

PUBLIC TRUST OBLIGATIONS AND CONSTITUTIONAL PROTECTIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: _____

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



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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.

(1) The state's public trust obligations are limited to public trust obligations defined by:

(a) federal law, including federal law applicable to the beds of navigable bodies of water;

(b) the Utah Constitution, including public trust obligations relating to state-owned lands under Utah Constitution, Article XX, Section 1; and

(c) the Utah Code, including public trust obligations relating to:

(i) sovereign lands as defined in Section 65A-1-1; and

(ii) public ownership of water, as described in Section 73-1-1.

(2) (a) The state does not recognize a public trust obligation that is not described in Subsection (1).

(b) Nothing in this section is intended to limit the state's use of its police powers or other legal means to protect public or private lands.

(3) In exercising a public trust obligation described in Subsection (1), the state may not violate property protections of the Utah Constitution, including:

(a) Utah Constitution, Article I, Sections 1 and 22; and

(b) Utah Constitution, Article XVII, Section 1.

(4) (a) To the extent a state public trust obligation related to public ownership of water exists under Subsection (1)(c)(ii), the state fulfills its public trust obligation through legislative enactment of laws regulating the use of water.

(b) An appropriation of water for beneficial use, made in accordance with applicable law, satisfies the state's public trust obligation for that appropriation.

(c) In advancing a claimed public trust violation, neither the state nor any other party may use the state's public trust obligation as grounds to reduce a quantity of water being put to

59 beneficial use under an appropriation made in accordance with applicable law.

60 (5) The state fulfills its public trust obligations related to public land through
61 legislative enactment of laws regulating public land.

62 Section 3. Section **73-1-1** is amended to read:

63 **73-1-1. Waters declared property of public -- Property right related to water.**

64 (1) All waters in this state, whether above or under the ground, are hereby declared to
65 be the property of the public, subject to all existing rights to the use thereof.

66 (2) The declaration of public ownership of water in Subsection (1) does not create or
67 recognize an easement for public recreational use on private property.

68 (3) The Legislature shall govern the use of public water for beneficial purposes, as
69 limited by constitutional protections for private property.

70 (4) The appropriation of water for beneficial use in accordance with applicable law
71 constitutes a property right protected under Utah Constitution, Article I, Sections 1 and 22 and
72 Article XVII, Section 1.

73 [~~4~~] (5) The right of the public to use public water for recreational purposes is
74 governed by Chapter 29, Public Waters Access Act.

Legislative Review Note
as of 1-15-13 4:18 PM

Office of Legislative Research and General Counsel