

CATTLE & FENCES – Update for Community Board

01/11/2024

Since the last posting, there has been significant new information on this topic which was emailed to those owners on our private mailing list.

1. On October 19 we received a letter from the Tonasket District Ranger concerning use of the National Forest and Livestock Grazing – see copy below.



United States
Department of
Agriculture

Forest
Service

Colville National Forest
Tonasket Ranger District

1 West Winesap
Tonasket, WA 98855
509-486-2186
Fax: 509-486-1922

File Code: 2230
Date: October 19, 2023

Dear 9mile Ranch property owners,
I am writing in response to recent questions regarding access onto National Forest Service Lands and Range areas vs restricted areas and how they affect the residents of the Nine Mile Ranch Homeowners Association.

Point of entry from private land onto Forest Service land in the Mt. Hull area by motor vehicle use (gas/diesel, or electric) is only permitted via open FS road 3525 or the Haley Canyon 100 road. Other forms of permitted travel are foot, horse, or pedal bike (Ebikes are considered motorized vehicles). This means a private landowner who shares the FS boundary may not cross that boundary to access an open or closed road with a motorized vehicle. See, Title 36 CFR 261.50(B)

Range areas as defined by the Okanogan County website https://www.okanogancounty.org/offices/stock_restricted_areas.php allow livestock to run at large. This means that if a private landowner does not want livestock to be grazing on their land, the private land owner needs to construct a fence to keep the livestock off of their private property. In converse, a stock restricted area means that the livestock owner needs to construct and maintain a fence to keep livestock from moving onto other individuals owned land.

To determine if your land is under a range area associated with the Nine Mile Ranch Homeowners Association, go to the Okanogan County website https://www.okanogancounty.org/offices/stock_restricted_areas.php for more information.

Additional information for what defines a legal fence for the State of Washington can be found under Washington State Legislature website [Chapter 16.60 RCW: FENCES \(wa.gov\)](https://www.wa.gov) under Lawful fence defined.

For additional questions, feel free to contact me at 509-486-2186 or my Rangeland Management Specialist, Joshua Read at 509-486-5112.

Sincerely,

A handwritten signature in blue ink that reads 'Matt D. Marsh'.

Matt D. Marsh

cc: Brandon Weinmann



2. After discussion and clarification with the Ranger and with the rancher the following clarifying points were put together:

Our Neighbor - the Colville National Forest Information and Rules

A. Nine Mile Ranch (9MR) has the unique and favorable condition of sharing 8+ miles of National Forest Boundary. Unique and favorable, because few properties offer this access to managed forest land meant for the use and enjoyment by the general public. Forest management by USFS/USDA includes cattle grazing that helps to keep down the late summer dry grass fire hazard, makes use of otherwise wasted tons of useful cattle forage, and contributes to the country's food supply. Along with the benefit comes the issue of containing cattle in the forest and not allowing free range of 9MR property and infrastructure. In their continuous search for food and water, roaming cattle can cause significant damage to our private 9 Mile HOA roads, ditches, and culverts - and to our private structures, wells, septic systems, and gardens.

B. The part of 9MR east is designated by Okanogan County as Herding District 11. The rancher is required to keep his cattle out of "herding districts" using USFS fences, but it is the responsibility of Rancher with help from Owners to maintain this provided fence – see 9MR Website/Community Notices. Our current Rancher will deal with difficult situations – any owner may call him. As good stewards of our property, owners along this fence routinely inspect and make minor repairs - and notify the rancher of any problem.

C. 9MR to the west of Herding District is Range Area (all of Okanogan County is designated "Range Area" if not in a designated Herding District or other stock restricted area such as a township.) In Range Area, cattle can run at large - it is the private property owners' responsibility to fence the cattle out (unless cattle roaming is deemed permissible). The dividing line between Herding District and Range Area is a North-South line starting at Division 8 Lot 12. All of Division 8 to the west of this line is Range Area. As private property owners the 9MR HOA should be responsible for maintenance and reconstruction of this portion of the boundary fence. At a cost of approximately \$51,000. for approximately 1 ½ miles of fencing, it is unfair and unreasonable to place this cost on the individual lot owners. A good fence benefits the entire HOA over the long run. *State Law RCW 16.60.020 requires land owners each side of a partition fence to share half the cost of fence construction/maintenance. However, the US Forest Service believes this only applies to private land owners – meaning they (USFS) will not share in any cost.*

D. Many Washington state laws also address cattle and fencing. Without delving into each RCW, it is the rancher's responsibility to round up strays and he is responsible for cattle caused damage in Herding Districts, *and in range area that has been properly fenced.* Stray cattle can be impounded but not injured or mistreated. There is nothing

specifically in the RCWs about rancher use of private 9MR roads and entry onto private property, but this is often necessary for stray cattle round up.

E. Back to Forest rules. The public has the right to walk anywhere in the National Forest. A Motorized Vehicle Use Area map ([fseprd815577.pdf \(usda.gov\)](https://www.usda.gov/fseprd815577.pdf)) exists for the Colville National Forest that limits use of motorized vehicles to certain Forest Service roads. Gates in the forest boundary fence are only for the use of pedestrians and for the rancher to return cattle to the forest. **Gates must be closed when not in use.** *Communication with the Tonasket District Forest Ranger confirms there are Forest Service law enforcement personnel who can and will enforce these motorized vehicles rules.*

3. Some of the state laws that apply in our cattle grazing situation are copied below.

WA State Cattle Laws

RCW 16.60.010 Lawful fence defined. A lawful fence shall be of at least four barbed, horizontal, well-stretched wires, spaced so that the top wire is forty-eight inches, plus or minus four inches, above the ground and the other wires at intervals below the top wire of twelve, twenty-two, and thirty-two inches. These wires shall be securely fastened to substantial posts set firmly in the ground as nearly equidistant as possible, but not more than twenty-four feet apart. If the posts are set more than sixteen feet apart, the wires shall be supported by stays placed no more than eight feet from each other or from the posts. [1985 c 415 § 22; Code 1881 § 2488; 1873 p 447 § 1; 1871 p 63 § 1; 1869 p 323 § 1; RRS § 5441. FORMER PART OF SECTION: Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442, now codified as RCW 16.60.011.]

RCW 16.60.015 Liability for damages—Restraint—Notice. Any person making and maintaining in good repair around his or her enclosure or enclosures, any fence such as is described in RCW 16.60.010 and 16.60.011, may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals, so trespassing, may be taken and held as security for the payment of such damages and costs: PROVIDED, That such person shall provide notice as required under RCW 16.04.020 and 16.04.025: PROVIDED FURTHER, That such person shall have such fences examined and the damages assessed by three reliable, disinterested parties and practical farmers, within five days next after the trespass has been committed: AND, PROVIDED FURTHER, That if, before trial, the owner of such trespassing animal or animals, shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded. [1985 c 415 § 26; Code 1881 § 2490; 1873 p 447 § 3; 1871 p 64 § 3; 1869 p 324 § 3; RRS § 5443.] Trespassing animals—Restraint—Damages and costs: RCW 16.04.010.

RCW 16.60.020 Partition fence—Reimbursement. When any fence has been, or shall hereafter be, erected by any person on the boundary line of his or her land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure [enclosure], so that such fence may also answer the purpose of inclosing [enclosing] his or her ground, he or she shall pay the owner of such fence

already erected one-half of the value of so much thereof as serves for a partition fence between them: PROVIDED, That in case such fence has woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his or her land fenced with hog fencing and uses the partition fence to make a hog enclosure of his or her land, then he or she shall pay to the one who owns said hog fence one-half of the value thereof. [2011 c 336 § 426; 1907 c 13 § 1; Code 1881 § 2491; 1873 p 448 § 4; 1871 p 65 § 4; 1869 p 324 § 4; RRS § 5444.]

RCW 16.60.030 Partition fence—Erection—Notice. When two or more persons own land adjoining which is inclosed [enclosed] by one fence, and it becomes necessary for the protection of the interest of one party said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land. [Code 1881 § 2492; 1873 p 448 § 5; 1871 p 65 § 5; 1869 p 325 § 5; RRS § 5445.]

RCW 16.60.040 Partition fence—Failure to build—Recovery of half of cost. If, after notice has been given by either party and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected, the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party. [Code 1881 § 2493; 1873 p 448 § 6; 1871 p 65 § 6; 1869 p 325 § 6; RRS § 5446.]

RCW 16.60.062 Assessing value of partition fence. In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in RCW 16.60.020. [Code 1881 § 2497; 1873 p 449 § 10; 1871 p 66 § 10; 1869 p 326 § 10; RRS § 5450.]

RCW 16.60.075 Damages by breachy animals. The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he or she shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals, that may be in company with such animal. [2011 c 336 § 429; Code 1881 § 2499; 1873 p 449 § 12; 1871 p 66 § 12; 1869 p 326 § 12; RRS § 5452. Formerly RCW 16.04.090, part. FORMER PART OF SECTION: Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453, now codified as RCW 16.60.076.]

RCW 16.60.076 Proof. In case of actions for damages under RCW 16.60.010 through 16.60.076, it shall be sufficient to prove that the fence was lawful when the break was made. [Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453. Formerly RCW 16.04.090, part.]

RCW 16.24.010 Restricted areas—Range areas. The county legislative authority of any county of this state shall have the power to designate by an order made and published, as provided in RCW 16.24.030, certain territory as stock restricted area within such county in which it shall be unlawful to permit livestock of any kind to run at large. No territory so designated shall be less than two square miles in area. RCW 16.24.010 through 16.24.065 shall not affect counties having adopted township organization. All territory not so designated shall be range area, in which it shall be lawful to permit cattle, horses, mules, or donkeys to run at large: PROVIDED, That the county legislative authority may designate areas where it shall be unlawful to permit any livestock other than cattle to run at large. [1989 c 286 § 4; 1937 c 40 § 1; 1911 c 25 § 1; RRS § 3068. Prior: 1907 c 230 § 1; 1905 c 91 § 1; R & B § 3166.]

RCW 16.24.065 Stock at large in restricted areas—Running at large on state or federal land. (1) No person owning or in control of any livestock shall willfully or negligently allow such livestock to run at large in any stock restricted area or to wander or stray upon the right-of-way of any public highway lying within a stock restricted area when not in the charge of some person. (2) Livestock may run at large upon lands belonging to the state of Washington or the United States only when the owner of the livestock has been granted grazing privileges in writing. [1989 c 286 § 9; 1985 c 415 § 20; 1937 c 40 § 6; RRS § 3070-3. Formerly RCW 16.24.070, part.]

RCW 16.24.090 Animals at large—Limitations—Defense. Except as provided in chapter 16.24 RCW, a person who owns or has possession, charge, or control of horses, mules, donkeys, cattle, goats, sheep or swine shall not negligently allow them to run at large at any time or within any territory. It shall not be necessary for any person to fence against such animals, and it shall be no defense to any action or proceedings brought pursuant to this chapter or chapter 16.04 RCW that the party injured by or restraining such animals did not have his or her lands enclosed by a lawful fence: PROVIDED, That such animals may be driven upon the highways while in charge of sufficient attendants. [1989 c 286 § 14; 1911 c 25 § 5; RRS § 3072. Formerly RCW 16.12.010, part.]

RCW 16.04.010 Trespassing animals—Restraint—Damages and costs. Any person suffering damage done by any horses, mules, donkeys, cattle, goats, sheep, swine, or any such animals, which shall either trespass upon any land enclosed by lawful fence as provided in chapter 16.60 RCW or trespass while running at large in violation of chapter 16.24 RCW may retain and keep in custody such offending animals until the owner or person having possession of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [1989 c 286 § 1; 1925 ex.s. c 56 § 1; 1893 c 31 § 1; RRS § 3090.]

Link to Herd Area Map -- [Draft-Okanogan County Herd Districts.pdf \(revize.com\)](#)

4. One owner prepared a **Special Assessment Proposal** for the Board of Directors to consider. Copy of this is shown below.

Special Assessment Proposal

Purpose. This special assessment is for the amount of \$51,000.00 to construct approximately 1 ½ miles of boundary fencing between the Colville National Forest and the southwestern boundary of Division 8. *In other words – a complete and lawful fence is needed. (RCW 6.60.010 Wa Cattle Laws – see attached)*

Background. A series of Washington State Laws (as attached) and Okanogan County Directives address cattle grazing. Okanogan County with the exception of designated stock restricted areas, is **Range Area**, in which “it shall be lawful to permit cattle, horses, mules, or donkeys to run at large”.

- A.** A local rancher has a grazing lease allowing his cattle to graze in the National Forest and State land to the south of Divisions 6, 7, & 8. The eastern 7-8 miles of these divisions are in **Herding District 11**, a County designated stock restricted area, in which “which it shall be unlawful to permit livestock of any kind to run at large.” In the Herding District the rancher has the responsibility to keep his cattle off Nine Mile Ranch (9MR) property.

He does this with a lawful barbed wire fence along the boundary. The approximately 1 ½ miles of Division 8 to the west of the Herding District is Range Area - in which it is a land owner's responsibility to keep cattle out (if the ownership so desires).

- B.** The 1 ½ miles of boundary at issue had a lawful fence at one time, but it has deteriorated to the point of being almost totally ineffective. The consequence of this is cattle can easily enter Division 8 and roam freely throughout 9MR. These large animals leave a mess and can cause significant damage to road surfaces, ditches, culverts and to private dwellings, utilities, and landscaping. Per RCW 16.60.015 damages are only recoverable IF cattle have broken through a fence in good repair. The current fence is in almost total disrepair. Much of this boundary area is rocky with steep terrain – generally beyond the capability of amateur fence builders.
- C.** Over the last 20 years our current rancher has built a trusting relationship with his 9MR neighbors. He has been cooperative and responsive in rounding up cattle when they roam onto 9MR. He is not required to round up strays in the **Range Area**, but again, he does so to maintain the good relationship with 9MR owners – and to protect his cattle. (It is unlawful to harm these animals!)

A new leasing rancher could have a different outlook and ignore our reports of cattle in the Range Area. Also, unless he is specifically granted access to 9MR roads and private property, he could easily use that as an excuse not to respond.

It is in the best interest of all 9MR owners to have this boundary fence constructed to guard against costly damage from stray cattle. This will become more important if a new leasing rancher doesn't strive for the good relationship established by our current rancher. The cost of this special assessment is approximately \$170.00 per lot. As currently done in Division 6, 7 and upper portion of Division 8 – maintenance of this new stretch of fencing will be the responsibility of each Lot Owner. (Contractor help is available at the expense of contracting Lot Owner.)

The BOD discussed this proposal and informally decided this “particular case is simply not within the jurisdiction of the BOD.”

After this proposal was considered it came to our attention that the rancher has been making the routine repairs for many years. These repairs take considerable effort, but have been only minimally effective due to the poor fence condition. If he ceases this effort cattle could legally roam freely throughout the Division 8 Range area. We owners did not realize that it was the responsibility of the HOA to maintain this section of Division 8 fence, if it is our desire to keep cattle out.

Information provided by Brian and Felicity Rabe