§ 15-0701. Harmless alterations in watercourses and lakes; prescriptive rights or privileges; action for declaratory judgment; limitations of time.

1. An alteration (whether or not it causes water to cover or permeate land previously dry) in the natural flow, quantity, quality or condition of a natural watercourse or lake situated in this state and either on or below the surface of the earth, effected by the use either on or off riparian land, withdrawal, impoundment, or obstruction of the water in such watercourse or lake, or by the addition of water thereto, or by changes in the banks, bed, course or other physical characteristics of such watercourses or lake, is reasonable and lawful as against any person, as defined in subdivision two of section 15-0107, having an interest in such watercourse or lake, unless such alteration is causing harm to him or it, or would cause him or it immediate harm if and when begun. No action for nominal damages or for an injunction shall be maintainable because of such an alteration against any person or corporation, whether a riparian owner or not, on the ground that such alteration is an infringement of the plaintiff's private rights and privileges in the waters of, or with respect to, such watercourse or lake unless such alteration is causing plaintiff harm, or would cause him or it immediate harm if and when begun. This subdivision shall apply to such an action regardless of whether the alteration sought to be made the basis of it was caused before or after the effective date of this section.

2. For the purpose of this section, "harm" shall mean:

a. Interference with a present use of the water by the complaining party or an interference with the complaining party's present enjoyment of riparian land occurring prior to suit, or which will immediately occur when the alteration complained of is begun, regardless of whether such interference has caused or will ever cause such party measurable financial loss; or

b. A decrease in the market value of the complaining party's interest in riparian land occurring prior to suit, or which will immediately

occur when the alteration complained of is begun, regardless of whether his use of the water or enjoyment of riparian land was interfered with prior to suit, or will be immediately interfered with when the alteration complained of is begun.

3. Interference with the present enjoyment of riparian land may be established by proof that the alteration complained of or sought to be enjoined is rendering or will immediately render riparian land owned or occupied by the complainant less suitable or useful for the purpose or purposes to which he is presently devoting it. The evidence admissible to establish a decrease in the suitability or utility of such land for such purposes may include, but not be limited to, evidence tending to show that the act complained of has diminished, or when begun, will immediately diminish, the desirability for recreational purposes, or the natural beauty of the body of water to which the land owned or occupied by the complainant is riparian.

4. The cause of action essential to the initiation and creation of a prescriptive right or privilege against a private riparian owner to continue an alteration in the natural condition of such a watercourse or lake shall not be supplied by such an alteration until it shall have caused such riparian owner harm and then only if it is unreasonable.

5. Nothing contained in this section shall, however, be construed as depriving any person or corporation having an interest in such watercourse or lake of any remedy either at law or in equity which he now has, or may hereafter acquire, under the law of this state for harm caused him by an unreasonable alteration in the natural condition of such a watercourse or lake, regardless of whether such alteration was harmful and unreasonable from its initiation or subsequently became so.

6. Any person desirous of ascertaining the extent of the rights and privileges of himself and others in the water of or with respect to the natural condition of such a natural watercourse or lake may maintain an action for a declaratory judgment defining the extent of such rights and privileges. Neither proof of present harm nor of the likelihood of future harm to the plaintiff from an alteration in the natural condition

of such watercourse or lake shall be prerequisite to the maintenance of such an action, the judgment in which shall not affect the rights and privileges of any person or corporation not a party thereto. Such an action shall be maintainable by persons, corporations, governmental units, owners of land riparian to such a natural watercourse or lake, persons to whom such owners have granted their riparian rights in whole or in part, and owners of prescriptive rights or privileges in the water of or with respect to such watercourses or lakes.

7. No statute of limitations shall begin to run against a cause of action for such a declaratory judgment until a plaintiff who is empowered by this section to maintain it has been harmed by an unreasonable alteration in the natural condition of such watercourse or lake effected by the person or his predecessor in interest against whom such an action may be maintained.

8. Notwithstanding any other provision of this section, if the harm resulting from an unreasonable alteration of the natural condition of such a natural watercourse or lake is one which would not ordinarily be noticeable by an owner of land actually present thereon, no statute of limitations shall begin to run against any cause of action referred to in subdivisions four and five of this section until the party harmed is fairly chargeable with knowledge that he has been harmed.

9. Nothing herein contained shall be construed to alter or affect the right to exercise any power which the state of New York or any agency thereof, or any county, city, town or village or any agency thereof, may have to enjoin the initiation or continuance of an alteration in the natural condition of a natural watercourse or lake.