TRESPASS LEGISLATION. This legislation states that a member of the public has the privilege to enter or remain on private land by the explicit permission of the landowner or his agent or by the failure of the landowner to post notice denying entry onto the land. The landowner may revoke the permission by personal communication. (For more detail see H. B. 911 from the 1985 session.)

The law states that any notice denying entry must consist of written notice or of notice by painting a post, structure or natural object with at least 50 square inches of fluorescent orange paint. In the case of a metal fencepost, the entire post must be painted. This notice must be placed at each outer gate and at all normal points of access to the property and wherever a stream crosses an outer boundary line.

Montana law further requires that landowner permission is required for all hunting on private property. The law also extends the authority of game wardens to enforce the criminal mischief, criminal trespass and litter laws to all lands being used by the public for recreational purposes.

NATIONAL PARKS, INDIAN RESERVATIONS AND WILDLIFE REFUGES. Certain waters on national parks, Indian reservations and wildlife refuges may have special rules. Specific information may be obtained from the headquarters of the park, reservation or refuge involved.

ACCESS FROM COUNTY ROADS AT BRIDGE CROSSINGS. Recreationists may gain access to streams and rivers from a county road right-of-way at bridge crossings. However, recreationists should be aware that access at a bridge could be restricted by 1) a county commission for public safety and 2) access at some bridges may be restricted where the establishment of the county road right-of-way did not allow access to the stream or river.

NEED MORE INFORMATION? For further information concerning the contents of this brochure, please contact FWP’s Conservation Education Division in Helena at (406) 444-2535, or one of the regional offices at the following telephone numbers:

Region 1 (Kalispell) 752-5501
Region 2 (Missoula) 542-5500
Region 3 (Bozeman) 994-4042
Region 4 (Great Falls) 454-5430
Region 5 (Billings) 247-2940
Region 6 (Glendive) 228-3700
Region 7 (Miles City) 234-0900

If you are a landowner, please respect the rights of recreationists to enjoy our rivers and streams and take their safety into consideration. THE STREAM ACCESS LAW. The law says that, in general, all surface waters capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters. It also states that recreationists can use rivers and streams up to the ordinary high-water mark. The law does not address recreational use of lakes; it applies only to rivers and streams.

The law defines surface water, recreational use, and ordinary high-water mark as follows:

Surface water means a natural river or stream, its beds and banks up to the ordinary high-water mark.

Recreational use means fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft (except where prohibited by law), boating in craft propelled by oars or paddles, other water-related pleasure activities, and related unavoidable or incidental uses. The law imposes certain restrictions on some forms of recreation. These restrictions are listed later in this brochure.

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. Flood plains next to streams are considered to be above the ordinary high-water mark, and are not open for recreation without permission.

Typical Stream Cross-Section*

* Although this is typical of some stream cross-sections, many other situations exist. Also, vegetation such as grass, sedges or willows can exist within the ordinary high-water marks. When in doubt, refer to the definition of ordinary high-water mark.
Water Classification. Class I and class II waters are also defined in the law. These definitions are important in determining the recreational uses that require permission.

Class I waters are defined as those which are capable of recre-ational use and have been declared navigable or which are capable of specific kinds of commercial activity, including commercial outfitting with multi-person watercraft. The Department has developed a preliminary list of rivers that meet at least one of the criteria listed in the law for class I rivers (see section 1(1) of the law). This preliminary list includes the mainstems of the following waters, as described:

Kootenai River Drainage:
- Kootenai River - from Libby Dam to the Idaho border
- Flathead River - from the Chase cut-off road to its confluence with the Kootenai River
- Hungry Horse Reservoir
- Middle Fork of the Flathead - from Schaffer Creek to its confluence with the mainstem of the Flathead
- South Fork of the Flathead - from Youngs Creek to the Idaho border
- North Fork of the Blackfoot - from Highway 206 east of Ovando to its confluence with the mainstem of the Blackfoot River
- Blackfoot River - from the Cedar Meadow fishing Access Site west of Helmsville to its confluence with the Clark Fork
- Bitterroot River - from the confluence of the East and West Forks to its confluence with the Clark Fork
- Rock Creek - from the confluence of the West Fork to its confluence with the Clark Fork

Missouri River Drainage:
- Missouri River - from Three Forks to the North Dakota border
- Bearhead River - from Clark Canyon Dam to its confluence with the Jefferson

Big Hole River - from Fishtrap Fishing Access Site downstream from Wisdom to its confluence with the Jefferson
- Gallatin River - from Taylors Fork to its confluence with the Missouri
- Jefferson River - to its confluence with the Missouri
- Madison River - from Quake Lake to its confluence with the Missouri
- Dearborn River - from the Highway 434 bridge to its confluence with the Missouri
- Sun River - from Gibson Dam to its confluence with the Missouri
- Smith River - Camp Baker Fishing Access Site near Ft. Logan to its confluence with the Missouri
- Marias River - from Tiber Dam to its confluence with the Missouri
- Yellowstone River Drainage:
- Yellowstone River - from Yellowstone National Park to the North Dakota border
- Bighorn River - from West Yellowstone Dam to its confluence with the Yellowstone
- Tongue River - from Tongue River Dam to its confluence with the Yellowstone

Keep in mind that this list is preliminary and that other waters may be added to it in the future as other criteria listed in the law for determining class I waters are addressed. Also keep in mind that 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.

Class II waters are all rivers and streams capable of recreational use that are not class I waters.

What types of activities between the ordinary high-water marks require landowner permission? On Class I waters, 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. Although this restriction deals specifically with only those stock ponds or impoundments fed by intermittent streams, the Department recommends, as a matter of courtesy, that recreationists obtain permission from landowners before using any private ponds;
- using a stream as a float-over cable or a float-through gate, and it does not interfere with the recreational use of the water, the public does not have the right to go above the ordinary high-water mark to portage.

In all cases recreationists must keep portages to a minimum, and should realize that landowners may place fences and other barriers across streams for purposes of land or water management or to establish land ownership, if otherwise allowed by law.

The Department of Fish, Wildlife & Parks will provide assistance to any landowner in designing and locating fences that do not interfere with recreational use of streams. For assistance call the Department’s Portage Coordinator at 444-5334.

Portage routes. The law, as interpreted, sets out a process by which either a landowner or a member of the public may, if necessary, request that a portage route over or around a barrier be established. The Department encourages, however, that portage problems be solved through other means if at all possible. If establishing a portage route is deemed the only workable solution, the request would be submitted to the board of supervisors of the local conservation or grazing district, or to the board of county commissioners. For assistance in determining where to file a request, or for other information regarding portage route establishment, maintenance and signing, contact the Department’s Portage Coordinator at 444-5334.

Liability. The Legislature has limited the situations in which a landowner may be liable for injuries to people using a stream flowing through his property. This limitation on liability applies not only to the landowner, but also to his agent or tenant, and to supervisors who participate in a decision regarding a portage route. The law states that landowners and others covered by the restriction on liability are liable only for acts or omissions that constitute “willful or wanton misconduct.”

Prescriptive easements and land title. The Legislature stated that a prescriptive easement cannot be acquired through recreational use of rivers and streams, the beds and banks, portage routes or property crossed to reach streams. It also said that the law does not affect title to surface waters, including the beds and banks of any rivers or streams, or portage routes used by the public.