

Eric P. Lee (USB #4870)
JONES, WALDO, HOLBROOK & McDONOUGH
1441 W. Ute Blvd., Suite 330
Park City, Utah 84098
Telephone: (435) 200-0085

Nathan D. Thomas (USB #11965)
Elizabeth M. Butler (USB #13658)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

Attorneys for Defendant VR Acquisitions, LLC.

IN THE FOURTH JUDICIAL DISTRICT COURT, WASATCH COUNTY

STATE OF UTAH

UTAH STREAM ACCESS COALITION, a	:	VR ACQUISITIONS, LLC'S MOTION
Utah non-profit corporation,	:	FOR SUMMARY JUDGMENT
	:	
Plaintiff,	:	
	:	
vs.	:	Civil No. 100500558
	:	
VR ACQUISITIONS, LLC, a Delaware	:	Hon. Derek Pullan
limited liability company, <i>et al.</i>	:	
	:	
Defendants.	:	
	:	

VR Acquisitions, LLC, by and through undersigned counsel, hereby moves the court for summary judgment pursuant to Utah Rule of Civil Procedure 56, on the claims asserted by plaintiff the Utah Stream Access Coalition (“USAC”).

In this action, USAC generally challenges the constitutionality of the Public Waters Access Act, codified at Utah Code Ann. §§ 73-29-101 *et seq.*, in 2010 (“H.B. 141”), which precludes the public from more than incidental touching of the beds of streams and rivers which flow over private property. This litigation has been pending since November, 2010, and at this point many of the issues have been decided. The remaining issue is whether H.B. 141 violates the Utah public trust doctrine.

In its March 8, 2013 Ruling and Order, this Court articulated a test to determine whether H.B. 141 violates the Utah public trust doctrine. In applying that test, the Court concluded that H.B. 141 was a regulation tantamount to a disposition of the public’s easement in the beds underlying streams and rivers which flow over property and that it did not promote the public interest. The Court also concluded, however, that that “[b]y enacting [H.B. 141], the state did not give up its right to control the public easement. . . . [H.B. 141] did not transfer any property interest to private landowners.” (March 8, 2013 Ruling and Order at 22). Based upon a stipulated dispute of material fact, the Court did not resolve the final and dispositive factor of its test – “whether the Act substantially impairs the public’s interest in the lands and waters remaining . . .” (*Id.* at 22–23). Accordingly, VR Acquisitions now moves for summary judgment based upon the lack of impairment of the public’s interest in what remains.

Here, the burden is on USAC to demonstrate that H.B. 141 operates to substantially impair the “public’s interest in the lands and waters remaining.” Whether the “public’s interest” is viewed in light of public’s ability to engage in recreational activities, in light of the availability of access to those lands or waters which remain after the legislative “disposition” of the beds of

the streams which flow across private property, or in light of the ability of the public to seek alternative treatment of those beds, USAC cannot meet its burden. Even after H.B. 141, the public retains the right to access all of its public waters and lands that remain. The right to fish in the manner of any angler's choosing remains and, in fact, the fly-fishing industry has enjoyed largely unabated growth. The public retains the right to float each and every mile of "floatable" streams and rivers in the state. And, the public's right to seek alternate legislation remains. As this Court observed, a different legislature may strike a different balance.

By this motion, VR Acquisitions submits that, in light of the undisputed material facts, USAC cannot demonstrate substantial impairment of the public's interest in what remains of the public's interest in the lands and waters remaining after enactment of H.B. 141. As such, VR Acquisitions requests summary judgment in its favor that H.B. 141 does not violate Utah public trust doctrine. This motion is based upon *VR Acquisitions Memorandum in Support of Motion for Summary Judgment* ("Memorandum in Support"), filed concurrently herewith, and including the exhibits thereto, and all other pleadings and papers on file with the Court in the above-captioned matter.

Accordingly, for the reasons set forth herein and more explicitly stated in VR Acquisitions Memorandum in Support, VR Acquisitions respectfully submits that this Court grant summary judgment in favor of VR Acquisitions.

DATED this 29th day of August, 2014.

JONES WALDO HOLBROOK & McDONOUGH PC

/s/ Elizabeth M. Butler

Eric P. Lee

Nathan D. Thomas

Elizabeth M. Butler

Attorneys for Defendant VR Acquisitions, LLC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of August, 2014, I caused a true and correct copy of the foregoing to be served via electronic filing to the following:

Craig C. Coburn
Richards Brandt Miller Nelson
299 South Main Street, 15th Floor
Salt Lake City, UT 84111

John L. Young
YOUNG HOFFMAN, LLC
170 S. Main Street, Suite 1125
Salt Lake City, UT 84101

Thomas D. Roberts
Office of the Utah Attorney General
160 East 300 South, 5th Floor
PO Box 140857
Salt Lake City, UT 84114-0857

/s/ Elizabeth M. Butler _____