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Open Range Law in Arizona

From: George Ruyle and Jeff Eisenberg
Natural Resource Users Law and Policy Center, School of Extension

“Open Range Law” is an effort by the legislature in Arizona and in Western states to accommodate the historic desire to make large acreages of arid land available for livestock grazing along with other uses. Open Range Law includes a series of statutes that have been interpreted and applied by the state courts. The basic rule reflects the spirit of settling the west: livestock roam freely except as otherwise provided by law. While some of the limitations are significant as will be noted below, the basic rule still reflects the original character of settling the state by promoting agricultural use of the land. The point of current laws is to establish priorities for the use of the land. Rules addressing livestock use of land are basically divided between those for “open range” and those for “no-fence districts”.

In general

Open range means that livestock can go where they want within the range, subject to some limitations. The need for further rules arose because of landownership patterns in the West. Large ranches owned by one person often surround smaller parcels, inholdings, owned by another person. Under Arizona law, it is the responsibility of the owner of the inholdings to erect a fence that meets the requirements of the law (ARS, 3-1426), termed a “legal fence”, to keep roaming livestock out of his or her property. This saves the rancher from having to fence all the small parcels that may exist within the boundaries of his ranch lands. Without the erection of such a fence, the inholding owner would have no recourse under the law for any damage caused to his property by the livestock. (ARS, 3-1427). “The obvious purpose and effect of [this statute] was to . . . make the owner of private premises fence his land to keep animals out, rather than to compel the owner of the animals to fence the land upon which they were grazing in order to keep them in.” Garcia v. Sumrall, 58 Ariz. 526, 535 (1942).

However, the fencing-out statute does not completely immunize livestock owners from liability for damages. They are still liable for acts of willful trespass, defined as “deliberately and intentionally causing their animals to trespass upon private property.” Cienega Cattle Co. v. Atkins, 59 Ariz. 287 (1942). “However, the mere knowledge or expectation that cattle will wander onto private property is insufficient to support liability, and in those cases, the statute requires that the [harmed party] erect a fence in order to recover damages.” Carrow Co. v. Lusby, 167 Ariz. 18 (1990).

3-1426. Lawful fence defined

A. A fence shall be deemed a lawful fence when it is constructed and maintained with good and substantial posts firmly placed in the ground at intervals of not more than thirty feet, upon which posts are strung and fastened at least four barbed wires of the usual type tightly stretched and secured to the posts and spaced so that the top wire is fifty inches above the ground and the other wires at intervals below the top wire of twelve, twenty-two, and thirty-two inches. If the posts are set more than one rod apart, the wires shall be supported by stays placed not more than seven and one-half feet from each other or from the posts, extending from the top wire of the fence to the ground, and each wire of the fence securely fastened thereto.

B. All fences constructed other than as provided in subsection A, or of other materials equally as strong and otherwise effective to turn livestock as the fences described in subsection A, shall also be deemed lawful fences within the meaning of this section.

Other Open Range Rules

- If livestock are killed in an open range area, whether it is an accident or not, a person may be liable to the owner for damages.

No-Fence District

- County Boards of Supervisors are authorized to designate no-fence districts. ARS 3-1421.
- Most Arizonans do not live in a no-fence district. Contact County Board of Supervisors to determine whether you do. Counties with designated no-fence districts include Maricopa and Pima. A check with the Mohave County office indicates one district was designated in 1965 and is still in effect.
- Livestock owners are guilty of a class 2 misdemeanor if they “recklessly” allow or permit livestock to run at large within a no-fence district. The owners are also liable for damages for trespass on land enclosed within lawful fences, ARS, 3-1424, as well as for damages caused on unfenced land in no-fence districts. ARS, 3-1427.