

## Private Property Rights and Public Trust Doctrine

**Private property rights allow people to use their property as they wish so long as their uses do not violate public trust doctrine. Public Trust Doctrine, dating back to the time of ancient Roman civilization, declares that nobody has a right to destroy natural resources.**

- According to the early documents of Roman civil law, **“By the law of nature these things are common to all mankind; the air, running water, the sea, and consequently the shores of the sea.”**<sup>1</sup> This concept of Public Trust Doctrine was adopted incorporated into British Common Law, from which it made its way to the United States. Although the concept of rights pertaining to private property has developed through time, **Public Trust Doctrine states that one does not have the right to ruin land even when one “owns” it.**
- In addition to the common law basis for the Public Trust doctrine, there is also a statutory basis for it, as it has been codified into our Federal and state constitutions for over a century and upheld by California case law. Both sources uphold the principle that **fish, wildlife, and water resources are held in trust by the state of California for the benefit of all people.**
- **The state Constitution in Article 4, Sec. 20 (a) provides for the establishment of fish and game districts for the protection of fish and game.** The legislature delegated a portion of its power to the Department of Fish and Game, stating that "fish and wildlife resources are held in trust for the people of the state by and through the Department." (Fish & Game Code Sec. 711.7)
- **Water is also a recognized public trust resource.** Property owners do not own the water that flows through their property. Rather, the water is owned by the people collectively and does not become a vested property right. Unreasonable use that is destructive of the beneficial uses of water is never permitted (California Constitution, Article X, Sec. 2). Fish and wildlife protection has been expressly recognized as a beneficial use of water under California law since at least 1935 (e.g., City of Los Angeles v. Aitken, 10 Cal. App. 3d 460 (1935); People v. Truckee Lumber Co., 116 Cal 397 (1897); Water Code, sec. 1243)
- **Public Trust Doctrine is also encapsulated in The California Forest Practice Rules which govern timber harvest on private lands.** According to the Z'berg-Nejedly Forest Practice Act, effective January 1, 2001, it is the intent of the California Legislature that:  
The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.<sup>2</sup>
- **The California Legislature thus holds up the principles of Public Trust Doctrine**, saying that even private land-owners must give consideration to the rights of surrounding citizens of “this and future generations.”<sup>3</sup> These principles have been upheld by a series of legal case hinging on this concept. Also, an Attorney General’s ruling stated that the phrase “while giving consideration” means equal consideration.<sup>4</sup>

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<sup>1</sup> Slade, David C. The Doctrine’s History: A Gift from a Roman Emperor. <http://www.wsn.org/issues/PIOpubtrust2.html>

<sup>2</sup> California Forest Practice Rules 2001. “Z’berg-Nejedly Forest Practice Act” Division 4, Chapter 8, Public Resources Code. Effective January 1, 2001. 200.

<sup>3</sup> Ibid. 200

<sup>4</sup> Alford, Warren. Sierra Club staff member. Private conversation.