

THE PUBLIC TRUST DOCTRINE

History, Origins & California Law

From Roman Law to the California Coast — a doctrine protecting public access to waterways, tidelands, and natural resources for over 1,500 years.

Roman Law & English Common Law



Roman Law (~530 AD)

- Justinian's Institutes declared rivers, seas, and shorelines *res communes* — common to all humanity
- These resources were incapable of private ownership
- No individual could hold exclusive rights to navigable waters
- The public right existed independently of any government grant

English Common Law

- Roman principles were absorbed into English common law with a key shift: the Crown became the trustee
- The sovereign held navigable waters not as absolute owner, but as steward for the public
- The Crown could manage these resources but could not give them away
- The public retained rights to waters for navigation, commerce, and fishing

Illinois Central Railroad v. Illinois (1892)



The Giveaway

The Illinois Legislature secretly granted the entire Lake Michigan shoreline — one mile out, including downtown Chicago's harbor — to Illinois Central Railroad.

Public Outrage & Repeal

The grant was so audacious that public pressure forced the legislature to repeal it just four years later. The case reached the U.S. Supreme Court.

The Supreme Court Rules

The Court upheld the repeal: navigable waters and lands beneath them are held in trust by the state — a legislature cannot irrevocably give them away to private parties.

California Enters the Union



~ 4M

acres of sovereign
lands acquired

= CT + DE
combined

in area

- Upon statehood, California inherited the English common law tradition — placing the state as trustee of all sovereign lands
- Tidelands and lands underlying navigable waterways became state property held in trust for the people
- The doctrine was applied to California tideland disputes as early as the 1850s
- California adopted English Common Law in 1850; navigable waterway beds became known as Sovereign Lands
- The California State Lands Commission, established in 1938, serves as the primary administrator of these public trust lands today



Constitutional Protections

Art. X §2

Beneficial Use

Water resources must be put to beneficial use to the fullest extent. Waste or unreasonable use is prohibited. Conservation must serve the public welfare.

Art. X §3

No Tideland Sales

All tidelands within 2 miles of any incorporated city fronting navigable water are withheld from grant or sale to any private person, partnership, or corporation.

Art. X §4

Public Access — Mandatory & Liberal ★

No private party may block public access to navigable water or obstruct free navigation. The Legislature SHALL enact laws giving the most liberal construction so that access "shall be always attainable for the people."

The Actual Language

Article X, §4 ★

"No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof."

From Commerce to Conservation



Marks v. Whitney (1971)

California Supreme Court

- First major expansion beyond commerce and fishing
- Extended public trust to include fish, wildlife, habitat, and recreation
- Declared public trust uses are 'sufficiently flexible to encompass changing public needs'
- Set the stage for the doctrine to protect ecological values, not just economic ones

Professor Joseph Sax (1970)

University of Michigan Law School

- Published a landmark law review article applying the public trust doctrine to natural resource management
- Argued the doctrine was a powerful tool against degradation of public commons — lakes, rivers, not just tidelands
- Inspired a generation of environmental lawyers and advocates
- His scholarship directly paved the way for the Mono Lake litigation

By the early 1980s, California had the legal tools and academic framework for a transformative ruling.

From Roman Law to California Coast

