

# California's Surface Water Ambient Monitoring Program Citizen Monitoring Access within California

August 2009



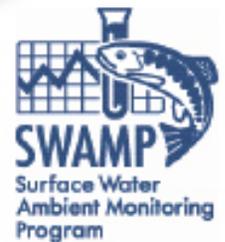
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Citizen Monitoring Coordinator

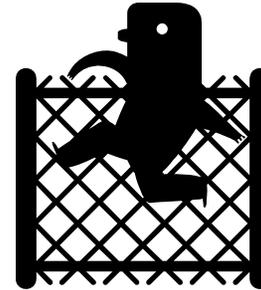
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## Illegal Trespass?



Illegal trespass is the wrongful interference with the use of the property of another.

# What is Trespass For Citizen Monitors?



- Trespass: a person **who enters** or **remains upon** or in possession of the land of another without the possessor's consent. Penal Code 601-602
- Posted land are those boundaries with conspicuous signs close along it (Usually at least 3 per mile per boundary, but this may vary).

Please Note: Not all property must be posted to prevent trespass.



## Legal Access:



- Written permission must be obtained and include the signature of the land owner or its agent.  
<Even if the property is owned by a public entity try to obtain permission prior to conducting any monitoring.>
- Ask for permission in an honest fashion.  
<You may want to pursue insurance which allows private and public land owners to be additionally insured.>



# Waterway Access



- A person in a vessel has a right of passage on a **navigable waterway**, even if the bed of the waterway is privately-owned and is posted. Harbors and Navigation Code Sections 100-107
- A waterway is navigable if it meets the tests set forth in **33 C.F.R. Part 329** (the water body is subject to the ebb and flow of the tide; while in its natural state it is presently used, has been used or is susceptible for use to transport commerce
- The waterway need not be navigable in both directions nor navigable for 12 months of the year. A waterway's navigability is not destroyed by rapids or other temporary obstacles so long as the rest of the waterway is otherwise. *The Public's Right to Navigate Waterways in California, 2003, Ronald W. Rogers, American Whitewater*
- Certain waterbodies have already been **listed as being navigable**. Harbors and Navigation Code Sections 100-107 and 33 USC Sections 401-403



# References:



- Appendix A: Joint Memorandum Introduction  
This document provides clarifying guidance regarding the Supreme Court's decision in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001) ("SWANCC") and addresses several legal issues concerning Clean Water Act ("CWA") jurisdiction that have arisen since SWANCC in various factual scenarios involving federal regulation of "navigable waters." Federal Register /Vol. 68, No. 10 /Wednesday, January 15, 2003 / Proposed Rules [http://www.epa.gov/owow/wetlands/pdf/Joint\\_Memo.pdf](http://www.epa.gov/owow/wetlands/pdf/Joint_Memo.pdf)
- Appendix D: Legal Definition of "Traditional Navigable Waters"  
Waters that Qualify as Waters of the United States Under Section (a)(1) of the Agencies' Regulations  
[http://www.epa.gov/owow/wetlands/pdf/app\\_d\\_traditional\\_navigable\\_waters.pdf](http://www.epa.gov/owow/wetlands/pdf/app_d_traditional_navigable_waters.pdf)
- California Harbors and Navigation Code Sections 100-107
- California Penal Code Section 601-602
- *DFG Q and A* –QUESTION: Is fishing permitted on any private property with a creek, stream or river? August 2008 [www.dfg.ca.gov/QandA](http://www.dfg.ca.gov/QandA)
- THE PUBLIC'S RIGHT TO NAVIGATE WATERWAYS IN CALIFORNIA © 2003 Ronald W. Rogers, American Whitewater



Thank You



“Our mission is to preserve and enhance the quality of California’s water resources and ensure their proper allocation and efficient use for present and future generations”

S W R C B

