



## **NEVADA OPEN RANGE LAW**

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### **Introduction**

This fact sheet provides an overview of the Nevada Open Range Law and its evolution in the U.S. and Nevada. The Nevada Open Range Law is as complex as its origins and evolution. Also, this law is the subject of increasing conflict between open range public land grazers and non-agricultural residents in or adjacent to public lands. The Nevada Open Range Law evolved from the early days of United States settlement. Thirteen western states have some form of the Open Range Law, or land designation. The U.S. legal system is based largely upon English common law. The Open Range Law is a distinct and opposite divergence in relation to liability associated with livestock.

### **Origin and Evolution of the Open Range Law**

In the medieval courts of England, the owner of livestock was held strictly liable for any damages to person or property inflicted by any livestock straying onto the property of another. The mere fact that livestock strayed and damaged crops, other livestock or personal property was sufficient to hold the owner liable for the injuries inflicted by cattle, sheep, goats and horses. This strict liability position made sense in the confines of a small island. In the U.S., with herds of livestock wandering over vast expanses of land owned by the federal government, a different process developed.

The legislatures of most states enacted statutes which provided that livestock were free to wander and that the owner was not responsible for damage inflicted by those livestock unless they entered land enclosed by a legal fence. These became known as open range laws (Phelps & Cengage, 2003). As the human population increased and agriculture became more intensively managed for crops, certain states reversed open range law and required livestock owners to fence in their livestock. This

was similar to the English common law position, only instead of strict liability, the livestock owner could be held liable upon demonstrating proof that the livestock escaped due to the owner's negligence.

As western states became increasingly populated, conflict between agricultural and non-agricultural residents increased. Evidence of this is found in the "Right to Farm" ordinances and other legal remedies sought by the agricultural community, and numerous legal actions seeking to change or eliminate agricultural practices when residences are constructed near or adjacent to agricultural operations. Open range law has received increased attention and controversy throughout the West.

### **Nevada Open Range Law**

Nevada experiences increased conflict in both urban and rural counties in regards to domestic grazing animals. Clark County has only one remaining BLM allotment and all open range grazing has been, in effect, eliminated. Usually the conflict arises at the interface between developed areas and undeveloped land (private or public). The emergence of small acreage ranchettes on private ranch or farmland sold for residential development often creates conflict. How the legal system governs and administers these conflicts is determined through the Nevada Open Range Law.

The Nevada Open Range Law is a collection of statutes and statutory definitions that legally govern duties, responsibilities and liabilities of domestic owners of livestock and the public on all unenclosed land outside of cities and towns, i.e., "open range."

### **Open Range Defined**

In 1893, Nevada law "*exempted owners of livestock running at large on the ranges or*

*commons” from civil liability for trespass pursuant to NRS 568.300” (Nevada Attorney General, 1965). Open Range is defined by Nevada Statute in NRS 568.355 as used in NRS 568.360 and 568.370 as “all unenclosed land outside of cities and towns upon which cattle, sheep or other domestic animals by custom, license, lease or permit are grazed or permitted to roam” (NRS 568.360 and 568.370).*

### **Trespassing Livestock and Legal Fence**

An owner or manager of livestock is not liable for any property damage caused by trespass livestock unless the damaged property is enclosed by a legal fence. NRS 569.450 prohibits an award for damages for “*trespass of livestock on cultivated land in this state if the land, at the time of the trespass, was not enclosed by a legal fence*” (NRS 569.450). Therefore; it is the responsibility of the private landowner to fence livestock off of private land through construction of a “legal fence.” NRS 569.431 defines a “legal fence” as a fence with not less than four horizontal barriers, consisting of wires, boards, poles or other fence material in common use in the neighborhood, with posts set not more than 20 feet apart. The lower barrier must be not more than 12 inches from the ground and the space between any two barriers must be not more than 12 inches and the height of top barrier must be at least 48 inches above the ground. Every post must be set so as to withstand a horizontal strain of 250 pounds at a point 4 feet from the ground, and each barrier must be capable of withstanding a horizontal strain of 250 pounds at any point midway between the posts.

### **Harassment of livestock on open range**

NRS 568.350 makes it unlawful for any person to lead, drive or in any manner remove any domestic livestock which are owned by another person from the range on which they are permitted to run without the consent of the owner. Any person violating the provisions of this section shall be guilty of a misdemeanor. In addition to criminal charges, an offender shall be civilly liable to the owner of livestock for the value of all such stock and the necessary expenses incident to their return.

NRS 568.370 also provides a penalty for harassing or allowing a dog to harass cattle on open range. Allowing a dog, without the permission of the owner of the domestic animals, to chase, worry, injure or kill domestic animals on open range or on private property is an offense punishable as a misdemeanor.

### **Livestock on Highways**

Livestock owners are also exempted from damages related to animals on highways passing through open range. A.B. 436 (Chapter 301, *Statutes of Nevada 1965*), defined open range and further provided that an owner of any domestic animal running on open range has no duty to keep the animal off any highway traversing or located on open range, nor may the owner be held liable for any damages caused by any collision between a motor vehicle and an animal on such highway. In fact, motorists that hit and maim or kill livestock on highways on open range are liable to the livestock owner for damages to the animal.

However, NRS 568.360 addresses the duties of owners of domestic animals with respect to such animals upon a fenced highway right-of-way area. If an owner negligently allows a domestic animal to enter within a fenced highway right-of-way area, then the owner may be held liable for any collision between a motor vehicle and the domestic animal. Nevada case law in *Jensen v. Nielson, 91 Nev. 412 (1975)* found that NRS 568.360 does not impose absolute liability on an owner of a domestic animal for damage resulting from the animal straying onto a fenced highway. In this case, cattle strayed through a gate left open on property for which the cattle owner had no ownership or control. The court found that the fact that cattle had entered upon a highway did not justify inference that the cattle owner negligently allowed them to be there.

### **Closing Gates Law**

NRS 207.220 is commonly referred to as the “closing gates law.” According to Nevada’s Division of State Library and Archives, Department of Cultural Affairs, the closing gates law was first enacted as Assembly Bill 45, introduced in the 1879 Legislature by Thomas

E. Hagar of Lander County. The law was re-enacted as part of a large crimes and punishment measure in 1911 (Senate Bill 124). The statute makes it a misdemeanor when a person does not close a gate or bar placed in fences enclosing fields or partly enclosing lands when opening and passing through such gate or bar.

### **Herding or Driving of Livestock near Water Supply**

In 1915, the Nevada Legislature enacted NRS 568.330. This statute addresses livestock grazing near certain water supplies and makes the violation of the statute punishable as a misdemeanor. The statute states "*it is unlawful for any person, firm, corporation or association owning or having charge of any livestock to herd, graze, pasture, keep, maintain or drive the same upon, over or across any lands lying within an area that has been identified by the board of county commissioners in the county in which the area is situated as unsuitable for such uses in order to protect any surface intake, intakes, water boxes or surface reservoirs into which water is diverted for use for municipal, drinking or domestic purposes in the state*" (NRS 568.330). In 1929, the Legislature limited the statute's application to waters owned exclusively by cities or municipalities and added the exemption for livestock running at large upon the range.

Assembly Bill 10 (Chapter 315, *Statutes of Nevada 1995*), authorized boards of county commissioners to designate and post areas as being unsuitable for herding or grazing livestock to protect surface water sources for municipal, drinking or domestic use. The bill specified that these designations must be based upon scientific information and must be adopted by ordinance after consultation with affected persons and State agencies. Attorney General Opinion No. 22 (1998) stated that counties have the authority, pursuant both to specific authority via NRS 568.359 and pursuant to their established police powers, to enact ordinances regulating livestock grazing. This opinion also found that Nevada law does not authorize the county to

categorically declare free-ranging livestock a public nuisance, in absence of a pre-established State or county prohibition of such activity.

NRS 568.340 prohibits any person from herding or driving livestock at a spring or well of another person or within one mile of another person's home or or spring belonging to another. This statute states it shall "*be unlawful for any person owning or having charge of any livestock to drive or herd or permit the same to be herded or driven on the lands or possessory claims of other persons, or at any spring or springs, well or wells, belonging to another, to the damage thereof, or to herd the same or to permit them to be herded within 1 mile of a bona fide home or a bona fide ranchhouse*" (NRS 568.340). Attorney General Opinion No. 102 (1917) stated that it was unlawful to herd or graze livestock on the land of another and creating liability for actual and exemplary damages for such trespass is not a criminal statute but does not preclude liability for civil damages.

NRS 568.340 is the basis for the most confusion, conflict and litigation between livestock owners who use open range and the general public. The statute does not clarify the obligations and limitations of either the livestock owner or the homeowner; thus, leaving the door open to personal interpretation and disagreement. It is impossible to keep open range livestock from grazing near a home or away from a spring unless they are fenced out. As the state population increases and residences continue to be developed within and adjacent to open range, disagreements and conflicts will continue to occur until the matter is either decided in court through litigation or clarified by the state legislature. Open range livestock owners should be aware of the potential for conflict and that Nevada Open Range Law does not provide them blanket protection against liability in all cases and circumstances.

## Required Disclosures upon Sale of Home or Improved Lot Adjacent to Open Range

NRS 113.065 requires the seller of property next to open range to disclose information to the buyer regarding grazing on open range. The disclosure statement must be provided before the buyer signs the sales agreement. Compliance with the disclosure requirements constitutes an affirmative defense in any action brought against the seller for any damages suffered as a result of livestock entering the property.

The statute was subsequently amended by S.B. 106 in 2009, expanding the disclosure requirements for the sale of homes and improved or unimproved lots that are adjacent to open range by requiring the seller to disclose to the buyer that the property may be subject to rights-of-way granted by Congress, which are commonly referred to as "R.S. 2477" rights-of-way. Further, S.B. 106 requires the seller to provide a copy of the signed disclosure document to the purchaser, and to record the original disclosure document with the purchaser's signature in the office of the county recorder where the property is located.

**NRS 113.065 Required disclosures upon sale of home or improved lot adjacent to open range; disclosures constitute affirmative defense in action resulting from presence of certain rights-of-way or of livestock entering property.**

This property is adjacent to open range on which livestock are permitted to graze or roam. Unless you construct a fence that will prevent livestock from entering this property, livestock may enter the property and you will not be entitled to collect damages because the livestock entered the property. Regardless of whether you construct a fence, it is unlawful to kill, maim or injure livestock that have entered this property.

(Added to NRS by [2001, 17](#); A [2009, 670](#))

## Conclusion

Nevada open range law comprises a collection of statutes that have been developed and

amended over time to address situations and conflicts as they have arisen. Because of these numerous changes, Nevada open range law may seem confusing and contradictory. Because Nevada is an open range state, property owners residing in open range are generally required to build "exclosures" to keep free range livestock out of their real property. Additionally, owners of livestock legitimately grazing livestock on open range are generally exempt from liability when livestock graze on unfenced private property.

This collection of statutes continues to be essential to the Nevada livestock industry to clarify situations involving producer liability. Open range agricultural producers should be aware that these statutes do not provide complete protection against all liability in all situations and circumstances.

The information provided in this fact sheet is not intended as legal advice, but to educate the public about legal issues commonly encountered with regards to Nevada Open Range Law.

## Publications Cited

Opinion Nevada Attorney General, 259 (August 24, 1965).

Phelps, S., & Cengage, G. (2003). *"Neighbor Relations."* *Encyclopedia of Everyday Law*. Retrieved July 10, 2010, from eNotes: <http://www.enotes.com/everyday-law-encyclopedia/neighbor-relations>

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