



Preface: MWF offers the following article not as a legal document but as a helpful tool for hunters. It is the responsibility of the hunter to know the law, to know where you are, and to treat private landowners with respect. MWF offers the article not to encourage or entice conflict but to encourage hunters to comply with the law thereby dissuading conflict while also offering basic information on sportspersons rights. It is not intended in any way to be anti-landowner. Ethical, responsible and honorable actions by hunters that extend beyond the scope of the law will ensure our hunting opportunities on private lands.

The Law is on Your Side

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One would think that with approximately 30-million acres of public land available to hunters in Montana, issues over hunting use would not be a big deal. Sadly, that is not always the case. Being prevented from enjoying public land can ruin a long planned and keenly anticipated hunting trip. No frustration is more personally felt than a confrontation with an irate individual claiming the land you are hunting is either private, or closed to hunting, especially when you believe you are on open public areas.

The Boy Scout motto, "Be Prepared," is key. There is no substitute for a good map to ensure you will be able to hunt where you wish. I always carry a Montana Atlas with GPS grids for large scale location, backed up by the local BLM surface management series map in the 1:100,000 scale. Both clearly show land ownership in color, which is critical in case of a dispute about your location. With my GPS unit I can zero in to within a few feet of where I am standing.

The overwhelming majority of landowners in Montana are aware of the rights of hunters on public land. However there are always some who will attempt to bully, threaten and intimidate as a method to claim exclusive use of public property and resources. It is for these few that hunters need an understanding of their own rights.

A friend was accosted during a mule deer hunt a few years ago in southeastern Montana. Hunting with his son on BLM land, he downed a nice buck. As a handicapped hunter, he took his vehicle down an established trail to get close enough to get the animal cleaned

and loaded. As they worked, a pickup barreled up the hill, slid to a screeching stop, and a man jumped out screaming at them that the place was posted, they were trespassing, and demanded they leave the deer and get off the land.

They endured his rant until he calmed down a bit, then pointed out to him they were on BLM land and had every right to be there. The man denied it, said the entire ranch was posted and off limits, and threatened to call the sheriff to have them arrested.

Calmly, my friend told him that would be fine, and since he had his lunch along, he would just sit in his truck, eat, and wait for the sheriff, which is exactly what he did.

It took about an hour for a deputy to arrive. My friend showed him their location on the map, clearly on a BLM section, along with his hunting license. The deputy agreed they were legally hunting on public land and to go ahead and enjoy their hunt. The irate individual mumbled something about just working for the rancher, and not knowing the exact boundaries, jumped in his pickup, and left.

My friend responded in exactly the right way. Rather than lose his temper and his deer, he simply had a nice lunch and cup of hot coffee and relaxed while the ranch hand stewed. Knowing he was in the right, he stood his ground and didn't allow the unpleasant situation to ruin his day. He didn't carry the matter to the next level, although he could have filed formal complaints to both federal and state agencies.

Unfortunately, many hunters would likely have left the area with a bitter memory, and not followed up to only later determine they were in the right. Having knowledge of the law, and being able to clearly identify your location on a map can go a long way toward eliminating the frustration of being kicked off public land.

Access to hunting and all outdoor recreation on federal and state land is your right. Understanding the law is an important tool in the hunter's arsenal. Knowing how to respond, and as necessary, how to follow up an unpleasant confrontation can pay off both for you as well as future hunters.

Federal law is clear. Recreational use of public land stands on an equal footing with grazing permits or any other use. It is helpful to keep in mind that a federal grazing permit, simply put, grants to a permittee (grazing district or individual rancher) only the privilege to rent the grass. They have no other rights to the land. A grazing permit is not an ownership right. The actual owners are the citizens of the United States who, through law and regulations, are allowing grazing on their land.

The federal Taylor Grazing Act, passed in 1934, says, "*Nothing in this Act shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as **vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district.***" (Emphasis added).

Provisions of the Federal Land Policy and Management Act of 1976 established outdoor recreation as a principal and major use on equal footing with domestic livestock grazing.

The Code of Federal Regulations (CFR), identifies prohibited acts, and provides penalties for violation of the law. The specific language is in Subpart 4140.1(b) (9), states, *“Interfering with lawful uses of users;” ... “may be subject to civil and criminal penalties...”* Those penalties can include fines and suspension or cancellation of a grazing permit.

So, in short, if a person holding a grazing permit on BLM or U.S. Forest Service land wrongfully kicks a hunter off, they may be subject to the penalties provided by the appropriate statute. I keep in my wallet a laminated copy of the pertinent section of the CFR language showing penalties. It is a useful tool to point out to an unfriendly permit holder what the law provides.

Hunting national forest land is less confusing than BLM, since forests are normally clearly marked large contiguous areas. Grazing permits on national forests are largely managed under the same conditions as on BLM lands. Hunting and other outdoor recreation are key aspects of Forest Service mandates and hold equal stature with other permitted use, including grazing. As with BLM land, national forests are owned by U.S. citizens who allow grazing, mining and logging under specified conditions.

Special permits, such as outfitting operations, grant only the privilege to use national forest or BLM land for a particular use. No exclusive use is granted, and permits include language to protect public access and use. Permits can be revoked or cancelled if state or federal law is violated.

Refuge land managed by the U.S. Fish and Wildlife Service, especially the million acre Charles M. Russell Refuge in north central Montana provide premier hunting opportunity. The federal Refuge Administration Act, 50 CFR 25-27 set out penalties for violation of any permitted legal activity. Refuge law enforcement can use either the federal law, or Montana law to cite violators. Common problems include illegal posting, signing legal access routes as closed and similar violations.

In 1991 the Montana Legislature created a system we use today for state-owned land. It met the goal of providing funds for school trust responsibilities and eased access issues. Most important for the hunter is the purchase of the state Conservation License which includes the state lands recreational use license. This has to be one of the best bargains on the planet! At just \$8.00 for residents and \$10.00 for non-residents, it opens up nearly 5 million acres for hunting and other outdoor recreation. Each Conservation License provides \$2.00 to the Montana school land trust, and has generated more than \$8.3-million to support schools since its inception.

State lands, shown in blue on maps, can be enjoyed in the same way as federal public lands. Unless you have landowner permission to cross private land, access must be from

a legal road, recreationally navigable waterway, easement or other legal route. You can freely move from federal land onto adjoining state land.

State law does provide for some closures, but these are narrowly drawn. If a lessee marks a parcel of land, it must be done with blue paint, rather than the orange used on private ground. Even if posted with blue paint, unless the area has been closed by the State Department of Natural Resources, it is open to those holding a Conservation License. Illegal posting of state or federal land is a criminal misdemeanor under Montana law.

Montana Code 45-8-115 states: *“Illegal posting of state and federal land. (1) A person commits the offense of illegal posting of state or federal land if, without authorization, he knowingly posts land that is under the ownership or control of the state or federal government to restrict access or use of state or federal land.*

(2) A person convicted of illegal posting of state or federal land shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.”

If a lessee does mark state land and request notification, he must provide approved drop boxes at a normal access points and display an approved sign from the State Department of Natural Resources or information posted at access points where notification can be given. The key word is notification. As long as you have the recreational use license (Conservation License), you need no other permission. Information on Montana Trust Land can be accessed at http://dnrc.mt.gov/public_interest/huntingonstateland.asp.

Under Montana Code 77-1-804, a lessee of state land violating rules can face a civil penalty of up to \$1,000 per day. In addition, the Department of Natural Resources can cancel a state land lease of any type for continuing violations.

Montana’s hunter harassment law is another tool designed to protect hunters from those who impede lawful activity. The pertinent language is in Montana Code 87-3-142, and says: *“Harassment prohibited. (1) A person may not intentionally interfere with the lawful taking of a wild animal or fishing by another. Breaking this law is a criminal misdemeanor and is punishable by a fine not to exceed \$500 or imprisonment not to exceed 30 days, or both. A person convicted of a second or subsequent violation punishable by a fine not to exceed \$1,000 or imprisonment for a term not to exceed 1 year, or both.”*

If you are confronted by anyone attempting to chase you off of public land during a hunt, be prepared with several strategies.

First, make sure you know exactly where you are at. Make sure you are accurate! This is where your surface management map and GPS unit are vital. Ask the individual to take a look at your map, use the GPS to pinpoint location to show you are clearly in a public land section. Usually, once it is clear you know the location of public land boundaries, and are in the right, they will concede your right to be there. Whatever you do, keep your

temper in check! Keep calm and cool, and try to discuss the situation in a rational manner.

Should this not work, and he still demands you leave, let him know you are willing to stay where you are if he would like to call the sheriff or game warden. If an officer is called, and agrees that you are on public land, he will be able to help straighten it out without further difficulty.

If all fails and you are wrongly forced off public land, making a case out of it will benefit future hunters. In the case of BLM or national forests, denying access can result in fines for the person responsible. You need to file formal complaints citing the statute, ask for a law enforcement investigation, and request grazing privileges be revoked. Follow up with phone calls to the agency, and insist you be kept informed about actions taken.

Complaints can also be filed with the Game Warden or Sheriff for interference with lawful hunting activity. A hunter faced with such situation can call the 1-800-TIP-MONT (1-800-847-6668) line immediately to file a complaint. When violations take place, federal and state law enforcement often work together and can decide where a case can best be prosecuted.

Montana is fortunate to have laws protecting lawful hunting activity. These can and should be used when the situation demands it. Be prepared with specifics, including photos, dates, locations and a willingness to testify in court. The sooner a complaint is filed, the better.

You can help yourself and future hunters by filing complaints when your rights and the law have been violated. Most landowners and permit holders wish to comply with law and regulations, but there are some who will need to feel the “big stick” in order to let hunters enjoy their public lands in peace. Keep in mind that you are an owner of public land and have every right to fully enjoy the use of your property.

The following laws protect the right to hunt and fish on Federal and State of Montana Land. Civil and criminal penalties can apply to any person violating these laws.

State of Montana Law:

Montana Code 45-8-115 Illegal posting
Montana Code 77-1-804 Denying access
Montana Code 87-3-142 Hunter Harassment
Montana Code 23-2-302 recreational stream access

Federal Law:

CFR Subpart 4140.1(b)(9) (BLM)

36 CFR 222.3(b) (U.S. F.S.)

Taylor Grazing Act, 43 U.S.C., Sec. 315

Refuge Administration Act, 50 CFR 25-27

National Forest Management Act of 1976 (16 U.S.C. §§ 1600-1614)