

## Public Trust Doctrine

The public trust doctrine has emerged as another challenge to development and infrastructure projects that involve State of California lands, water, or resources (e.g. wildlife, coastal, and mineral resources). Agencies acting as trustees are imposing stricter review and public and private project proponents face more litigation challenging projects and activities that allegedly may cause harm to public trust uses or resources.

Downey Brand attorneys are at the forefront of public trust doctrine litigation. Our attorneys also regularly assist public agencies and private applicants as they seek to secure water rights, obtain leases, resolve title and boundary issues, or secure and administer granted trust lands. We also help clients address the risks associated with activities that may adversely affect trust lands, waters, or resources.

The common law public trust doctrine in California has long played an important role in protecting navigable waters and waterfronts for purposes consistent with the trust—commerce, navigation, fisheries, recreation, and conservation. The doctrine was extended substantially in 1983 by the California Supreme Court in *National Audubon v. Superior Court*, which for the first time limited the ability of the State to authorize surface water diversions without considering the public trust and protecting trust resources whenever “feasible.” In the land use context, the doctrine often arises when there are questions about the extent of public trust lands at a particular site, the allowable land uses for lands subject to the trust, or when the state has entered into a boundary line or exchange agreement to resolve trust land boundary issues.

Downey Brand attorneys work with clients in many different matters impacted by the public trust doctrine, including:

- Advising public agencies and private applicants on the risks and trust duties associated with possible adverse effects of those activities on public trust lands, waters, and resources.
- Assisting private companies, landowners, and public agencies with obtaining and renewing leases with the State Lands Commission for a variety of uses.
- Assisting cities and ports with the management of existing trust lands granted by the State Legislature and in obtaining grants of additional trust lands.
- Representing landowners in negotiations of trust termination or exchange agreements with the State Lands Commission to remove public trust easements from privately owned lands.

### Selected Experience

#### Selected Litigation

- *San Francisco Baykeeper, Inc. v. California State Lands Commission*, 29 Cal.App.5th 562 (2018).

Represented leaseholder in action under public trust doctrine challenging sand mining on tide and submerged lands within San Francisco Bay. Court upheld finding by State Lands Commission that mining leases will not impair trust uses or values.

- *Environmental Law Foundation v. State Water Resources Control Board*, 26 Cal.App.5th 844 (2016). On behalf of amici curiae League of California Cities, California Station Association of Counties, and California Association of Sanitation Agencies, supported appeal of ruling that the public trust doctrine requires counties, as subdivisions of the State, to consider the trust before authorizing any activity that may allegedly affect trust resources in navigable waters.
- *Monterey Coastkeeper v. Monterey County Water Resources Agency*, 18 Cal.App.5th 1 (2017). Successfully defended against allegations that county agency had failed in its fiduciary duties under the public trust doctrine in management of flood control and stormwater facilities.
- *Atherton Cove Property Owners Association v. San Joaquin Area Flood Control Agency*, San Joaquin Co. Sup. Ct. (2017). At trial, successfully defended challenge to multi-million dollar flood control facility brought under CEQA and grants of sovereign lands under the public trust doctrine.
- *San Francisco Baykeeper, Inc. v. California State Lands Commission*, 242 Cal.App.4th 202 (2015). Represented leaseholders in action challenging EIR for sand mining operations in San Francisco and Suisun Bays under CEQA and common law public trust doctrine.
- *Santa Teresa Citizens Action Group v. City of San Jose*, 114 Cal.App.4th 689 (2003). Defense against suit challenging construction of a pipeline for delivery of reclaimed water to a new energy facility brought by a private water company. Held that public trust doctrine has no direct application to groundwater.

## Selected Advice & Counsel

- *San Francisco Bay Sand Mining, San Francisco, Solano, and Contra Costa Counties*. Counseled clients on lease renewals for mining construction-grade sand from San Francisco and Suisun Bays. Advised on completion of EIR and helped negotiate and secure lease renewals from the California State Lands Commission and permits and regulatory approvals from a host of wildlife and regulatory agencies.
- *Title Settlement and Trust Termination Agreement, Sonoma County*. Assisting private developer with negotiation of Title Settlement and Trust Termination Agreement with California State Lands Commission to settle dispute regarding the extent, nature, and location of the State's interests in the property.
- *Water and Land Management, Inyo County*. Advised water and power agency on amendments of leases to lands owned and administered by the California State Lands Commission.
- *Management of Granted Trust Lands*. Counseled trustee agency with respect to management of existing granted trust lands and process for obtaining additional grants of trust lands from the State

Legislature.

- *Base Closure and Reuse, Cities of Vallejo, Alameda, and San Diego*. Represented the cities of Vallejo and San Diego and later the developer at Alameda in negotiations with California State Lands Commission on closure and reuse of former naval facilities and settlement of the state's title claims.