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RESEARCH &
GENERAL COUNSEL

Landowner Rights under the Public Waters Access Act (PWAA) Utah Code Title 73, Chapter 29

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Roadmap

Policy
Declarations

PWAA
Terms

Landowner
Rights





Legal Disclaimer

Independent legal counsel is necessary for questions about applying the PWAA to your individual circumstances.

OLRGC Staff is nonpartisan and does not advocate for or take a position on pending or passed legislation.



Policy
Declarations



Policy Declarations

Utah Code Section
[73-29-103](#)

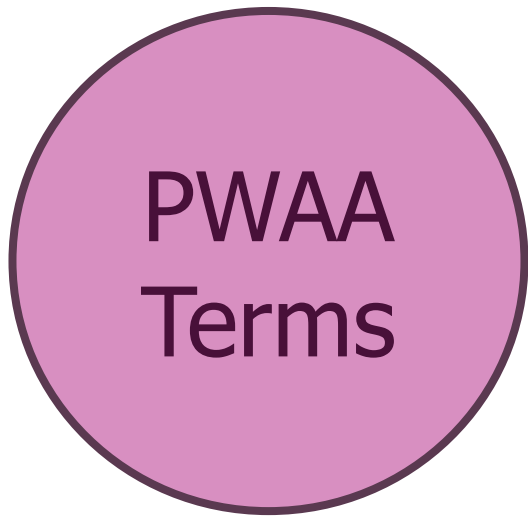
“The Utah Constitution's specific private property protections . . . **protect against government's broad recognition or grant of a public recreation easement** to access or use public water on private property.”

“**General constitutional and statutory provisions declaring public ownership of water . . . 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 . . . ”

Restore “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 . . . ”

PWAA Terms

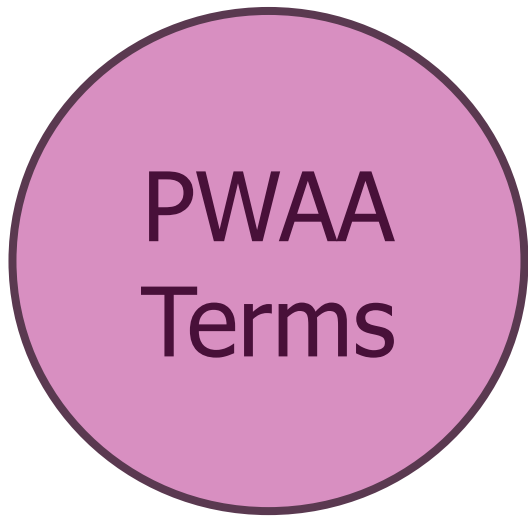




Utah Code Section
[73-29-102](#)

- Navigable water
- Public waters
- Public recreational access





Navigable water

Utah law definition:

"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" PWAA

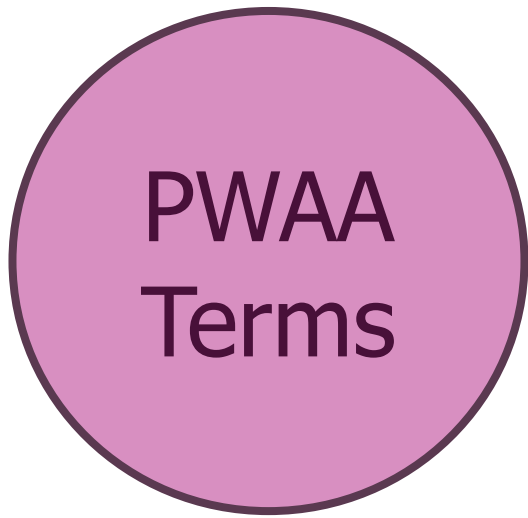
Utah Code Subsection
[73-29-102\(4\)](#)

Federal law definition:

"waters of the United States and territorial seas." Clean Water Act

"principally refers to bodies of navigable water like rivers, lakes, and oceans." Sackett v. EPA, 598 U.S. 651 (2023)





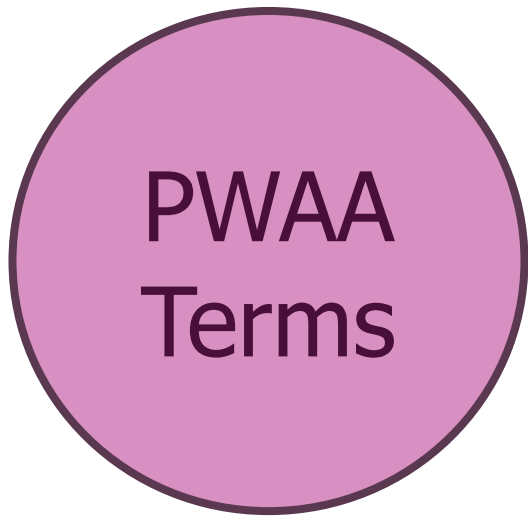
Navigable water

Litigated examples in Utah:

- **Green River** U.S. v. Utah, 283 U.S. 64 (1931)
- **Colorado River** U.S. v. Utah, 283 U.S. 64 (1931)
- **Weber River** Utah Stream Access Co. v. Orange Street., 2017 UT 82
- **Utah Lake** State of Utah v. Marsh, 740 F.2d 799 (10th Cir. 1984)
- **Great Salt Lake** Utah v. United States, 403 U.S. 9 (1971)

Utah Code Subsection
[73-29-102\(4\)](#)





Public water

Includes:

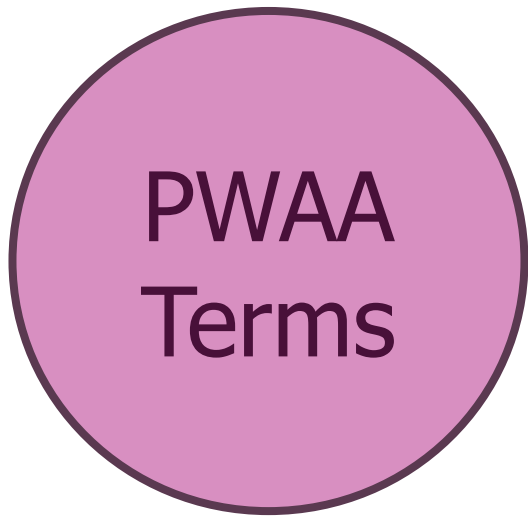
- Water regulated by the state
- Water flowing or collecting on the surface within a natural or realigned channel or in a natural lake, pond, or reservoir on a natural or realigned channel.

Does not include water:

- In impounded wetlands
- In a migratory bird production area
- On private property in a manmade structure
- On a jurisdictional wetland

Utah Code Subsection
[73-29-102\(8\)](#)





Public recreational access

Public recreational access means the right to use a public water and to touch a public access area incidental to the use of the public water for floating, fishing, or lawful waterfowl hunting.

Public recreational access is established by continuous, open, adverse, and uninterrupted use by the public for a period of at least 10 consecutive years that begins after September 22, 1982.

Utah Code Subsection
[73-29-102\(7\)](#)



Landowner Rights





Landowner Rights

- Restriction of Public Recreational Access
- Protection from Establishment of Public Recreational Access
- Enforcement Tools



Landowner Rights

Utah Code Subsection
[73-29-201\(3\)](#)

Restriction of Public Recreational Access

A private landowner may restrict access to a public water on the landowner's private land if the private land is cultivated land or properly posted or fenced in accordance with [Section 73-29-102\(5\)](#).

Restricting access include:

- Signage prohibiting entry
- Fencing in a manner that conveys prohibited entry
- Directing an unwelcomed person to leave

Landowner Rights

Restriction of Public Recreational Access

Utah Code Subsection
[73-29-201\(3\)](#)



<https://www.sltrib.com/news/environment/2021/08/17/courts-reverse-course/>



Landowner Rights

Restriction of Public Recreational Access

Utah Code Subsection
[73-29-201\(3\)](#)



[Deseret News](#)





Landowner Rights

Utah Code Subsections
[73-29-203\(1\) & \(2\)](#)

Protection from Establishment of Public Recreational Access

A private landowner may:

- Permit recreational access
 - Private landowner permission prevents the establishment of public recreational access
- Revoke permission for recreational access once granted
- Prohibit recreational access via signage, fencing, or other “overt action intended to interrupt recreational access”



Landowner Rights

Utah Code Sections
[73-29-203, 205, & 207](#)

➤ Enforcement Tools

- Trespass action
- Injunctive Relief
- Attorney Fees if action lacks a reasonable basis
- Fencing that does not create an unreasonably dangerous condition

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