



*Working to restore public access to public waters in Utah*

Subject: Comments on H.B. 208 - "Criminal Trespass Amendments"  
To: Members of the Senate Natural Resources, Agriculture, and Environment Committee  
From: The Board of Directors, Utah Stream Access Coalition  
Date: February 20, 2023

Dear Senators,

The Utah Stream Access Coalition (the Coalition) represents the interests of its 7,000+ members, and the public at large, when it comes to their enjoyment of lawful recreational activities that utilize Utah's publicly-owned waters. The Coalition's Board of Directors offers the following comments on H.B. 208 - "Criminal Trespass Amendments," which is currently before your Committee:

1. Current trespass laws, in conjunction with the Public Waters Access Act, already prohibit the touching of privately owned stream beds without the permission of the owner of those beds. See Utah Code Sections 73-29-101 et seq. (Public Waters Access Act), 76-6-206 (Criminal trespass – general), 76-6-206.3 (Criminal trespass on agricultural land or range land) and 23-20-14 (Criminal trespass while hunting or fishing). The penalties in these existing statutes are the same as those in H.B. 208, making H.B. 208 superfluous and redundant to existing law.
2. According to its Sponsor, H.B. 208 is intended to clarify for the public and law enforcement that touching the beds of *non-navigable* waterways constitutes trespass. Unfortunately, the State of Utah has yet to conduct a comprehensive review of the navigability of Utah's major rivers and streams to determine which are navigable and which are not. Respectfully, unless and until the navigability of these waterways is properly determined Utahns, and their law enforcement officers, simply cannot know where the provisions of H.B. 208 apply.
3. The Coalition has challenged the constitutionality of the Public Waters Access Act (PWAA) - which serves as the foundation for H.B. 208 - in a lawsuit (*Utah Stream Access Coalition v. VR Acquisitions [Victory Ranch]*) initiated on 11/12/2010. Oral arguments were heard – for the third time in six years – in this case on 1/9/2023. The matter is presently under advisement by the Court and a Written Decision – which could very well address the public's right to touch the privately-owned beds of *non-navigable* streams – is expected in 2 to 5 months. Enactment of H.B. 208 in advance of the Court's Written Decision is premature, at best.
4. As written, H.B. 208 fails to establish any repercussions for landowners misrepresenting a *navigable* stream or river as a *non-navigable* stream or river, or harassing, or seeking the citation and/or removal of a member of the public exercising their legal right to use the beds and banks (to the Ordinary High Water Mark) of *navigable* streams or rivers for lawful recreational purposes that utilize the publicly-owned waters of the State.

In view of the above, we ask that you please vote against passing H.B. 208 out of Committee, and kindly consider sending it for Interim study, where members of the Legislature can further consider the concerns raised above.

Thank you.

Respectfully,

The Board of Directors,  
Utah Stream Access Coalition