Chris Taggart

From: Montana FWP <montanafwp@announcements.mt.gov>
Sent: Monday, December 4, 2023 9:21 AM
To: Ravalli County Commissioners Office
Subject: [EXTERNAL] Montana Outdoors: Supporting Montana public stream access

Supporting Montana public stream access

As you read this, duck and goose hunters are hunkered down in fields or crouched in blinds along lakes, reservoirs, ponds, rivers, and streams across Montana. We're in the heart of the 2023-24 waterfowl hunting season.

State law provides waterfowlers public access to hunt along streams and rivers—as well as allowing others to fish, kayak, and engage in water-based recreation on those waters.

Montana Fish, Wildlife & Parks fully supports the Stream Access Law and the recreation it provides. Users must stay within the bounds of the law by accessing streams and rivers at legal entry points and staying below the ordinary high-water mark.

Few states in the nation have a law like this, which is part of the cherished Montana way of life. In most, like Wyoming and Idaho, it's illegal to walk along any stream or river without a landowner's express permission. In Colorado, it's even illegal to anchor your boat in a river.

In Montana, stream access is settled law.

In 1984, the Montana Supreme Court held that surface waters capable of recreational use may be used by the public for water-based recreation. In a 2014 ruling on landowner efforts to close off portions of the Ruby River, the state's highest court upheld the Stream Access Law, adding that landowners can't close routes to public land or water where recreationists have a history of use. The following year, the Montana Legislature made clear that streams and rivers could be legally accessed at bridge crossings.

In recent years duck hunters, anglers, and floaters have been challenged by some landowners or their agents while legally accessing streams and rivers. Some landowners may not be familiar with our state's access laws and the important tradition of public access to the state's outdoor recreation culture.

FWP wants everyone who lives in and visits this state to know the law. To be clear:

- The public has the legal right to access rivers and streams by crossing state or federal land, including FWP fishing access sites and wildlife management areas, and via public road right-of-ways and easements, including bridges, as well as across private land with the landowner's permission. Landowners may fence bridges to keep livestock off roads, but they can't construct fences or other barriers aimed at keeping the public out.
- As long as people legally enter a stream or river, they are not trespassing, even if signs posted at bridges and elsewhere say otherwise.
- As long as they stay below the ordinary high-water mark*, the public can walk in and along a stream or river while partaking in water-based recreation on those waters.

What the public legally can't do is:

- Access public waters in any manner not listed above.
- Go above the high-water mark to get around a natural obstruction like a steep bank, fallen tree, deep pool, or waterfall. The only exception is when a fence, instream diversion, or other human-caused obstruction prevents safe passage up or down the channel. In that case a person can go around the obstruction.
- Hunt big game without landowner permission unless the stream or river is part of public land.
- Litter or otherwise degrade private land.

Duck hunting a legally accessed stream in south-central Montana

Montana isn't like most states. We've enshrined outdoor recreation as one of our highest values. That appreciation has protected our wild trout, wilderness, wildlife populations, scenic open space, and abundant public access to public lands. It's part of our way of life.

Here at FWP, we want to be sure that landowners and others know what the Stream Access Law says and how important public access is to Montanans.

—**Dustin Temple**, *Director, Montana Fish, Wildlife & Parks*

* The line that water impresses on the shoreline by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Generally observable as a clear, natural line impressed on the bank or indicated by terracing, changes in soil characteristics, destruction of vegetation, presence or absence of debris on banks or streamside branches, or other similar characteristics. Floodplains adjacent to surface waters are not considered to lie within the high-water marks.

CRAIG W. HERGERT

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By Dustin Temple, Director, Montana Fish, Wildlife & Parks

This story is featured in *Montana Outdoors* November-December 2023 issue.

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