



MONTANA FISH, WILDLIFE & PARKS

Stream Access in Montana

Sept. 8, 2023

Understanding Montana's Stream Access Laws is critical to know how to enjoy our rivers and streams. If you're visiting or moving to Montana from another state, please realize that our stream access law maybe, and likely is, different that the laws in your home state. As a recreator, landowner, and homeowner, it's your responsibility to know the law.

Broadly, Montana's Stream Access Laws affect the recreational use of the state's rivers and streams.

Courtesy – If you are a recreationist, we ask you to get landowner permission before pursuing any activities on private lands. If you are a landowner, please respect the rights of recreationists to enjoy our rivers and streams and take their safety into consideration.

Stream access laws – All surface waters capable of recreational use may be so used by the public up to the ordinary high-water mark without regard to the ownership of the land underlying the waters. The limit on water-related pleasure activities is the water resource itself. The laws do not apply to recreational use of lakes.

DEFINITIONS:

- **Surface water** means a natural river or stream, its beds and banks up to the ordinary high-water mark. Surface water, as governed by the Stream Access Laws, does not mean lakes, ponds, or reservoirs.
- **Recreational use** means fishing, waterfowl and upland gamebird hunting (not big game hunting), swimming, floating in small craft or other flotation devices, boating in motorized craft, boating in craft propelled by oars or paddles, other water-related **pleasure** activities, and related unavoidable or incidental uses.
- **Ordinary high-water mark** means the line that water impresses on land by covering it for sufficient time to cause different characteristics below the line, such as deprivation of the soil of substantially all its terrestrial vegetation and destruction of its value for agricultural vegetation.
- A flood plain adjacent to surface waters is not considered to lie within the surface waters' ordinary high-water mark and is not open for recreation without permission.
- **Barrier** means an artificial obstruction that effectively obstructs the recreational use of the surface water at the time of use.

Water classification is important to determine the recreational uses that require landowner permission. If the landowner grants permission for any of the activities mentioned below, they would be a permitted use. Remember, surface waters here refer to rivers and streams, not lakes, reservoirs, and ponds.

Class I waters are defined in 23-2-301(2), MCA and have been declared navigable or which are capable of specific kinds of commercial activity. Montana Fish, Wildlife & Parks has developed a list of Class I surface waters that is available to the public here (NEED LINK).

There may be times during the year when flow and physical condition of these waters may not permit their use for certain kinds of recreation.

To avoid trespass pursuant to 45-6-203, MCA landowner permission is required for the following recreational uses:

- operating all-terrain vehicles or other motorized vehicles not intended for use on the water;
- making recreational use of stock ponds or private impoundments fed by intermittent streams;
- making recreational use of water diverted away from a stream, such as an entirely man-made irrigation canal or drainage ditch;
- big game hunting—game animals as defined in Title 87;
- overnight camping unless necessary for the enjoyment of the water resource and the camping is done within sight of or within 500 yards of an occupied dwelling;
- the placement or creation of any permanent duck blind, boat moorage, or any other permanent object;
- the placement or creation of any seasonal objects, such as a duck blind or boat moorage, unless necessary for the enjoyment of the water resource and the objects are placed within sight of or within 500 yards of an occupied dwelling;
- using a streambed as a right-of-way for any purpose when no water is flowing;
- any other activities not primarily water related.

Class II waters are defined in 23-2-301(3), MCA as all surface waters that are not Class I waters, except lakes. There may be times during the year when flow and physical condition of these waters may not permit their use for certain kinds of recreation.

To avoid trespass pursuant to 45-6-203, MCA landowner permission is required for the following recreational uses:

- operating all-terrain vehicles or other motorized vehicles not intended for use on the water;
- making recreational use of stock ponds or private impoundments fed by intermittent streams.;
- making recreational use of water diverted away from a stream, such as man-made irrigation canal or drainage ditch;
- big game hunting—game animals as defined in Title 87;
- overnight camping;
- the placement or creation of any permanent duck blind, boat moorage, or any other permanent object;
- the placement or creation of any seasonal objects, such as a duck blind or boat moorage;
- using a streambed as a right-of-way for any purpose when no water is flowing;
- any other activities not primarily water related.

Portage

Recreationists using Class I or Class II waters may go above the ordinary high-water mark to portage around artificial barriers but must do so in the least intrusive manner possible, avoiding damage to the landowner's property and violation of property rights. It's important to note the

presence of natural barriers within the high-water mark such as down trees, cliff faces, collected debris, do not allow recreator to move above the high-water mark. Artificial structures such as a float-over cable or a float-through gate that does not obstruct the recreational use of surface waters does not create the right to portage above the ordinary high-water mark. FWP will assist any landowner to design and to locate fences that do not interfere with recreational use of surface waters. For assistance call the FWP's Portage Coordinator at 444-5334.

Access from county roads at bridge crossings

Recreationists may gain access to surface waters from a county road right-of-way at bridge crossings, however, individual bridge access could be restricted by a county commission for public safety purposes.

Liability

The Legislature has limited the situations in which a landowner may be liable for injuries only to acts or omissions that constitute willful or wanton misconduct. An example of willful or wanton misconduct is running barbed wire across surface waters.

Need more information?

For further information or to request a list of the mainstems of surface waters considered to be Class I waters for water-related pleasure activities, please contact FWP's Communication and Education Division in Helena at (406) 444-3088.