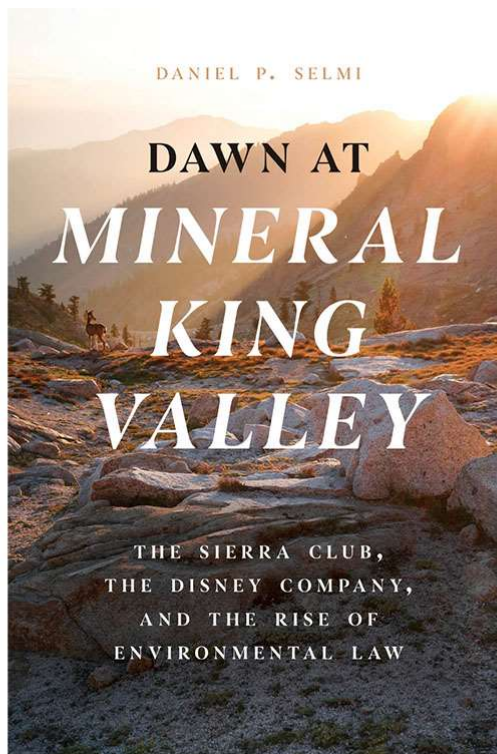
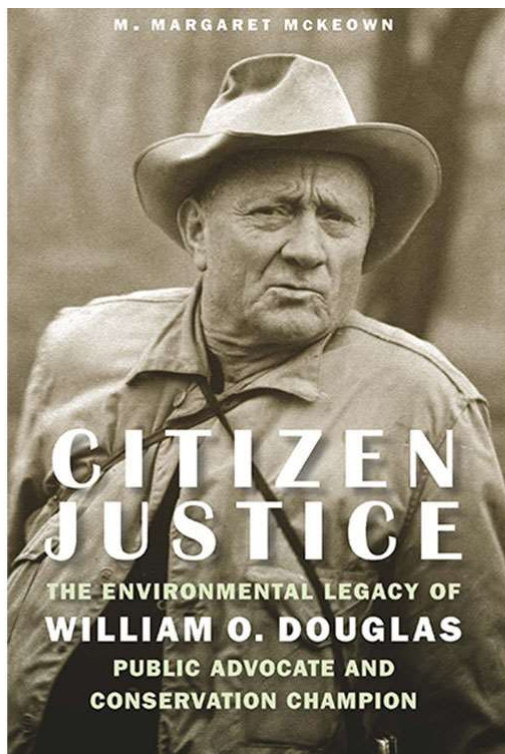


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# River as Plaintiff

Two new books illustrate the legacy of Supreme Court Justice William O. Douglas and the Sierra Club's role in shaping environmental law



By [Aaron Isherwood \(/other/authors/aaron-isherwood\)](/other/authors/aaron-isherwood) and [Ross Macfarlane \(/sierra/authors/ross-macfarlane\)](/sierra/authors/ross-macfarlane)

January 25, 2023

## **Citizen Justice: The Environmental Legacy of William O. Douglas, Public Advocate and Conservation Champion**

By M. Margaret McKeown  
Potomac Books, 2022

William O. Douglas was a legendary figure. Brilliant, irascible, and outspoken, Douglas thrived on controversy and refused to play the cloistered role that is generally expected for Supreme Court Justices. The longest-serving member of the Supreme Court in US history, “Wild Bill” is remembered for his frequent and fiery dissents, his lofty political aspirations, his central role in the New Deal and close friendship with President Franklin D. Roosevelt, his colorful personal life (he was married four times), his 50 books, and for the unsuccessful effort that Congressional Republicans made to impeach him. Yet beyond Douglas’s role as a jurist on our highest court, perhaps his most important and enduring contribution was as a citizen-activist fighting to conserve and protect wild places and natural areas across the country from exploitation and destructive development.

Douglas’s advocacy for the earth is the focus of Judge M. Margaret McKeown’s new book, *Citizen Justice: The Environmental Legacy of William O. Douglas, Public Advocate and Conservation Champion*. McKeown traces Douglas’s path to becoming a passionate advocate for ecology and the environment, terms that barely existed when he began his career. McKeown, herself a federal jurist on the Ninth Circuit Court of Appeals, does not attempt to write a comprehensive biography, noting how much has been written on his life, including his own three-volume autobiography. Instead, she examines how Douglas’ love for wild places—nurtured in childhood hikes in the Cascade Mountains of Washington State—blossomed into his volunteer role as a citizen-activist. This



advocacy was separate from, and sometimes in tension with, his role on our nation's highest court. McKeown argues persuasively that Douglas' efforts as a passionate warrior for conservation may actually be his biggest legacy.

Douglas had extremely close ties with the Sierra Club as well as several other conservation organizations. He was a life member of the Sierra Club and served on the national board for two years in the early 1960s. Douglas only resigned his membership in the fall of 1970, just as a major case brought by the Sierra Club was heading toward the Court (more on that below). Even then, he refused to limit his active involvement in politics or advocacy based on public perceptions of how a judge should act, declaring that he had every right to be a "first-class citizen to the fullest extent compatible with [his] judicial duties."

That advocacy took many forms. He excelled at publicizing his views, engaging in highly visible nature walks and marches, giving speeches, and penning articles and books about the places he wanted to protect. He also used his private access effectively, buttonholing key figures in Congress and the executive branches over meals, drinks, and poker games. Given his celebrity, communications skills, and connections in high places, Douglas had tremendous success as an environmental advocate, creating a lasting legacy that millions enjoy today.

Douglas loved wild places and the book recounts the key role he played in preserving many special areas, including (to name just a few) Alaska's Arctic National Wildlife Refuge, Big Bend National Park in Texas, Tennessee's Red Rock Gorge, the Willowa Mountains of Oregon, portions of Olympic National Park, and countless places in the Washington Cascades (including his childhood stomping grounds, which was posthumously preserved and named as the William O Douglas Wilderness). His first and perhaps best known foray into conservation advocacy involved the C & O Canal, whose towpath had become his personal "wilderness of solitude" close to his home in Washington, DC. Taking on the political establishment, Douglas helped lead what initially appeared to be a quixotic campaign to prevent his backyard refuge from being paved over for a new highway. He published an op-ed in the Washington Post, which had been one of the strongest backers for the planned expressway, decrying the project, and challenging the newspaper's editors to join him in hiking the length of the towpath from Cumberland to Georgetown. The editors accepted the challenge and the walk became a public spectacle, with dozens of prominent leaders struggling to keep up with Douglas' legendary pace.

Ultimately, his efforts at what he called "hiking and hollerin'" were successful, and the highway was rerouted. Today, more than five million people enjoy the C & O towpath, making it the US' eighth most popular national park. It seems clear that Douglas would have applauded Sierra Club's current Outdoors for All campaign—which helps ensure that everyone has access to nature near where they live and work, regardless of race, income, or ethnicity—every bit as much as he would support the Sierra Club's advocacy for wilderness.

Douglas's historic tenure on the Supreme Court was ending just as environmental law started to become a significant issue in the legislatures and judicial system. Therefore, he was only involved in a handful of cases that touched on these subjects. But his influence on the then-emerging body of environmental law was still considerable. He was a fierce critic of bureaucratic overreach by agencies such as the Corps of Engineers, the Bureau of Reclamation, the Department of Interior, and the Forest Service, which back in those days usually argued in favor of development and typically fought any constraints on their ability to build new roads, dams, or other major projects. Douglas authored one major opinion on an environmental issue, stopping two Northwest utilities from building the proposed High Mountain Sheep Dam in Hell's Canyon of the Snake River. Although the decision centered on administrative law, Douglas emphasized the project's impact on the river's important salmon and steelhead runs. Then-Secretary of Interior Stewart Udall termed Douglas' opinion in the case "a conservation landmark." It is not hard to guess where Douglas' sympathies would lie in the current campaign, led by Sierra Club, Native American nations, and other allies, to remove the four dams on the lower Snake River that threaten the continued existence of those fish.

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Sometimes known as “The Great Dissenter,” most of Douglas’s opinions touching on environmental and conservation issues noted his disagreement with the other justices. Douglas objected to the court’s decision not to take up a case involving widespread spraying of DDT to combat the gypsy moth. He also panned decisions to narrowly interpret the newly passed National Environmental Policy Act and defer to agencies in several cases, including one letting a federal agency build a highway through an urban park in San Antonio, and another authorizing a massive hydro project at Storm King in New York’s Hudson River Valley.

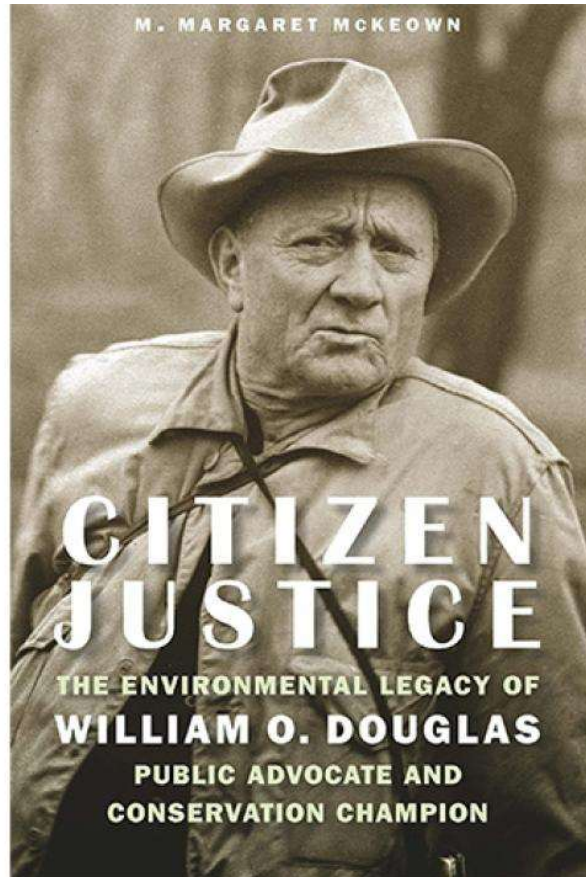
Douglas’ most famous dissent, and the one that has the most resonance today, arose in a case brought by the Sierra Club protesting the Forest Service’s work with the Disney Corporation to build a huge resort in remote Mineral King Valley, in California’s Sierra Nevada Mountains. McKeown devotes an entire chapter of her book to this case, Douglas’ relationship with the Sierra Club, and his historic dissenting opinion. In bringing this case, Sierra Club’s lawyers made a strategic choice not to rest their right to be in court—what is known in legal jargon as their “standing” — based on any claim that the Club or any of its members would experience harm from the development. Instead, the Sierra Club attorneys argued that courts should take the case based on the harm to Mineral King Valley itself. The Supreme Court rejected this claim, demanding that Sierra Club show specific harm to the organization or members before addressing the merits of the case. Justice Douglas’s now classic dissent argued that nature itself should have legal rights that our courts can protect. He pointed out that “both corporations and ships had long been parties in litigation, despite being artificial and inanimate. So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life.” Douglas argued that the case should have been labeled “Mineral King v. Morton” instead of being named for the organization that stepped in to defend the valley from massive development.

McKeown sketches the fascinating backstory for the case, including a controversy over whether Douglas should be recused from participating due to his prior membership in and leadership position with the Sierra Club. She also recounts the unusual way that Douglas obtained an advance copy of what subsequently became a famous law review article, “Should Trees Have Standing?— Toward Legal Rights for Natural Objects,” authored by University of Southern California professor Christopher Stone, which Douglas used in crafting his dissent. Both Douglas’ dissent and Stone’s article have become foundational texts for advocates of the “Rights of Nature” movement, which works to afford legal rights to animals, plants, rivers, and other elements of the ecosystem.



While this legal movement has achieved only limited success to date in the United States, it has inspired Ecuador and several other countries to enshrine natural rights in their constitutions and foundational laws. And it has inspired many people to rethink the role our legal system should play in protecting nature as well as the interests of humans and the pursuit of profit. This movement takes a debate over a seemingly arcane legal doctrine” —the notion of “standing” ” — and places it in a moral and philosophical context in a way that inspires environmental activists to think differently about the relationship between our systems of law and the natural world.

McKeown’s book is a fascinating portrait of a complex and brilliant man whose profound love for wild and natural places led him to play a major role supporting environmental protection and conservation, both as a jurist and as a citizen-activist. It’s appropriate that Sierra Club has named our highest award for legal work on behalf of the environment for Justice Douglas. I highly recommend it to anyone who is interested in learning more about the history of our movement and a colorful character who was very influential in shaping the law and policy on these issues, and who left an indelible legacy in the lands, rivers, and trails that he fought to protect. *-Ross Macfarlane*



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 2, 1970

Dear Dr. Berry:

Ten years or more ago I was a Director of the Sierra Club and had to resign because of the impossibility of getting to the meetings in San Francisco. I think at that time I was made a Life Member. I now desire to give up that membership.

I do not desire to take any action which would reflect on the Sierra Club, but I wish your records would show my notice of resignation as a member.

The problems of the environment are so numerous and so great and the Sierra Club is, or may be, in many of them. Nobody knows what the future will bring forth. I do not want to be disqualified in cases which come before the Court. I am not thinking of any case in particular. I have not seen one here, nor have I heard of one which is on its way. But in view of the proliferation of the litigation in this area, I thought this would be the best course for me to take.

Yours faithfully,

*W. Douglas*

Dr. Philip Berry, President  
Sierra Club  
7173 Norfolk Road  
Berkeley, California 94705

