



LEGAL OBSTACLE A paddler holds up a barbed-wire fence crossing a New Mexico river so his partner can pass under. In many western states, including Montana, it is legal for landowners to fence rivers, though it's rarely done here out of courtesy to floaters and because fences blow out in high water.

Seeking Calm Waters

Navigating a legal and respectful route through private and public rights on a Montana river. **By Kathy Heffernan**

The landowner was furious. She questioned our authentic Montana origins and admonished us “town people” to get off her property. Stunned, we retreated down the dusty ranch road toward the river. Her husband caught up to us in his pickup. He was calm and civil, but unsympathetic. He looked tired. Perhaps tired of the parched summer that rolled into a smoky autumn, tired of coaxing hay from his dry fields, and tired of us—floaters who got caught in his barbed-wire fence across the

Kathy Heffernan is a retired special-education and science teacher in Missoula.

river—interrupting his day.

Our misadventure had started a few miles upstream in a rock-strewn canyon on a blue-sky morning. We four 50-something adults launched our kayaks and canoes from a public access site into the cool, shallow waters of our favorite river, abandoning house chores for a relaxing river weekend. After navigating miles of cascading waters tumbling over rocky reefs and eddying into deep pools, we rolled out onto broad prairie ranch lands lined with yellowing cottonwoods, some of them topped with eagles. The sun was low behind us when we spotted fence posts in the shallow river ahead. Within 20 feet, we detected

barbed wire. We scanned the obstruction, looking for a float gate or breach that would allow us to pass safely downstream.

In the lead, John got out of his kayak, tripped, fell, and grabbed for the fence. “It’s hot!” he yelled, dropping boat and gear at the shocking surprise delivered by the electrified wire. We were all out of our boats now, staring up and down the fence, looking for the opening that was not there. The fence on its metal posts marched across the river, impenetrable from shore to shore and into cottonwoods and willows on both sides. We pried the lowest wire with paddles and pushed our boats under, gingerly sliding under the electric wires ourselves. Andrea caught her paddle against the unforgiving wire and received a jolt of electricity. Paul was chasing lost gear in his kayak. John waited in his torn swimsuit, bleeding from gashes in his forearm and thigh.

We were certain that someone had mistakenly blocked our passage and a simple conversation would clear up the misunderstanding. Andrea and I headed up to the nearby ranch house to ask about the fence. At this point, we were technically trespassing, but we felt our mission was justified.

The eventual explanation was less than

we had hoped. The rancher didn’t think anyone floated the river that time of year. He had to keep his cows in. He couldn’t make everyone happy. He didn’t think the electricity was strong enough to hurt a person much.

We were tired, too. We wearily loaded ourselves into our canoe and kayaks, determined to put the unfortunate incident behind us. The river sang beneath us as we carried on downstream to a gravel bar under comforting cottonwoods, where we camped. We woke to the melancholy notes of a coyote choir and another clear morning. A sunlit day and many satisfying river miles later, we tied our boats onto our truck, drove into a friendly little town for ice cream, and joked about the disastrous fence.

KNOWING THE LAW

As regrettable as our interactions that Saturday were, most angst between landowners and floaters can be avoided with an understanding of Montana’s Stream Access Law. Our small boating party had misconceptions that fueled this disagreement. The angry landowner launched into her tirade when I called her fence “illegal.” In fact, it was not illegal. With very little effort, I later learned that Montana’s Stream Access Law does not outlaw fences across rivers, though landowners must allow, but are not required to facilitate, floaters’ access through or



WATER FOR ALL The author on a September afternoon: “Most angst between landowners and floaters can be avoided with an understanding of Montana’s Stream Access Law,” she writes.

around such fences.

Since 1985, and after several court challenges, the Stream Access Law allows recreational access along the beds of rivers and streams. A person may access any Montana stream or river capable of recreational use from public water access sites, road bridges, public land, or private property with the landowner’s permission. Once on the water, a person may wade, boat, and walk along the shoreline below the normal high-water mark. A person cannot venture up onto the floodplain, camp above the high-water mark, drive an ATV in the river, or do anything not directly related to water recreation without landowner permission.

The Stream Access Law also does not permit camping along a stream or river “unless it is necessary for the enjoyment of the surface water.” Also, the campsite “must be out of the sight of a dwelling or more than 500 yards from any occupied dwelling (whichever is less).” Landowners can legally put a fence across a river, even electrified, to either contain livestock or delineate property boundaries. State law allows floaters, if necessary, to portage their craft on private land above the high-water mark to get around the barrier. A portage around that electrified fence would have proved challenging for us, but that is the law.

PROTECTING RIGHTS

I am glad this ranching couple protect their private land and property rights as fiercely

as many of us protect public rivers and access rights. They preserve the honorable, hard-working traditions of Montana ranching. I would not take away their fence or their land or their cattle. I just want access to our beautiful, free-flowing rivers. I hope someday they add a float gate to their stream fence, an oversized wind-chime-like structure of PVC pipe that allows floaters to pass through unscathed. However, Montana law does not require ranchers to put up float gates, so the choice is theirs.

I treasure the river access that Montana’s Stream Access Law provides floaters. In addition to obeying that law, my husband, friends, and I try to act as good river citizens. We carry out all our trash. If we find cans in someone else’s fire ring or trash in the willows, we pick that up, too. We drown our campfire until the ash is swimming, then stir it like a blackened stew. When on the river or in camp, we are quiet—out of respect for any nearby landowners or other river users.

For us, a river is a sacred place. We have floated this river for many years, and we will return every year until old age forces us out of our canoes and kayaks. We treasure its crystal waters, lonely vistas, and abundant wildlife as it tumbles along.

Ranchers, anglers, and floaters: It takes all of us to protect our rivers. When we obey state laws and otherwise assume the responsibilities of stewardship, our rivers will provide for us all. 🐾



CLOCKWISE FROM TOP: LEFT, SCOTT CARPENTER; KATHY HEFFERNAN; SCOTT CARPENTER

UP AND AROUND In Montana, boaters may go onto land even above the high-water mark to bypass fences crossing streams and rivers.