

Part 1 General Provisions

73-29-101 Title.

This chapter is known as the "Public Waters Access Act."

Enacted by Chapter 410, 2010 General Session

73-29-102 Definitions.

As used in this chapter:

- (1) "Division" means the Division of Wildlife Resources.
- (2) "Floating access" means the right to access public water flowing over private property for floating and fishing while floating upon the water.
- (3) "Impounded wetlands" means a wetland or wetland pond that is formed or the level of which is controlled by a dike, berm, or headgate that retains or manages the flow or depth of water, including connecting channels.
- (4) "Navigable water" means a water course that in its natural state without the aid of artificial means is useful for commerce and has a useful capacity as a public highway of transportation.
- (5) "Private property to which access is restricted" means privately owned real property:
 - (a) that is cultivated land, as defined in Section 23A-5-317;
 - (b) that is:
 - (i) properly posted, as defined in Section 23A-5-317;
 - (ii) posted as described in Subsection 76-6-206(2)(b)(iii); or
 - (iii) posted as described in Subsection 76-6-206.3(2)(c);
 - (c) that is fenced or enclosed as described in:
 - (i) Subsection 76-6-206(2)(b)(ii); or
 - (ii) Subsection 76-6-206.3(2)(b); or
 - (d) that the owner or a person authorized to act on the owner's behalf has requested a person to leave as provided by:
 - (i) Section 23A-5-317;
 - (ii) Subsection 76-6-206(2)(b)(i); or
 - (iii) Subsection 76-6-206.3(2)(a).
- (6) "Public access area" means the limited part of privately owned property that:
 - (a) lies beneath or within three feet of a public water or that is the most direct, least invasive, and closest means of portage around an obstruction in a public water; and
 - (b) is open to public recreational access under Section 73-29-203; and
 - (c) can be accessed from an adjoining public access area or public right-of-way.
- (7) "Public recreational access" means the right to engage in recreational access established in accordance with Section 73-29-203.
- (8)
 - (a) "Public water" means water:
 - (i) described in Section 73-1-1; and
 - (ii) flowing or collecting on the surface:
 - (A) within a natural or realigned channel; or
 - (B) in a natural lake, pond, or reservoir on a natural or realigned channel.
 - (b) "Public water" does not include water flowing or collecting:
 - (i) on impounded wetland;

- (ii) on a migratory bird production area, as defined in Section 23A-13-101;
 - (iii) on private property in a manmade:
 - (A) irrigation canal;
 - (B) irrigation ditch; or
 - (C) impoundment or reservoir constructed outside of a natural or realigned channel; or
 - (iv) on a jurisdictional wetland described in 33 C.F.R. 328.3.
- (9)
- (a) "Recreational access" means to use a public water and to touch a public access area incidental to the use of the public water for:
 - (i) floating;
 - (ii) fishing; or
 - (iii) waterfowl hunting conducted:
 - (A) in compliance with applicable law or rule, including Sections 23A-5-314, 73-29-203, and 76-10-508; and
 - (B) so that the individual who engages in the waterfowl hunting shoots a firearm only while within a public access area and no closer than 600 feet of any dwelling.
 - (b) "Recreational access" does not include:
 - (i) hunting, except as provided in Subsection (9)(a)(iii);
 - (ii) wading without engaging in activity described in Subsection (9)(a); or
 - (iii) any other activity.

Amended by Chapter 34, 2023 General Session

73-29-103 Declarations.

The Legislature declares:

- (1) the Utah Constitution's specific private property protections, including recognition of the inalienable right to acquire, possess, and protect property and the prohibition on taking or damaging private property for public use without just compensation, protect against government's broad recognition or grant of a public recreation easement to access or use public water on private property;
- (2) general constitutional and statutory provisions declaring public ownership of water and recognizing existing rights of use are insufficient to overcome the specific constitutional protections for private property and do not justify inviting widespread unauthorized invasion of private property for recreation purposes where public access has never existed or has not existed for a sufficient period and under the conditions required to support recognition under this chapter;
- (3) whether, or to what extent, a public easement exists for recreational use of public waters on private property is uncertain after judicial decisions in the cases of *J.J.N.P. Co. v. State*, 655 P.2d 1133 (Utah 1982) and *Conatser v. Johnson*, 194 P.3d 897 (Utah 2008), which decisions did not address the constitutional prohibition on taking or damaging private property without just compensation;
- (4) legislative failure to provide guidance before, coupled with legislative inaction after the 1982 decision in *J.J.N.P. Co. v. State* form a compelling foundation for the Legislature to affirm a limited right to float on the water without violating the constitutional protections of the underlying private property;
- (5) the real and substantial invasion of private property rights did not occur with recognition of the right to float on water that passes over the land, but with the right, first recognized in *Conatser*

- v. Johnson, to physically occupy the land for an indeterminate time and for a wide range of activities by the public against the owner's will and without just compensation;
- (6) its intent to foster restoration of the accommodation existing between recreational users and private property owners before the decision in *Conatser v. Johnson*, affirm a floating right recognized by the court in *J.J.N.P. Co. v. State*, and recognize adverse use as a constitutionally sound and manageable basis for establishing a limited right of public recreational access on private property in accordance with this chapter.

Enacted by Chapter 410, 2010 General Session