

# LIVESTOCK FENCE LAWS: in versus out

by Jeff Mosley

*Extension Range Management Specialist, Montana State University*

Understanding the legal rights and responsibilities of land ownership is an important part of rural land stewardship in Montana. Weed control laws and water rights, for example, are two common topics where lack of understanding can lead to unnecessary conflicts with neighbors. Livestock fencing laws are another potential source of misunderstanding.

Every rural Montana landowner should know whether they are responsible for fencing their land to keep their own livestock within the confines of their property, or whether they are responsible for fencing their land when they want to prevent other people's livestock from roaming onto their property. In other words, "Do I need to 'fence in' my livestock, or do I need to 'fence out' other people's livestock?" The answer depends upon whether the land is legally classified as "open range" or "closed range". On "open range" the property owner is responsible for fencing neighboring livestock out. On "closed range," the livestock owner is responsible for fencing livestock in. Contact the Montana Department of Livestock to find out the range designation in your area. Also be sure to review any subdivision covenants that may apply to your property or your neighbors'. For example, rural subdivision covenants often require lot owners within the subdivision to confine their livestock within their lot boundaries.



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However, if the rural subdivision is adjoined by open range, it is the responsibility of the subdivision lot owner to fence their property boundary if they don't want livestock from the open range area roaming onto their lot.

Construction of a new home within open range, or in a subdivision adjoined by open range, is a potential source of conflict among rural residents. Most homeowners would be horrified to find livestock seeking shelter within their under-construction dream house, or to discover livestock rubbing against unprotected water or propane pipes and electrical outlet boxes. Such conflicts can be avoided while a home is being built by inquiring with neighboring ranchers about the time of year livestock usually graze in the area and by installing permanent or temporary fences during construction. Ranchers should also keep apprised of new construction in the area and alert their neighbors as to when roaming livestock may visit the construction site.

Most of Montana is classified as open range, but closed range exists within all incorporated cities and towns. Closed range also exists within unincorporated, rural areas designated as "herd districts." Montana fence law allows county commissioners to create herd districts when a majority of the land ownership in the proposed district petitions the county commissioners in favor of the new designation.

Within open range, one exception to fencing responsibility occurs with federal land boundaries. Livestock owners are responsible to prevent livestock from illegally trespassing onto federal land, including lands administered by the U.S. Forest Service and Bureau of Land Management. Therefore, if your rural property adjoins federal land, and you do not

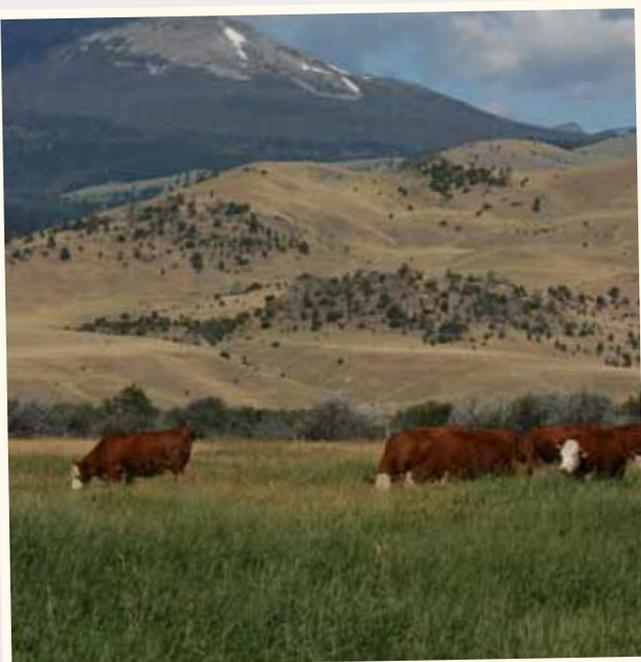


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have a federal livestock grazing permit or lease, you must fence the boundary or otherwise prevent your livestock from roaming onto federal land.

Most landowners in open range are not compelled by law to exclude livestock from their property. In fact, some landowners purposely do not fence out livestock from some or all of their property so that livestock grazing can reduce the threat of wildfire and so that fences do not impede wildlife travel or detract from aesthetics. Fencing along railroads, however, is required within open range. Montana law requires railroads to build and maintain fences along their tracks to keep livestock out, and the railroad must pay fair market value for any livestock that get through the fence and are hurt or killed by trains. Where highways pass through open range, the Montana Department of Transportation has the option to construct fences along the highway rights of way where livestock may present a road hazard.

Finally, who owns and who maintains the boundary fence between you and your neighbor? If the fence is located on the property boundary, ownership and maintenance is shared equally. Each landowner is responsible for maintaining one-half of the boundary fence. The portion designated for you to maintain is determined by standing at the midpoint of the shared boundary and looking toward your neighbor's property. You maintain the half that is to your right. ■



## Origin of Montana's Open Range Fence Law

To understand the reasons behind Montana fence laws, it is necessary to consider how the land came to be owned by the United States and how it came to be occupied by livestock. The area encompassed by present-day Montana became part of the United States via wars, treaties, and purchases. The Louisiana Purchase from France in 1803 provided the land east of the Continental Divide, and a treaty with Great Britain, the Oregon Compromise in 1846, provided the land west of the Continental Divide. Subsequent wars, treaties, and purchases from Native American Indian tribes further secured the land into the control of the United States government.

From the beginning, the federal government allowed its citizens to roam their livestock freely on the public domain. This began in the 1840s with Jesuit missionaries in the Bitterroot Valley and in 1850 when Richard Grant and his sons, Johnny and James, drove cattle northward from the Oregon Trail into the Beaverhead Valley of southwestern Montana. The range livestock industry continued to expand during the next 36 years, booming in the 1880s, and relying almost exclusively on the unfenced public domain for year-round grazing. Everything changed when severe weather during the "Hard Winter of 1886-1887" caused tremendous numbers of livestock to die. This disaster taught large numbers of stockmen the value of harvesting hay for winter feed, which subsequently spawned the need to use fencing to exclude free-roaming livestock from hayfields so that hay could be grown and harvested. The need also arose to decide whose responsibility it was to build and maintain these new fences that separated the hayfields from the open range of the public domain.

In 1887, two years before statehood, the Montana Territorial Legislature passed the law declaring that the stockman who separated the hayfield from the public domain would have the responsibility of fencing to exclude all free-roaming livestock. Twelve years later, when large numbers of homesteaders began entering Montana and separating their farm fields from the public domain, the fencing law was already clearly established. Homestead farmers not wanting free-roaming livestock to access their crop fields had the same responsibility to fence out the livestock as did the stockmen wishing to fence out the livestock from their hayfields. The same approach continues today, that landowners wishing to separate their land from open range are responsible for constructing and maintaining the fence.