

Private Property and the Public Trust

The idea that the public has rights to access resources such as water and wildlife—even if those resources are found on private property—found its way into Montana law through the public trust doctrine. Legal scholars and judges have expanded this historical doctrine beyond its constitutional limits to mean that landowners cannot deny access to resources owned by the public.

This expansion infringes on private property rights by taking away the owner’s ability to restrict access and reduces the incentive for water and wildlife stewardship by private landowners.



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- Laws and policies that force access to water and wildlife on private lands discourage private stewardship and therefore diminish the citizens’ rights to a “clean and healthful” environment guaranteed by the Montana Constitution.
- The beds and banks of non-navigable streams in Montana have always been treated as private property and hence taxed as such; forcing access to these private lands without justly compensating the private landowners is a violation of the takings clauses of the U.S. and Montana Constitutions.
- The public trust doctrine as it has been applied in Montana is not based on legal precedent, but is activist law made by legal scholars and judges. (Ref PPS-39)