The nuance of high-water marks: what you might not know about the stream access law

HIKE, FISH AND BE HAPPY.

Enter a Montana river from a public place and stay within its high-water marks – it's the foundation of Montana's stream access law. That access is one of the biggest reasons Montana is world-renowned for trout fishing.

The law is far from cut and dried, however – its definitions and descriptions are often vague and open to interpretation. If you fish often enough, you'll encounter a protective landowner. But if you understand the law – and its intricacies – you'll be able to stand your ground and hopefully continue that day's trouting.

The most important thing is that you always follow the rules and stay within the fine lines called high-water marks. To be fair, there isn't an angler who's never stepped out of bounds due to fishing zeal or difficult conditions. But river users should try to minimize that, not only because it's the law, and not only so you can defend yourself in good faith, but because careless anglers give us all bad names and add fuel to the perennial fire that tries to burn Montana's stream access down.

First off, the definition of "high-water mark" should be understood. Fish, Wildlife and Park's Stream Access in Montana brochure describes it as "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 I wouldn't dare deviate from that. And it's "ordinary" high-water mark meaning normal-flow mark, not "annual", meaning run-off mark. And it's not within 10 feet, nor two feet (both of which I've heard anglers say), it's within it.

But there are caveats about which many anglers and landowners seem oblivious.

One oft-overlooked aspect is that notice denying entry to private land must be posted. From the brochure: "...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." I warn against taking advantage of this, but those are the lawmakers' words.

That notice must consist of "written notice or 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 all normal points of access to the property and wherever a stream crosses an outer boundary line."

Some other details:

- The law does not address lakes.
- A No Trespassing sign at a public-road bridge is notice of private property, but does not mean anglers cannot access that stream there (despite the potential intent of whoever posted it within the road easement).
- River users may portage around man-made obstructions (like fences, irrigation equipment or junked appliances/vehicles) in the least intrusive manner possible but does not address natural barriers, leaving such instances open to convenient interpretations.
- Not every public-road bridge is fair game for access, for now. With the recent Montana Supreme Court's decision regarding the Seyler Lane bridge on the Ruby River, hopefully the law is becoming more clearcut.

Conflicts often occur on seldom waded drainages where ranchers aren't used to seeing strangers. These places can be desirable fishing holes since they get little pressure.

I've had on-stream conflicts from Darlington Ditch to the Ruby River to the upper Madison to Mitchell Slough. I've seen guns brandished, and sheriffs called. I've also had many congenial conversations with hospitable locals who care more about how the fishing is than why you think you have the right to be there.

If challenged, it's important to remain respectful and cool, even if you're confronted with a firearm. Calmly explain that you entered legally and that you have remained within the high-water marks the entire time (and be sure to have done so). Inquire about what evidence they have (some claim to have trail cams at bridges, etc.), and explain the law. Some anglers carry a copy of the law verbatim as defense. Always try to deescalate, and never argue too long.

Don't be surprised to find neighborly nepotism favoring the landowner if a sheriff's department is called. In such a case, concede but consider writing letters to the appropriate parties when you get home. The Public Lands Water Access Foundation out of Billings takes on these cases, and county commissioners sometimes take an interest.

So go find a map's blue line and confidently enter it from a public place. Search for likely holding water, lay down a gentle cast, mend well, set, and be merry.