

Where the public trust concept began

A defining characteristic of the United States is that it protects and conserves wildlife (including fisheries) for the common good. Canada and several other countries also steward wildlife for the benefit of all. But nowhere has the idea of wildlife as a commonly shared resource, a concept known as the public trust, been as legally and legislatively secured as it is here.

The public trust concept arrived in this country with European immigrants who came seeking freedom of religious practice and escape from a class system that gave control of land, wildlife, wealth, political power, and even thought to a privileged few. The nation's founders sought to establish a new social and political environment where everyone was granted both the opportunity to own property and the right to equitably share certain natural resources.

Recognizing its vital importance, America's founders protected private property in the U.S. Constitution, especially with the Fifth Amendment's "takings" clause, which requires the government to compensate landowners when taking their property for public use.

But the founders didn't include wildlife as part of private property, as was the case in Europe. Though later federal law allowed private ownership of coal, minerals, timber, oil, and gas, no administration or court has ever authorized the privatization of commonly shared resources like water and wildlife that move across property boundaries.

Originating in late Roman times and later incorporated into English law, the public trust concept originally applied to waterways and shorelines. The concept was strengthened in the United States during the 19th century by three Supreme Court rulings: *Martin v. Waddell* (1842), *Illinois Central Railroad v. Illinois* (1892), and *Geer v. Connecticut* (1896). The first two rulings reinforced the idea that government is responsible for ensuring that shorelines and navigable waters are protected for the equitable use of current and future generations, with *Martin* also including shoreland wildlife (in this case, oysters) as a public trust resource. In *Geer*, the high court recognized wildlife as a public resource held and managed by the state for the benefit of all.

Land-based wildlife like deer and elk were not explicitly included with water and shorelines as public trust resources in federal law until the late 19th century. That's when Americans began realizing that seemingly limitless populations of those species, as well as bison, bighorn sheep, and pronghorn, were being hunted to near extinction.

Elected officials responded to this conservation awakening by embracing a more expansive notion of the public trust to include wildlife.

The relevance of the public trust, and wildlife as part of that trust, became manifest in the late 19th and 20th centuries with a series of federal laws aimed at protecting trust resources and ensuring their equitable use. These include the Unlawful Enclosures Act (1885), Lacey Act (1900), Migratory Bird Treaty Act (1918), Clean Water Act (1972), and Endangered Species Act (1973). Montana's Stream Access Law and Stream Protection Act, as well as the Montana Constitution and guiding principles included in the North American Model of Wildlife Conservation, further bolstered the public trust concept.

As wildlife was incorporated into the public trust, state and federal leaders began recognizing the need to create conservation agencies like Montana Fish, Wildlife & Parks to conserve and manage

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wildlife as a trust resource at the state level.

That was FWP's original mandate, and it continues to this day. The point of all this is that the fishing, hiking, hunting, boating, and other outdoor experiences we enjoy in Montana exists in large part thanks to widespread acceptance of the public trust concept. For the past century, Montanans and other Americans have supported a system of laws founded on the shared belief that wildlife and waters should be protected and managed for the common good, today and far into the future.

In my next director's message, I'll write about the essential role of private property and property owners in Montana's wildlife conservation legacy; the inherent tension between the public trust and private property rights; and how courts, the Montana Legislature, and Montanans themselves have attempted, for the most part successfully, to fairly and equitably resolve that tension.

—**Martha Williams**, Director, Montana Fish, Wildlife & Parks

"SCENE AT THE SIGNING OF THE CONSTITUTION OF THE UNITED STATES" BY HOWARD CHANDLER CHRISTY, 1940