PUBLIC TRUST PRINCIPLES AND WATER RIGHTS

2013 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill defines the state's public trust obligations and declares that certain water rights constitute property rights protected by the Utah Constitution.

Highlighted Provisions:

This bill:

- defines the state's public trust obligations;
- declares that certain water rights constitute property rights protected by the Utah Constitution; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-1, as last amended by Laws of Utah 2010, Chapter 410

ENACTS:

65A-15-101, Utah Code Annotated 1953

65A-15-102, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **65A-15-101** is enacted to read:

CHAPTER 15. STATE PUBLIC TRUST OBLIGATIONS

65A-15-101. Title.

This chapter is known as "State Public Trust Obligations."

Section 2. Section **65A-15-102** is enacted to read:

65A-15-102. State public trust obligations.

33 (1) The state's public trust obligations are limited to public trust obligations defined by:
34 (a) federal law, including federal law applicable to the beds of navigable bodies of
35 water;
36 (b) the Utah Constitution, including public trust obligations relating to state-owned
37 lands under Utah Constitution, Article XX, Section 1; and
38 (c) the Utah Code, including public trust obligations relating to:
39 (i) sovereign lands as defined in Section 65A-1-1; and
40 (ii) public ownership of water, as described in Section 73-1-1.
41 (2) (a) The state does not recognize a public trust obligation that is not described in
42 Subsection (1).
43 (b) Nothing in this section is intended to limit the state's use of its police powers or
44 other legal means to protect public or private lands.
45 (3) In exercising a public trust obligation described in Subsection (1), the state may not
46 violate property protections of the Utah Constitution, including:
47 (a) Utah Constitution, Article I, Sections 1 and 22; and
48 (b) Utah Constitution, Article XVII, Section 1.
49 (4) To the extent a state public trust obligation, related to public ownership of water,
50 exists under Subsection (1)(c)(ii):
51 (a) an appropriation of water for beneficial use, made in accordance with applicable
52 law, satisfies the state's public trust obligation for that appropriation; and
53 (b) the state may not, under its public trust obligation, reduce the quantity of water
54 being put to beneficial use under the appropriation.
55 (5) The state fulfills its public trust obligations related to public land and public water
56 through legislative enactment of laws regulating public land and public water.
57 Section 3. Section **73-1-1** is amended to read:
58 **73-1-1. Waters declared property of public -- Property right related to water.**
59 (1) All waters in this state, whether above or under the ground, are hereby declared to
60 be the property of the public, subject to all existing rights to the use thereof.
61 (2) The declaration of public ownership of water in Subsection (1) does not create or
62 recognize an easement for public recreational use on private property.
63 (3) The Legislature shall govern the use of public water for beneficial purposes, as

64 limited by constitutional protections for private property.

65 (4) The appropriation of water for beneficial use in accordance with applicable law

66 constitutes a property right protected under the Utah Constitution, Article I, Sections 1 and 22

67 and Article XVII, Section 1.

68 [~~(4)~~] (5) The right of the public to use public water for recreational purposes is

69 governed by Chapter 29, Public Waters Access Act.