

Representative Kay L. McIff proposes the following substitute bill:

PUBLIC TRUST OBLIGATIONS AND WATER RIGHTS

PROTECTIONS

2014 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:



26 [65A-15-101](#), Utah Code Annotated 1953

27 [65A-15-102](#), Utah Code Annotated 1953



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

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

31 **CHAPTER 15. STATE PUBLIC TRUST OBLIGATIONS**

32 **65A-15-101. Title.**

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

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

35 **65A-15-102. State public trust obligations.**

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

37 (a) federal law applicable to the beds of navigable bodies of water as set forth in

38 Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892) and as applied under Utah law in

39 Coleman v. Utah State Land Board, 759 P.2d 622 (Utah 1990);

40 (b) the Utah Constitution, including public trust obligations relating to state-owned

41 lands under Utah Constitution, Article XX, Section 1; and

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

43 (i) sovereign lands as defined in Section [65A-1-1](#); and

44 (ii) public ownership of water as described in Section [73-1-1](#).

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

46 Subsection (1).

47 (b) Nothing in this section is intended to limit the state's use of its police powers or

48 other legal means to protect public or private lands.

49 (3) In exercising a public trust obligation described in Subsection (1), the state may not

50 violate property protections of the Utah Constitution, including:

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

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

53 (4) (a) To the extent that a state public trust obligation related to public ownership of

54 water exists under Subsection (1)(c)(ii), the state fulfills its public trust obligation through

55 legislative enactment of laws regulating the use of water.

56 (b) An appropriation of water for beneficial use, made in accordance with applicable

57 law, satisfies the state's public trust obligation for that appropriation.

58 (c) In advancing a claimed public trust violation, neither the state nor any other party
59 may use the state's public trust obligation as grounds to reduce a quantity of water being put to
60 beneficial use under an appropriation made in accordance with applicable law.

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

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

64 **73-1-1. Waters declared property of public -- Property right related to water.**

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

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

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

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

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