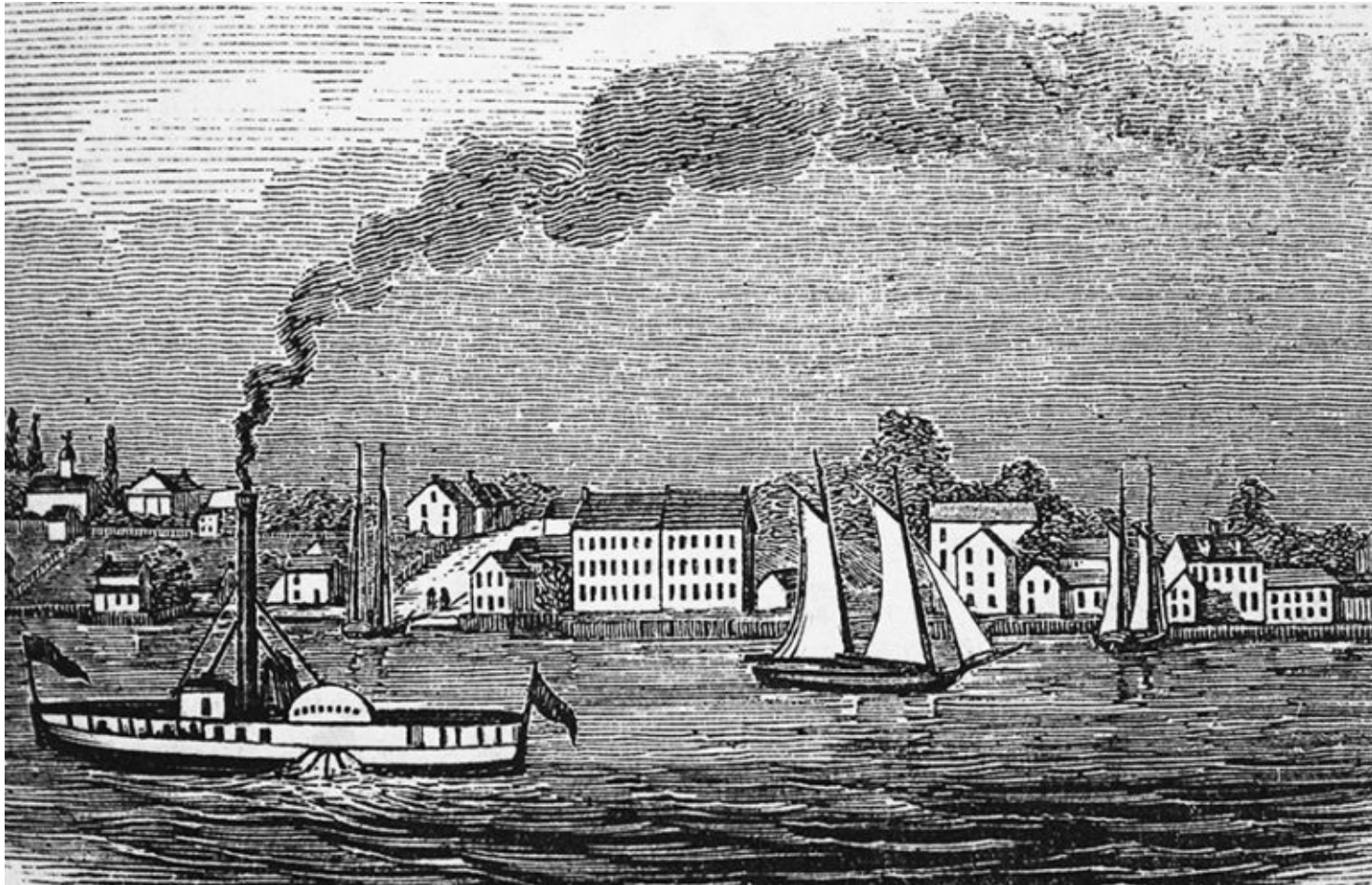
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## Institutes of Justinian (533 A.D.)



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## *Arnold v. Mundy* (NJ 1821)



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## *Commonwealth v. Alger* (MA 1851)



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## ***New England Clam Digging Cases (1800s)***



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***People v. Gold Run Ditch & Mining (CA 1884)***



# Illinois Central Railroad v. State of Illinois (1892)



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## ***Mono Lake Cases (CA 1983)***







RUSH CREEK  
BRIDGE 47-8  
395 MNO 46 28







Los Angeles

Mono Lake

Google earth

© 2013 Google  
Image Landsat  
Data SIO, NOAA, U.S. Navy, NGA, GEBCO  
© 2013 INEGI

Imagery Date: 4/9/2013 37°20'21.13" N 119°33'07.10" W elev 4211 ft eye alt 88.59 mi



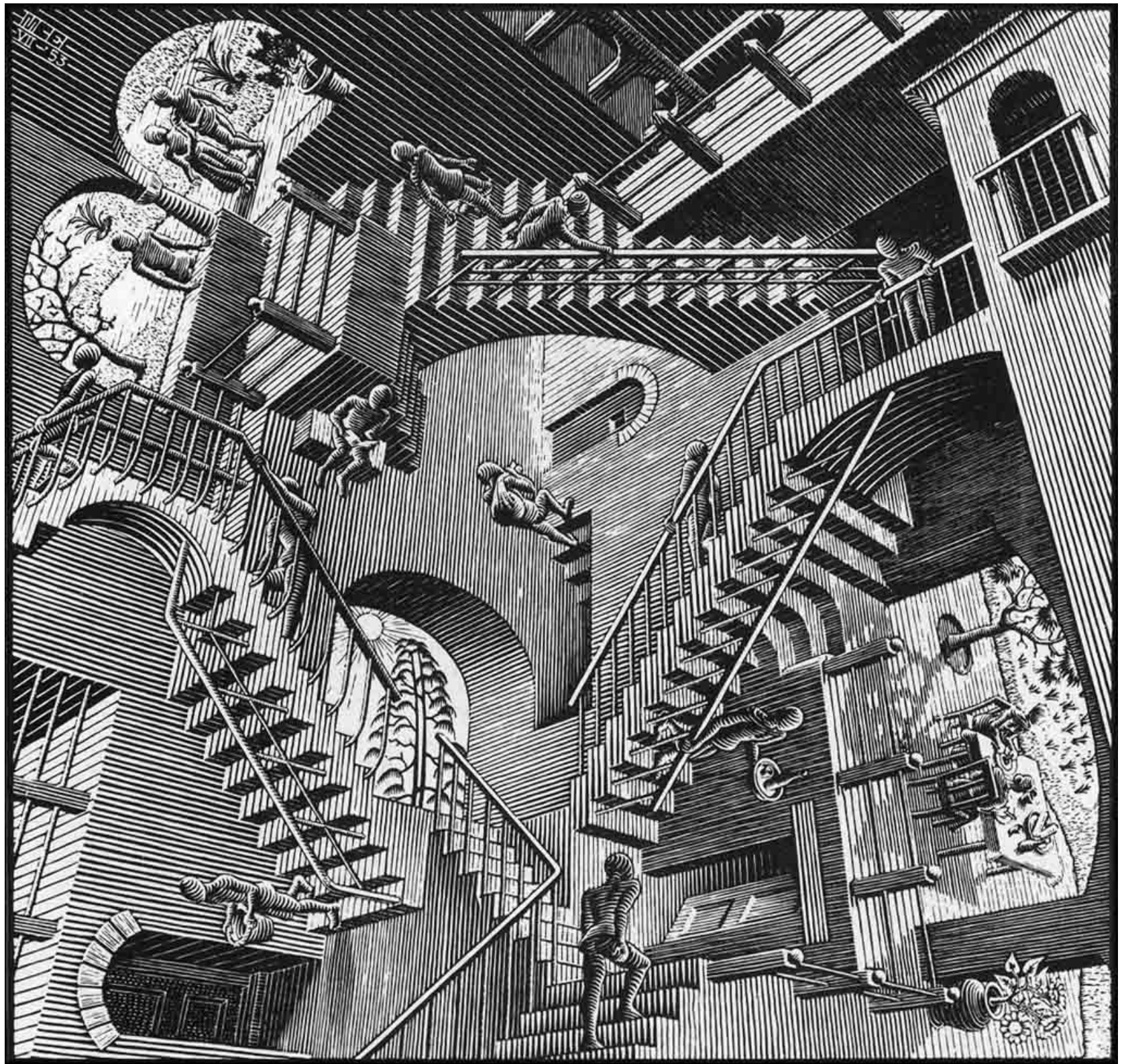




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## **Lessons since 1996**





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## Lessons for Future

- Integration of public trust doctrine into agency procedures
- Application to existing water rights



EXIT

Unit  
Karel POTVIN

Lektriever

karc



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## Lessons for Future

- Ecological trend analysis





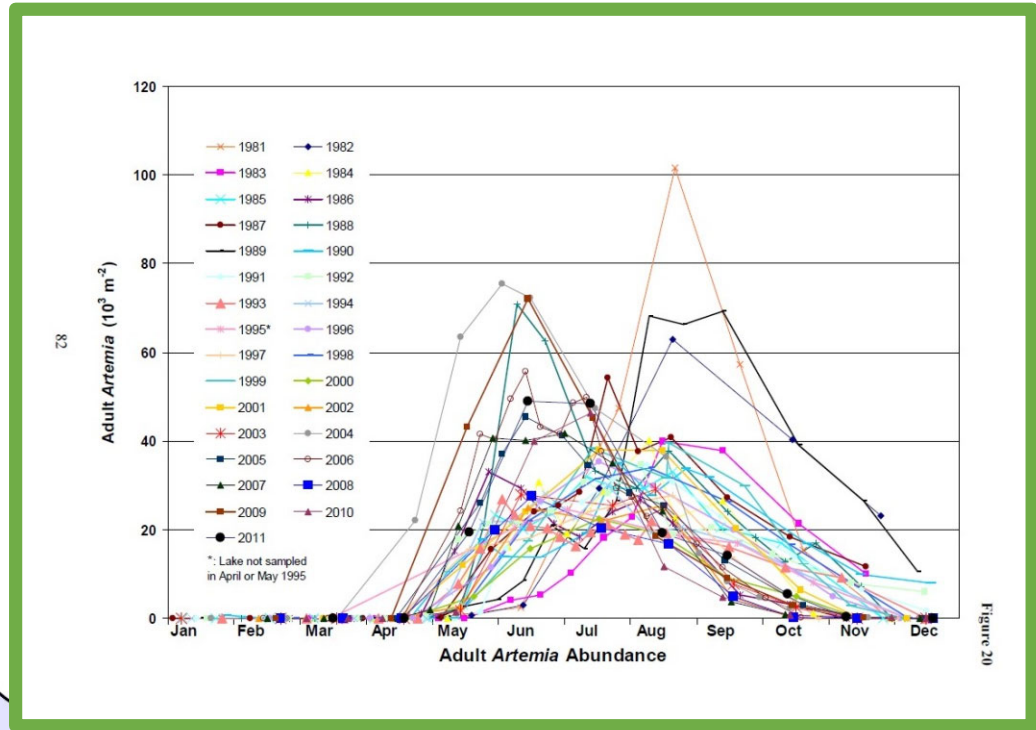


Figure 20

Mono Lake  
1946 m asl

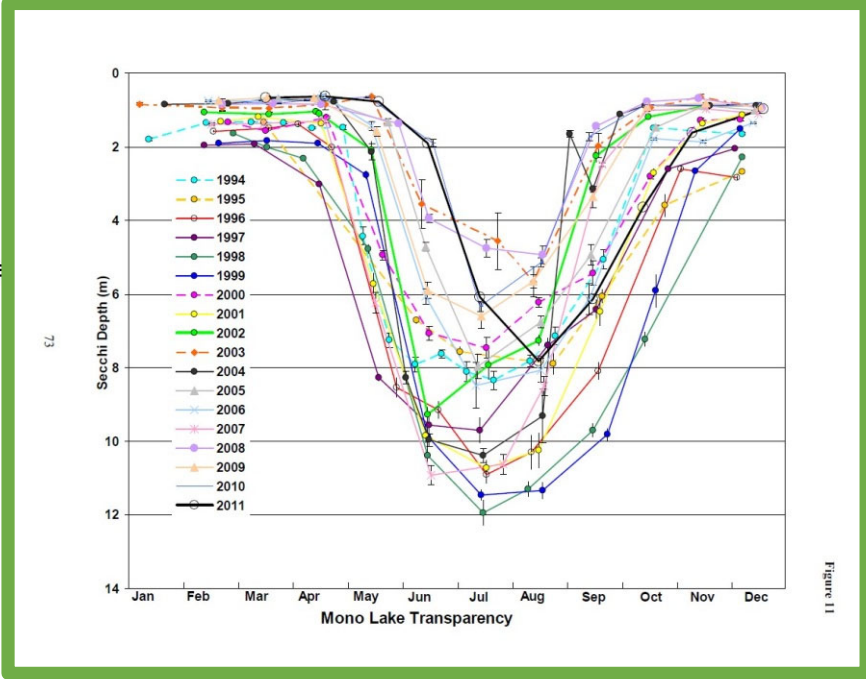
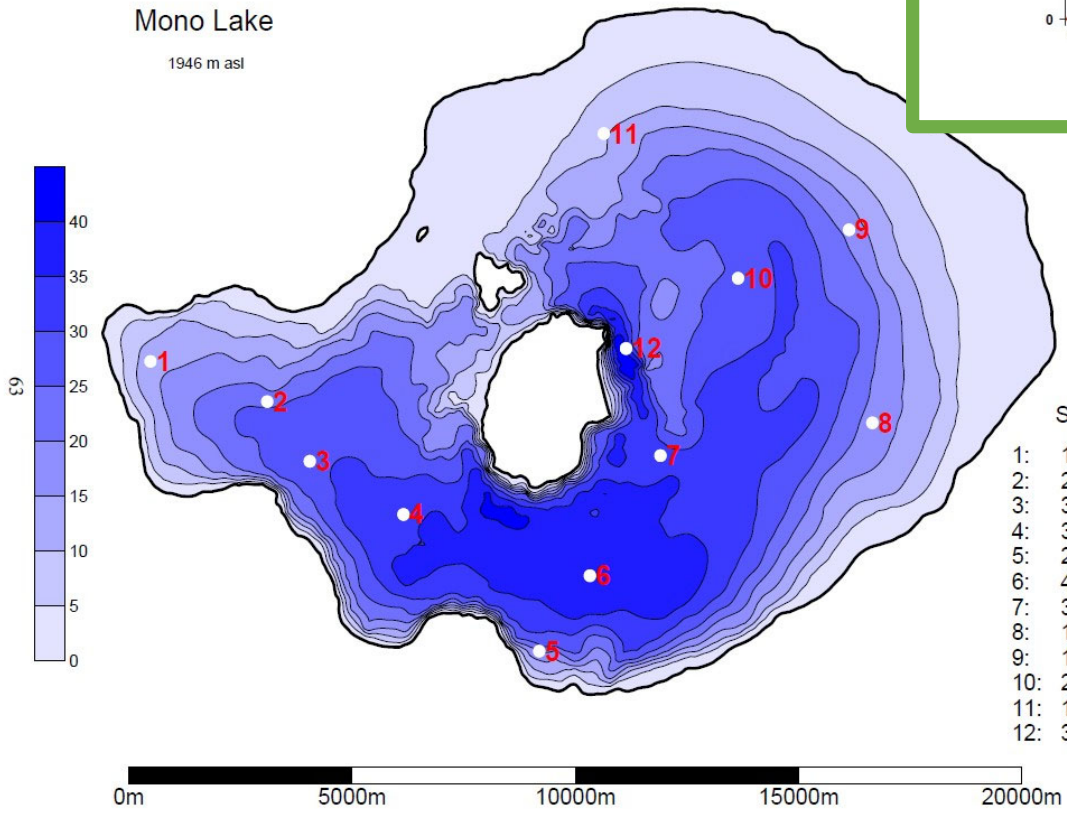


Figure 11

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## Lessons for Future

- Meaningful engagement of stakeholders



# The Troubled Waters of Mono Lake

By GORDON YOUNG

NATIONAL GEOGRAPHIC SENIOR STAFF

Photographs by CRAIG AURNESS

**F**ROM A ROADSIDE OVERLOOK, my first view of distant Mono Lake was 61 square miles of cobalt blue mirror. White puffs of cumulus clouds crept along its surface, framed by inverted peaks of California's Sierra Nevada.

Absolutely gorgeous. Yet a century ago Mark Twain, in *Roughing It*, had written: "This solemn, silent, sailless sea—this lonely tenant of the loneliest spot on earth—is little graced with the picturesque."

The lake is ten miles from the Nevada line and just east of popular Yosemite National Park, so countless skiers and summer tourists can testify that Mark Twain was wrong about its picturesqueness. And though it may be silent, its advocates are not. Mono Lake, for several years now, has been the focus of a war of words and writs. On one side, environmentalists; on the other, a power often known simply as the "Department."

As I drove closer, the lake's beauty took on the look of fantasy. Misshapen giants stood in groups in its green shallows and on the pastel beach—sight-seeing trolls fixed by an enchantment.

They were columns of tufa, a porous form of calcium carbonate. Each was born under the surface of the lake, as fresh springwater brought up calcium to interact with Mono's chemicals, coalescing into the towers. Some of them are home to rock wrens, swallows, and great horned owls.

Mono basin, formed some three million years ago at the western edge of the Sierra, has held a lake for perhaps a million years. The lake has no outlet other than evaporation and has not overflowed its basin in tens of thousands of years. Over time, minerals have concentrated in the lake, until today its water is two and a half times as salty as the ocean. Ironically the undrinkable lake is dwindling further to feed the faucets of Los Angeles, 275 miles to the south.

Five streams used to enter it. Four are diverted into aqueducts now; the fifth is too small to be worth diverting.

"In recent years the lake level has dropped about 18 inches annually," botanist and researcher Dean Taylor explained. He had come to give me a tour along the lake's perimeter in his venerable microbus. "Not only is a scenic asset shrinking, but an expanding rim of alkaline shoreline is exposed. Winds kick it up into very unpleasant dust storms in the Mono basin."

Concerned about those dust storms, Dr. Taylor is pursuing a research project to determine what effect, if any, the alkali has on area vegetation.

Residents in the lakeside village of Lee Vining, too, are unhappy at the sight of the shrinking lake. "Their favorite intellectual exercise," Dr. Taylor remarked, "seems to be the designing of bombs that could blow up the tunnels and aqueducts."

*Ghostly islands of tufa in California's Mono Lake stand as bleak monuments to a bitter dispute over the lake's future. Built by upwelling springs, the deposits of calcium carbonate testify to a 44-foot drop in the water level since 1941, when Los Angeles began tapping all but one of the lake's five main tributaries.*



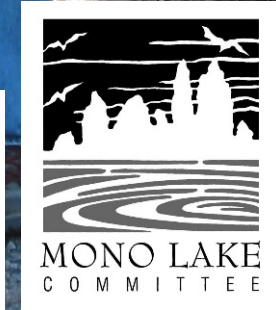
MONO BASIN  
**Outdoor**  
Education Center







Eastern Sierra  
Audubon



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## Lessons for Future

- Faster pace



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## **Further Information**

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