

CITIZENS' RIGHTS TO CALIFORNIA WATERWAY USE

The public's right to use California waterways is guaranteed by the United States and California Constitutions and affirmed by California Legislative, Civil and Penal Codes. Both Federal and California case law further define and affirm these rights.

United States Constitution - Freedom of navigation and the public's right to use rivers are guaranteed by the Commerce Clause. The congressional Act admitting States to the Union requires that "all the navigable waters within said State shall be common highways and forever free."

California State Constitution, Article 10, Section 4 - Forbids individual, joint and corporate landowners from obstructing free navigation. It provides that "the Legislature shall enact such law 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." It also forbids landowners "to exclude the right of way to [navigable] water whenever it is required for any public purpose."

California Public Resources Code, Section 6301 - States the "California State Lands Commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned in the state and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets and straits, including tidelands & submerged lands or any interest therein, whether within or beyond the boundaries of the State as established by law"

California Civil Code, Section 830 - The State's ownership of tidelands, submerged lands and beds of navigable waterways includes lands laying below the ordinary high water mark of tidal waterways and below the ordinary low water mark of non-tidal waterways. The area between the ordinary high and low water marks on non-tidal waterways is subject to a "public trust easement" which is also under State Lands Commission jurisdiction.

California Civil Code, Section 3479 - (Obstruction of the free passage or use of a navigable waterway is a civil offense). Anything which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal or basin is a nuisance.

California Penal Code, Section 370 - (Obstruction of the free passage or use of a navigable waterway is a criminal offense). Anything which unlawfully obstructs the free passage or use, in a customary manner, of any navigable lake, or river, bay, stream, canal or basin is a public nuisance.

California Public Trust Doctrine - Restricts the kinds and uses for which state lands may be utilized. These uses typically include public uses of waterways for navigation, commerce, fisheries, recreation and environmental protection. The State Lands Commission reviews projects affecting tidal and non-tidal waterways for consistency with the public trust doctrine.

California Harbors & Navigation Code, Section 100 - States that "Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purpose of navigation and of such transportation."

Clean Water Act & San Francisco Bay Basin Plan - The Clean Water Act requires that every effort be made to improve the beneficial uses of area waterways. The Basin Plan lists all of the waterways and tributaries draining into the basin as well as their **beneficial or potential beneficial uses**. Contact and non-contact water recreation, which includes boating, are two of the many beneficial uses listed in the Plan for most all area waterways flowing into San Francisco Bay.

Federal Case Law

Daniel Ball, 77 U.S. (10 Wall.) 557,563 (1870) A stream is navigable in fact when it is used, or susceptible of being used, in its ordinary condition, as a highway for commerce, over which trade or travel are or may be conducted. **Transportation of people or recreational use is considered to meet the description of travel** (Navigability of Inland Waterways, Univ. of Calif. Davis Vol. 16:579).

Churchill Co. v. Kingbury (1918) 174 P. 329, 178 C. 554) State's title to land under navigable waters extends, not only to land underlying the part of navigable waters over which navigation may be conducted but

to the entire bed, in particular to the land covered and uncovered by the ordinary rise and fall of the tide, stream or lake.

State of Arizona v. State of California (1931) 51 S. Ct. 522, 283 U.S. 423, 75 L. Ed. 1154, Whether a stream is navigable in law depends upon whether it is navigable in fact.

U.S. v. 412.715 Acres of Land, Contra Costa County, Cal. (D.C. 1944) 53 F. Supp. 143. Title to the banks and bed of a navigable stream are subject to the “navigation servitude” which is the public right of navigation for the use of the people at large.

California Case Law

Colberg Inc. v. State ex rel. Dept. of Public Works (1967) 62 Cal. Rptr. 401, 432 P. 2d 3, 67 C.2d 408, certiorari denied 88 S. Ct. 1037, 390 U.S. 949, 19 L. Ed. 2d 1139. State holds all of its navigable waterways and lands lying beneath them as trustee of the public trust for the benefit of the people.

People ex. Rel. Baker v. Mack, 19 Cal. App. 3rd. 1040, 1050, 97 Cal Rptr. 448, 454 (3rd. Dist. 1971) (**Fall River Case**) (**California State Test of Navigability**). **Members of the public have right to navigate and to exercise incidence of navigation in a lawful manner at any point below high water mark on waters which are capable of being navigated by oar or motor propelled small craft.**

Hitchings v. Del Rio Woods Recreation and Parks District, 55 Cal. App. 3d 560, 567, 127 Cal. Rptr. 830, 834 (1st Dist. 1976) (**Russian River Case**). On streams which have the physical capability to float small craft which are not navigable as a matter of Federal law, restrictions on public recreational travel on the stream may be invalid under State law. **Passing the state test is sufficient proof of navigability.**

People ex. rel. Younger v. County of El Dorado 96. Cal App. 3d 493; 157 Cal. Rptr. 815 1979 (**American River Case**). El Dorado Ordinance making it unlawful to float, swim or travel on a 20 mile section of the South Fork of the American River was ruled as unconstitutional on appeal because it denied the right of the public to the use of and access to a navigable stream.

Bess v. County of Humboldt (App. 1 Dist. 1992) 5 Cal. Rptr. 2d 399, 3 Cal. App. 4th 1544). (**Van Duzen River Case**) **The fact a river is navigable only seasonally does not require that river to be designated “non-navigable.” Under California State Law, if a river was susceptible to navigation as a highway for public passage at the time California came into the Union, a public right of way existed without regard to ownership of the stream bed. The ability of present day small water craft, which are similar to water craft in use at the time of Statehood to navigate the river is evidence that the river was navigable at the time of Statehood. The public has a right to use a navigable river and the riverbed up to the high water mark for navigational, fishing, recreational and other permitted purposes.**

Troutwine Family Trust v. County of Nevada, CA Aug. 10, 1994, Case No. A49952 Superior Court of Nevada County, CA (**Yuba River Case**). Yuba River is navigable and the public has a right to boat the river. **Rivers may be used by the public up to the high water mark for various recreational purposes. Recreational purposes include, but are not limited to fishing, hunting, bathing, swimming, boating (which includes portage, scouting, brief rests, anchoring and standing on the bottom), scenic enjoyment and general recreational purposes.**