The Bay Area's NBA franchise, the Golden State Warriors, is collaborating with San Francisco city officials to develop a new, state-of-the-art basketball arena on a site that literally sits atop San Francisco Bay. Few would argue that the region's basketball team–a perennial second-division NBA franchise until it surged into contention last season–needs a new arena. And many observers believe that the team would be both more financially viable and accessible to its fan base if it moved from Oakland to downtown San Francisco. But the proposed arena project, located on two piers fronting the Bay that are currently (under)utilized as a parking lot, has generated substantial controversy. Specifically, many environmentalists and city activists ask: does the construction and operation of such a sports arena constitute a proper use of these lands under California's public trust doctrine?

The public trust doctrine is a foundational principle of California natural resources law, just as it is in many states. The doctrine provides that certain public resources are owned by the state in its sovereign capacity, in trust for current and future generations of Californians, and that public officials charged with administering those resources have an affirmative duty to manage them in a manner that preserves their long-term sustainability. Tide and submerged lands, including those underlying San Francisco Bay, are perhaps the most traditional form of public trust resources. For many years, courts focused on a "traditional trilogy" of proper trust uses: commerce, navigation and fisheries. But in the landmark, 1971 decision, *Marks v. Whitney*, the California Supreme Court famously held that public trust uses "are sufficiently flexible to encompass changing public needs," and include "the preservation of these lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life…" More recent judicial decisions in California and elsewhere similarly confirm that recreation is another legitimate use of public trust lands.

So, to return to the question, is the proposed construction of a basketball arena on (or, more accurately, over) the tide and submerged lands of San Francisco Bay an appropriate use of these public trust lands?

Supporters of the Warriors' proposed arena argue strenuously that the answer is yes. They cite the fact that construction of the facility will permit a multitude of recreational opportunities for Bay Area residents. (A new arena would presumably be used for numerous events besides 41-50 professional basketball games annually; it would also serve as a venue for concerts, trade shows, theatrical performances, etc.) Additionally (and, to some observers, inconsistently),

proponents argue that the arena would generate substantial commercial and tax revenues for the Warriors and the City of San Francisco.

At least some opponents of the Warriors' project argue that finite public trust resources such as the tidelands site eyed by the Warriors should be limited to "water-dependent uses"–i.e., those that can only be carried out on or adjacent to tide and submerged lands. A sports arena, they point out, can be built anywhere and is clearly not water-dependent. (In an effort to overcome this argument, project proponents have recently added a cruise ship terminal on a corner of the project site, alongside the planned arena.)

This debate should sound familiar to veterans of California public trust debates–and to Northern California sports fans. A very similar controversy arose in the 1990's over the San Francisco Giants' plan to build a new major league baseball stadium on filled tidelands a long baseball throw from the proposed Warriors' arena. Like the latter, the China Basin site on which the Giants' AT&T Park was ultimately constructed had previously languished as a dilapidated industrial waterfront area. The Giants' ballpark project incorporated numerous features designed to accommodate public trust concerns. They included a public promenade located between the stadium and the water; (free) public visual access from that promenade into the ballpark; and a dedicated ferry terminal onsite to transport fans by water to the ballpark from other parts of San Francisco Bay. By all accounts, AT&T Park has been a resounding success, drawing tens of thousands of people on a daily basis to a waterfront area that had previously been largely inaccessible to the public. In turn, the opening of AT&T Park in 2000 spawned an influx of new restaurants, bars and other public facilities in the neighborhood, and anchored an urban renaissance of the entire China Basin/South-of-Market Street area of San Francisco.

It is San Francisco's recent, phenomenally successful experience with AT&T Park that ultimately convinces me the Warriors arena project– if similarly and carefully designed with public access a paramount concern–satisfies public trust principles and constitutes a valid trust use.

The controversy over the proposed Warriors arena is far from over. A multitude of government agencies, including the California State Lands Commission and the San Francisco Bay Conservation and Development Commission (BCDC) will have to review and approve the project before it becomes a reality. Meanwhile, the Warriors' arena project is shaping up as the next chapter in California's

longstanding, always robust debate over public trust principles.