

1 **USAC Stream Access Compromise – Bill Version (Clean)**

2 **TITLE 73**

3 **WATER AND IRRIGATION**

4 **CHAPTER 1**

5 **GENERAL PROVISIONS**

6 **73-1-1. Waters declared property of public.**

7 (1) All waters in this state, whether above or under the ground, are the property of the
8 public, subject to all existing rights to the use thereof.

9 (2) The right of the public to use public water in place is governed by Chapter 29, Public
10 Waters Access Act.

11 **PUBLIC WATERS ACCESS ACT**

12 **PART 1**

13 **GENERAL PROVISIONS**

14 **73-29-101. Title.**

15 This chapter is known as the "Public Waters Access Act."

16 **73-29-102. Definitions.**

17 As used in this chapter:

18 (1) "Impounded wetlands" means a wetland or wetland pond that is formed or the level of
19 which is controlled by a dike, berm, or headgate that retains or manages the flow or
20 depth of water, including connecting channels.

21 (2) "Private property to which access is restricted" means privately owned real property:

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

23 (b) that is:

- 24 (i) properly posted, as defined in Section **23-20-14**;
- 25 (ii) posted as described in Subsection **76-6-206(2)(b)(iii)**; or
- 26 (iii) posted as described in Subsection **76-6-206.3(2)(c)**;
- 27 (c) that is fenced or enclosed as described in:
- 28 (i) Subsection **76-6-206(2)(b)(ii)**; or
- 29 (ii) Subsection **76-6-206.3(2)(b)**; or
- 30 (d) that the owner or a person authorized to act on the owner's behalf has
- 31 requested a person to leave as provided by:
- 32 (i) Section **23-20-14**;
- 33 (ii) Subsection **76-6-206(2)(b)(i)**; or
- 34 (iii) Subsection **76-6-206.3(2)(a)**.
- 35 (3) (a) "Public access water" means water:
- 36 (i) described in Section **73-1-1**; and
- 37 (ii) flowing or collecting on the surface:
- 38 (A) within a natural or realigned channel; or
- 39 (B) in a natural lake, pond, or reservoir on a natural or realigned
- 40 channel, and
- 41 (C) in its natural state during ordinary high water is capable of
- 42 floating cut timber six (6) feet in length and six (6) inches in
- 43 diameter or any other commercial or floatable commodity, or is
- 44 capable of being navigated by oar, paddle or motor propelled
- 45 watercraft.

- 46 (b) "Public access water" does not include water flowing or collecting:
- 47 (i) on impounded wetland;
- 48 (ii) on a migratory bird production area, as defined in Section **23-28-102**;
- 49 (iii) on private property in a manmade:
- 50 (A) irrigation canal;
- 51 (B) irrigation ditch; or
- 52 (C) impoundment or reservoir constructed outside of a natural or
- 53 realigned channel

54 **PART 2**

55 **ACCESS TO PUBLIC WATER**

56 **73-29-201. General access provisions.**

57 Public access waters are open to public use year round at or below the ordinary high water
58 mark for any otherwise lawful activity that utilizes the water, including boating, fishing,
59 swimming, or wading.

60 **73-29-202. Limitation; obstructions.**

61 Nothing in this chapter authorizes members of the public to enter upon, cross or use private
62 property as to which access is restricted other than at or below the ordinary high water mark of
63 a public access water; provided however, that where a manmade or natural obstruction
64 interferes with use of a public access water, members of the public, along with their craft, may
65 portage around the obstruction in a manner that is reasonably direct and closest to the water,
66 to reenter the water immediately above or below such obstruction at the nearest point where
67 it is safe to do so.

68 **73-29-203. Effect of chapter on other uses and restrictions – Required acts.**

69 (1) A person using a public access water is subject to any other restriction lawfully placed
70 on the use of the water by a governmental entity with authority to restrict the use of
71 the water.

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

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

75 **73-29-204. Fences across public water.**

76 (1) The owner of the bed of a public access water may place a fence or similar barrier across
77 the public access water for agricultural, livestock, or other lawful purposes.

78 (2) A fence or other barrier shall:

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

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

82 (3) The owner who has placed or places such a fence or other barrier shall allow the
83 placement of a ladder, gate, or other facility allowing portage around or over the fence or
84 barrier

85 **73-29-2085. Severability.**

86 If any of this chapter's provisions, or the application of any of this chapter's provisions, is held
87 to be unconstitutional, the provision is severable and this chapter's other provisions and
88 applications remain effective.