



Mono Lake: Not a Baseball Diamond

As part of the book I am writing on the Mono Lake case, one question stands out: how was the Mono Lake Committee able to assemble the resources to bring a lawsuit against the powerful Los Angeles Department of Water and Power?

At one level, the answer is obvious: it found a Sugar Daddy, in this case, the international law firm of Morrison & Foerster, which according to John Hart's fine book *Storm Over Mono*, agreed to contribute \$250,000 of attorney time to the case — nearly \$1 million in today's money. But this, of course, begs the question of *why* MoFo agreed to put in that much money. (And of course, the case wound up costing far more). The firm has something of a progressive reputation, but that doesn't translate into several millions of dollars, which the case wound up costing and any experienced attorney would have seen.

I am still looking into this, but I cannot help but suspect that California Code of Civil Procedure 1021.5 has something to do with it. That provision is familiar to most California lawyers: it allows fee-shifting "in any action which has resulted in the enforcement of an important right affecting the public interest."

That, at any rate, would explain things: MoFo didn't take the case *pro bono*: it took it on contingency, gambling that it would get its attorneys' fees if it prevailed. It might even get a "multiplier," i.e. more than its attorneys fees, if the case was especially hard, which it was. It still required MoFo partners like Bruce Dodge to persuade the firm to do it, but it would have been a lot easier if he could hold out the possibility of getting fees.

And when did 1021.5 come into effect? January 1, 1978, the year after it was enacted (as is standard under state law), and just when the Mono Lake Committee was about to give up. Just in time.

Yogi Berra, a mere 5 foot 7 inches, once commented that "you don't have to swing hard to hit a home run. If you got the timing, it'll go." It's true for litigation as well, and it might have been completely true with *Mono Lake*: the case is seen as coming out of the environmental movement of the late 60's and early 70's, but if MoFo had been approached even five years earlier, the whole thing might have collapsed.