

PROTECTION OF WATER RIGHTS

2015 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



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

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

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

31 **65A-15-101. Title.**

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

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

34 **65A-15-102. State public trust obligations.**

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

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

37 Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892);

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

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

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

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

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

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

44 Subsection (1).

45 (b) Nothing in this section is intended to limit the state's use of its police power in a

46 constitutional manner to protect public or private lands.

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

48 violate property protections of the Utah Constitution, including:

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

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

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

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

53 legislative enactment of laws regulating the use of water.

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

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

56 (c) In advancing a claimed public trust violation, neither the state nor any other party

57 may use the state's public trust obligation as grounds to reduce a quantity of water being put to

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

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

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

62 **73-1-1. Waters declared property of public -- Property right related to water.**

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

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

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

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

72 ~~(4)~~ (5) The right of the public to use public water for recreational purposes is
73 governed by Chapter 29, Public Waters Access Act.

Legislative Review Note
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Office of Legislative Research and General Counsel