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Four Hills Ranch
c/o Sherrian Bloomquist, President
11256 W. Bright Sky Trail
Williams, AZ 86046

Sent via email

RE: Open Range Issues in Four Hills Ranch

Dear Sherrian:

You requested guidance for the Four Hills Ranch POA on a few different issues related to livestock grazing within Four Hills Ranch. The following is my research and opinion on the two issues we discussed.

Dogs Chasing, Wounding, or Killing Livestock

First, *any person*, not merely an owner of livestock, may legally kill dogs caught killing, wounding, or chasing livestock. Ariz. Rev. Stat. § 3-1311(A). The person may legally kill the dog(s) if he or she “discovers a dog under circumstances which show conclusively that [the dog] has recently killed or chased livestock.” Ariz. Rev. Stat. § 3-1311(A). This means the person who kills the dog does not need to witness the dog wounding, killing, or chasing livestock, if it is very clear the dog recently did so.

An owner of dog(s) chasing, killing, or wounding livestock is liable to the owner of the livestock for damages. If the dog kills or wounds the livestock, the owner “is liable for damages to the owner of the livestock equal to three times the value of the livestock killed or wounded.” Ariz. Rev. Stat. § 3-1311(B) (emphasis added). If the dog causes damage to the livestock by chasing, the owner of the dog is liable solely for the damages the dog caused. Ariz. Rev. Stat. § 3-1311(B).

Allowing dogs to chase, wound, or kill livestock can be a crime, if done intentionally or recklessly. In criminal law, doing something “recklessly” means knowing there is a risk involved in one’s actions, but taking the actions anyway. Intentionally or recklessly allowing a dog to chase livestock belonging to another is a class 3 misdemeanor if the chase causes injury to the livestock. Ariz. Rev. Stat. § 3-1311(C)(2). Intentionally or recklessly allowing a dog to wound or kill livestock belonging to another is a class 1 misdemeanor. Ariz. Rev. Stat. § 3-1311(C)(1).

Pursuant to the law above, people who intentionally allow their dogs to roam free in Four Hills Ranch, when the area is well-known to be open range, are likely recklessly allowing their dogs to chase, wound, or kill cattle. The owners of such dogs may therefore face criminal charges and be liable to the owners of cattle for three times the value of any livestock their dogs kill or cause to be wounded in any way.

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A person whose dogs escape and chase, kill, or wound livestock, when the person has made clear efforts to contain the dogs, might not be liable criminally, since the person did not act intentionally or recklessly. However, the person would still be liable civilly to the owner of the livestock for three times the value of the livestock.

Damage to Livestock from Conditions on Property

The answer to the question of whether a landowner may be civilly liable to an owner of livestock for a hazardous condition on the landowner's property is less clear.

In open range districts, landowners must fence livestock out, rather than livestock owners needing to fence livestock in. An owner of land who has not fenced livestock out is not entitled to recover for damages caused by livestock entering his or her land. Ariz. Rev. Stat. § 3-1427.

There is no specific rule on a landowner's liability if livestock encounter a hazard on land from which livestock has not been fenced out. In these types of situations, in which there is no clear rule, landowners should avoid acting negligently and/or recklessly to cause potential damage to livestock. As noted above, acting recklessly is when one is aware (or *should be* aware) of a risk caused by one's actions, but goes forward with the action anyway. Acting negligently is not acting as a reasonable person should.

Because owners of unfenced land in Four Hills Ranch are aware (or should be aware) livestock will be entering their property, allowing hazards to that livestock to exist on the property might be viewed as reckless, but is very likely to be viewed as negligent. My advice to landowners who do not fence their property within Four Hills Ranch is to avoid creating hazards to livestock, or allowing hazards to livestock to remain on their land.

Additionally, Section 5(l) of the CC&Rs for Four Hills Ranch states "No garbage may be kept on any Parcel except in covered containers and screened from view from adjacent parcels." CC&Rs, p.10. It sounds like the person who is leaving her camping trash on the parcel is in violation of this section.

Please let me know if you have any questions or if I can provide any additional information.

Sincerely,

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