

1 **PUBLIC WATERS ACCESS ACT**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4

LONG TITLE

5 **General Description:**

6 This bill modifies provisions relating to access to public waters.

7 **Highlighted Provisions:**

8 This bill:

- 9 ▶ defines terms;
- 10 ▶ repeals provisions of Title 73, Chapter 29, Public Waters Access Act;
- 11 ▶ allows members of the public to use certain public waters;
- 12 ▶ restricts a member of the public from entering, crossing, or using certain private
- 13 property while using certain public waters except under some circumstances;
- 14 ▶ allows a property owner to place a fence or similar barrier across certain public
- 15 water under certain circumstances; and
- 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **73-1-1**, as last amended by Laws of Utah 2010, Chapter 410

24 **73-10-1**, as last amended by Laws of Utah 2007, Chapter 329

25 **73-29-102**, as enacted by Laws of Utah 2010, Chapter 410

26 REPEALS AND REENACTS:

27 **73-29-201**, as enacted by Laws of Utah 2010, Chapter 410

28 **73-29-202**, as last amended by Laws of Utah 2011, Chapter 340

29 **73-29-203**, as enacted by Laws of Utah 2010, Chapter 410

30 **73-29-204**, as enacted by Laws of Utah 2010, Chapter 410

31 **73-29-205**, as enacted by Laws of Utah 2010, Chapter 410

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33 REPEALS:

34 **73-29-103**, as enacted by Laws of Utah 2010, Chapter 410

35 **73-29-206**, as enacted by Laws of Utah 2010, Chapter 410

36 **73-29-207**, as enacted by Laws of Utah 2010, Chapter 410

37 **73-29-208**, as enacted by Laws of Utah 2010, Chapter 410

38

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

40 Section 1. Section **73-1-1** is amended to read:

41 **73-1-1. Waters declared property of public.**

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

44 [~~(2) The declaration of public ownership of water in Subsection (1) does not create or~~
45 ~~recognize an easement for public recreational use on private property.~~]

46 [~~(3) The Legislature shall govern the use of public water for beneficial purposes, as~~
47 ~~limited by constitutional protections for private property.~~]

48 [~~(4)~~ (2) The right of the public to use public water [~~for recreational purposes~~] is
49 governed by Chapter 29, Public Waters Access Act.

50 Section 2. Section **73-10-1** is amended to read:

51 **73-10-1. State's policy -- Creation of revolving fund -- General construction of**
52 **act.**

53 (1) The Legislature of the state of Utah having [~~heretofore~~] declared by Section 73-1-1,
54 Utah Code Annotated 1953, that, "All waters [~~of~~ in] this state, whether above or under the
55 ground, are [~~hereby declared to be~~] the property of the public, subject to all existing rights to
56 the use thereof"; and further, by Section 73-1-3, Utah Code Annotated 1953, that, "Beneficial
57 use shall be the basis, the measures and the limit of all rights to the use of water in this state";
58 and further, by Section 17B-2a-1002 that the policy of the state is, "To obtain from water in
59 Utah the highest duty for domestic uses and irrigation of lands in Utah within the terms of
60 interstate compacts or otherwise," now by this act reiterates and reaffirms such declaration of
61 the public policy of the state of Utah.

62 (2) It is further declared to be the policy of this chapter and of the state of Utah, and the
63 Legislature recognizes:

64 (a) that by construction of projects based upon sound engineering the waters within the
65 various counties of the state of Utah can be saved from waste and increased in efficiency of
66 beneficial use by 25% to 100%;

67 (b) that because of well-known conditions such as low prices and lack of market for
68 farm products, particularly the inefficiency of water supply because of lack of late season water
69 and consequent lack of financial strength, water users in small communities have been unable
70 to build projects that would provide full conservation and beneficial use for the limited water
71 supply in this semiarid land;

72 (c) that water, as the property of the public, should be so managed by the public that it
73 can be put to the highest use for public benefit;

74 (d) that Congress of the United States has provided for the building of larger water
75 conservation projects throughout the semiarid states, payment of the capital costs without
76 interest to be made by the water users upon the basis of a fair portion of crop returns;

77 (e) that the Congress of the United States has established in the department of interior
78 and in the department of agriculture, various agencies having authority to develop, protect, and
79 aid in putting to beneficial use the land and water resources of the United States and to
80 cooperate with state agencies having similar authority;

81 (f) that the interests of the state of Utah require that means be provided for close
82 cooperation between all state and federal agencies to the end that the underground waters and
83 waters of the small streams of the state, and the lands thereunder, can be made to yield
84 abundantly and increase the income and well-being of the citizens of the state;

85 (g) that it appears to be sound public policy for the state of Utah to provide a revolving
86 fund, to be increased at each legislative session, to the end that every mountain stream and
87 every water resource within the state can be made to render the highest beneficial service, such
88 fund to be so administered that no project will be built except upon expert engineering,
89 financial, and geological approval.

90 (3) All of the provisions of this chapter shall be liberally construed so as to carry out
91 and put into force and effect the purposes and policies as [~~hereinabove set forth~~] described in
92 this section.

93 Section 3. Section **73-29-102** is amended to read:

94 **73-29-102. Definitions.**

95 As used in this chapter:

96 [~~(1) "Division" means the Division of Wildlife Resources.~~]

97 [~~(2) "Floating access" means the right to access public water flowing over private~~
98 ~~property for floating and fishing while floating upon the water.~~]

99 [~~(3)~~ (1) "Impounded wetlands" means a wetland or wetland pond that is formed or the
100 level of which is controlled by a dike, berm, or headgate that retains or manages the flow or
101 depth of water, including connecting channels.

102 [~~(4) "Navigable water" means a water course that in its natural state without the aid of~~
103 ~~artificial means is useful for commerce and has a useful capacity as a public highway of~~
104 ~~transportation.~~]

105 [~~(5)~~ (2) "Private property to which access is restricted" means privately owned real
106 property:

107 (a) that is cultivated land, as defined in Section 23-20-14;

108 (b) that is:

109 (i) properly posted, as defined in Section 23-20-14;

110 (ii) posted as described in Subsection 76-6-206(2)(b)(iii); or

111 (iii) posted as described in Subsection 76-6-206.3(2)(c);

112 (c) that is fenced or enclosed as described in:

113 (i) Subsection 76-6-206(2)(b)(ii); or

114 (ii) Subsection 76-6-206.3(2)(b); or

115 (d) that the owner or a person authorized to act on the owner's behalf has requested a
116 person to leave as provided by:

117 (i) Section 23-20-14;

118 (ii) Subsection 76-6-206(2)(b)(i); or

119 (iii) Subsection 76-6-206.3(2)(a).

120 [~~(6) "Public access area" means the limited part of privately owned property that:~~]

121 [~~(a) lies beneath or within three feet of a public water or that is the most direct, least~~
122 ~~invasive, and closest means of portage around an obstruction in a public water; and]~~

123 [~~(b) is open to public recreational access under Section 73-29-203; and]~~

124 [~~(c) can be accessed from an adjoining public access area or public right-of-way.~~]

125 [~~(7) "Public recreational access" means the right to engage in recreational access~~

- 126 ~~established in accordance with Section 73-29-203.]~~
- 127 ~~[(8)] (3) (a) "Public access water" means water:~~
- 128 ~~(i) described in Section 73-1-1; [~~and~~]~~
- 129 ~~(ii) flowing or collecting on the surface:~~
- 130 ~~(A) within a natural or realigned channel; or~~
- 131 ~~(B) in a natural lake, pond, or reservoir on a natural or realigned channel[:]; and~~
- 132 ~~(iii) that, in its natural state during ordinary high water, is capable of:~~
- 133 ~~(A) floating cut timber six feet in length and six inches in diameter;~~
- 134 ~~(B) floating a commercial or floatable commodity; or~~
- 135 ~~(C) being navigated by oar, paddle, or motor-propelled watercraft.~~
- 136 ~~(b) "Public access water" does not include water flowing or collecting:~~
- 137 ~~(i) on impounded wetland;~~
- 138 ~~(ii) on a migratory bird production area, as defined in Section 23-28-102;~~
- 139 ~~(iii) on private property in a manmade:~~
- 140 ~~(A) irrigation canal;~~
- 141 ~~(B) irrigation ditch; or~~
- 142 ~~(C) impoundment or reservoir constructed outside of a natural or realigned channel; or~~
- 143 ~~(iv) on a jurisdictional wetland described in 33 C.F.R. 328.3.~~
- 144 ~~[(9) (a) "Recreational access" means to use a public water and to touch a public access~~
- 145 ~~area incidental to the use of the public water for:]~~
- 146 ~~[(i) floating;]~~
- 147 ~~[(ii) fishing; or]~~
- 148 ~~[(iii) waterfowl hunting conducted:]~~
- 149 ~~[(A) in compliance with applicable law or rule, including Sections 23-20-8, 73-29-203,~~
- 150 ~~and 76-10-508; and]~~
- 151 ~~[(B) so that the individual who engages in the waterfowl hunting shoots a firearm only~~
- 152 ~~while within a public access area and no closer than 600 feet of any dwelling:]~~
- 153 ~~[(b) "Recreational access" does not include:]~~
- 154 ~~[(i) hunting, except as provided in Subsection (9)(a)(iii);]~~
- 155 ~~[(ii) wading without engaging in activity described in Subsection (9)(a); or]~~
- 156 ~~[(iii) any other activity.]~~

157 Section 4. Section **73-29-201** is repealed and reenacted to read:

158 **Part 2. Access to Public Water**

159 **73-29-201. General access provisions.**

160 (1) A public access water at or below the ordinary high water mark is open to public
161 use year round for a lawful activity that utilizes the public access water, including:

162 (a) boating;

163 (b) fishing;

164 (c) swimming; or

165 (d) wading.

166 (2) A public water is not open to public use if the public water:

167 (a) is located on private property to which access is restricted; and

168 (b) is not a public access water.

169 Section 5. Section **73-29-202** is repealed and reenacted to read:

170 **73-29-202. Limitation -- Obstructions.**

171 (1) Except as provided in Subsection (2), nothing in this chapter authorizes a member
172 of the public to enter, cross, or use private property to which access is restricted other than at or
173 below the high water mark of a public access water.

174 (2) If a manmade or natural obstruction interferes with the use of a public access water,
175 a member of the public may, along with a watercraft, reasonably portage around the obstruction
176 staying close to the water and reentering the water immediately upon reaching a safe place to
177 reenter.

178 Section 6. Section **73-29-203** is repealed and reenacted to read:

179 **73-29-203. Effect of chapter on other uses and restrictions -- Required acts.**

180 (1) A person who uses a public access water is subject to any other restriction lawfully
181 placed on the use of the public access water by a governmental entity with authority to restrict
182 the use of the public access water.

183 (2) Nothing in this chapter limits or enlarges any right granted by express easement.

184 (3) When leaving a public access water, a person shall remove any refuse or tangible
185 personal property the person brought to the public access water.

186 Section 7. Section **73-29-204** is repealed and reenacted to read:

187 **73-29-204. Fences across public water.**

188 (1) An owner of the bed of a public access water may place a fence or similar barrier
189 across the public access water for an agricultural, livestock, or other lawful purpose.

190 (2) A fence or similar barrier across a public access water shall:

191 (a) comply with an applicable federal, state, or local law; and

192 (b) be constructed in a manner that does not create an unreasonably dangerous
193 condition to the public lawfully using the public access water.

194 (3) An owner described in Subsection (1) who places a fence or similar barrier across a
195 public access water shall allow a member of the public to use a ladder, gate, or other
196 mechanism to portage around or over the fence or similar barrier.

197 Section 8. Section **73-29-205** is repealed and reenacted to read:

198 **73-29-205. Severability.**

199 If a provision of this chapter, or the application of a provision of this chapter, is held to
200 be unconstitutional, the provision is severable and this chapter's other provisions and
201 applications remain effective.

202 Section 9. **Repealer.**

203 This bill repeals:

204 Section **73-29-103, Declarations.**

205 Section **73-29-206, Effect of chapter on other uses and restrictions -- Required acts.**

206 Section **73-29-207, Fences across public water.**

207 Section **73-29-208, Severability.**

Legislative Review Note
as of 11-12-13 8:45 AM

Office of Legislative Research and General Counsel