Dave
File this with Bill

MISCONCEPTIONS RELATING TO HB 385 AND CONTROLLED LIVESTOCK DISTRICTS

On March 14, 1986 the House Resource Committee held a teleconference hearing on HB 385, dealing with responsibility for the actions of uncontrolled livestock. A number of comments were made in opposition to the bill which indicate a lack of understanding of the purpose of it and of the nature of existing and past law relating to uncontrolled livestock. I would like to comment on these misconceptions.

COMMON LAW PROTECTION OF PERSONS AND PROPERTY

Any person suffering injury due to uncontrolled livestock now has the right to recover damages through litigation. This is true for all lands in the state, fenced or not (see O'Meara vs. Anderson #3HO 84-276 SC). In spite of what some individuals may believe, there is no "open range" in Alaska, where stockmen are free of responsibility for their uncontrolled animals.

NATURE OF CONTROLLED LIVESTOCK DISTRICTS

A "controlled livestock district" is an area established by a district court judge in which it is against the law for domestic animals to run at large, unattended. Within such an area any person suffering injury from uncontrolled livestock need not go through litigation to recover damages. Any such person may impound the offending animal and demand payment from the owner. If the owner fails to comply, the injured party has the right to sell the animal at auction in order to recover.

The "controlled livestock district" thus provides for a non-judicial remedy in addition to the common law protection for persons and property. It does not limit liability for domestic animals to within the boundaries of such districts (see AS Chapter 35).

THE EFFECT OF HB 385

House Bill 385 would not increase existing liability for the owners of uncontrolled domestic animals. It would serve to state in simple and clear language just what that liability is. In so doing it would help to dispel the myth of "open range" and so should result in fewer confrontations between stockmen and other citizens and less litigation. HB 385 makes no changes in the law relating to "controlled livestock districts" and it has nothing to do with fencing.

MIKE O'MEARA
P.O. BOX 1125
HOMER, AK 99603

1,Millie Martin,P.O. Box 2652,"Homer, AK",99603,Millie

2,An Peischel,Box 15193 F.C.,"Homer, AK",99603,An

3,Daisy Lee Bitter,60385 Skyline Dr.,"Homer, AK",99603,Daisy

4,Victoria Hand,P.O. Box 2889,"Homer, AK",99603,Victoria

5,Dan Long,Box 15297 F.C.,"Homer, AK",99603,Dan

6,Sue Mohn,SR Box 700 A.P.,'Homer, AK",99603,Sue

7,Jean Strutz,Box 1143,"Homer, AK",99603,Jean

8,Kenton Bloom,Box 1141,"Homer, AK",99603

9,Marilyn Kirkham,1275 Ocean Dr.,"Homer,AK",99603

FOR YOUR INFORMATION..
NO REPLY AND NO
NOTIFICATION OF
THE HEARING.

MICHAEL S. O'MEARA
P.O. BOX 1125
HOMER, AK 99603

FEBRUARY 8, 1986

REPRESENTATIVE ANDRE MARROU
ALASKA STATE LEGISLATURE
POUCH V (MS 3100)
JUNEAU, AK 99811

DEAR REPRESENTATIVE MARROU:

I was pleased to finally receive your response to my letter of December 28 regarding the matter of uncontrolled livestock. Thank you very much for including a copy of your bill, HB 428, and for the copy of the Alaska State Legislature Directory.

We are in agreement about the need to resolve the confusion over stockmen's responsibilities under the law. Unfortunately, I cannot see how the passage of HB 428 would do that. Our legal research indicates that common law protection would still apply to all private property and persons, in or out of a "grazing district". If indeed legislation was passed which attempted to remove such equal protection for all citizens, it seems unlikely to withstand the constitutional challenge which would assuredly follow. The "controlled livestock district" simply provides injured parties within with a nonjudicial remedy in addition to that available through the courts. That really isn't a bad idea, except that confusion about liability is generated, resulting in a "wild west" attitude on the part of some stockmen.

I realize that since Edna Anderson was your campaign manager, and is no doubt a personal friend, that it will be difficult for you to avoid seeing the issue through her eyes. She and Elton are good people and deserve to prosper...but not at the expense of the majority of citizens in Alaska. When you refer to "decimating one entire industry" you would do well to consider the impact of an "open range" policy upon agriculture in general. If such a policy were ever attempted, barley growers and other farmers could face financial ruin in attempting to protect their developments from a small group of stockmen. How does one justify favoring one form of agriculture over all others?

As a libertarian you claim to defend such things as private ownership of land and elimination of intrusive "big government". It is therefore surprising to see you supporting governmental actions which would eliminate the right to control and enjoy private property, subsidize stockmen with a grant of free use of all public and unfenced private land (basically a form of social welfare), and deny equal protection under the law for all citizens.

As you can tell, I am not ready to support your bill, and have been in contact with many other legislators and concerned property owners suggesting that in its present form it should not be passed out of committee. You are no doubt aware that I do strongly support HB 385 (Thompson) and have suggested additional language which would provide nonjudicial remedies for injured parties, similar to those now available within "controlled livestock districts". I have also suggested that legislation requiring livestock to be adequately branded or marked be introduced, since it is difficult to prove which animals caused damage otherwise. Obviously I would hope that you would look at these proposals seriously and consider supporting them in place of HB 428.

In closing let me say that like you, I do not enjoy the process of litigation and hope to see our laws written in such a way as to help avoid it in the future. This can be done, I believe, only if such laws clearly provide for equal treatment of all citizens and make clear the need for each person to be responsible of his or her own actions. Any attempt to legislate "open range" policy can only assure an increase in the number of lawsuits involving stockmen, the state of Alaska, and other citizens. As Judge Fuld wrote in his opinion,"...the rights of the private property owner in this and other states are absolute as far as free and untrammelled enjoyment subject only to taxation, zoning, and some limitations against noxious use".

Sincerely,

MICHAEL S. O'MEARA

March 10, 1986

Representative Richard Shultz,
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz,

It has come to our attention that there are several bills pending in this legislature that pertain to stock, grazing, grazing rights and liabilities. We refer to H.B. 428, An Act relating to grazing districts, S.B. 277, An Act relating to cattle and domesticated animals and H.B. 385 An Act relating to liability for damage caused by domestic animals and providing for an effective date.

As property owners in an area designated "Open Range", having sufered at the hands of an absent stockman who leaves his animals for months on end to forage and sometimes starve, we watched with particular interest the recent court ruling (O'Meara vs. Anderson, No. 3HO 84-276 SC) which for once proved that stockmen are liable for damages caused by their animals to private property under existing law.

It was also anticipated that a small handful of stockmen in the state would endeavor to create laws to circumvent this ruling. To our dismay, even the local soil conservation district supported this legislation, of which we are members, and to which we strongly disagreed. Their actions are not representative of these members.

We own property just outside of Homer in a well populated area, yet these stockmen would like to deny us our private property rights so they can run stock over it, or force us to build very costly fences (SB 277), so they can operate their business??? And I think that is wrong. It is undemocratic when one individual has the right to do so much damage, and to dictate to so many - and we have no rights in return. This occurs to us yearly in the Skyline Drive, Olson Mountain area of Homer. It is not right.

Of the bills mentioned above the only one we might support would be that of Mr. Thompson, H.B. 385, and that with reservation.

However we would like to strongly suggest that public hearings be held, in the communities that are so affected by them. Such as Homer. I believe you will find there exists a great deal of opposition to reinstating grazing districts or the fence out law. Please, before enacting new laws, give us a chance to speak in a public forum.

Thank you for your attention.

Sincerely,

Darol and Mildred Martin

Darol B. and Mildred M. Martin
59490 E. Skyline Drive
Homer, Alaska 99603
235-6652

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 385
Title : "An Act relating to liability for damage caused by domestic animals; ..."
Sponsor : Representative Thomson
Requestor : Representative Thomson
Date of Request : March 12, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Legal Services
Components : Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This bill appears to set liability for damage on injury to a person by a domestic animal, and it provides for a private right to seek recovery for such damage or injury. Actions that may grow out of these provisions will be between private parties and will not involve the Department of Law.

Prepared by: Richard L. Pegues — Richard L. Pegues, Director — Phone : 465-3672
Division : Administrative Services Division — Date : 3/14/86
Approved by Commissioner Richard L. Pegues/For/ Harold M. Brown, Atty General — Date : 3/14/86
Agency : Department of Law

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

1 1

10/25/85

Post Office Box 3385
Kodiak, Alaska 99615

May 1, 1985

Representative Dave Thompson
Pouch V
Juneau, Alaska 99811

Dear Dave,

I am in receipt of House Bill No. 385 which you introduced on April 17, 1985.

As you know I was a victim of a cow crossing the road late at night. My children and I were lucky this time. We were wearing seatbelts and no one was seriously injured. Our car did'nt fair as well. It sustained $2,000 dollars in damages.

What I think this bill attempts to do is place the responsibility and liability of any domestic animal with its owner.
I support this bill in its entirety and will be willing to testify when the time comes. Thank you.

Sincerely,

Teresa D. Stone

WILLIAM R. DEVRIES
ATTORNEY AT LAW
P. O. BOX 2456
HOMER, ALASKA 99603
(907) 235-7504

October 23, 1985

Office of Mike Navarre, State Representative
312 Tyee Street
Soldotna, Alaska 99669

Re: O'Meara lawsuit

Dear Sir or Madam,

In response to your request, I enclose the most pertinent documents from the above case. My file is about a foot thick. If you have any further inquiries, please feel free to contact me.

I also enclose a copy of the Estray Act (Alaska Compiled Laws Annotated 1949) for your reference. This act was in existence from 1933 until its repeal in 1963. The other side in the lawsuit kept insisting there was a time in Alaskan history when cattlemen could let their animals roam without liability. The Estray Act totally negates that argument.

Sincerely,

William R. De Vries

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

ELTON ANDERSON and EDNA ANDERSON,

Appellants,

vs.

MICHAEL S. O'MEARA and JANET V. O'MEARA,

Appellees.

Case No. 3HO-84-276 SC

APPEAL FROM THE DISTRICT COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT HOMER
WILLIAM H. FULD, JUDGE

BRIEF OF APPELLEES

DATED: April 2, 1985

William R. De Vries
Attorney for Appellees
P. O. Box 2456
Homer, Alaska 99603
235 7594

WILLIAM R. DEVRIES
ATTORNEY AT LAW
P. O. BOX 2456
HOMER, ALASKA
99603
907/235-7594

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RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellees object to appellants' statement of issues and restate all issues on appeal as follows:

In a case of trespass of livestock upon unenclosed private property, does the State of Alaska follow the common law rule of liability making the owner of the livestock liable for any damages caused by the trespass?

STATEMENT OF THE CASE

The appellants, Elton Anderson and Edna Anderson, and the appellees, Michael S. O'Meara and Janet V. O'Meara, live off the North Fork Road near Anchor Point, Alaska. The Andersons purchased their property in 1959 and the O'Mearas purchased their property in 1971.

The relevant facts are uncontested on appeal. It is uncontested that certain livestock owned and possessed by Elton and Edna Anderson trespassed upon property owned by the O'Mearas and caused damages. The trial court decided that the Andersons were liable for the damages based upon the common law rule of liability pertaining to trespassing livestock.

The record at trial is devoid of any evidence as to grazing customs in the State of Alaska which would qualify as "ancient custom" or "usages and customs of immemorial antiquity". Appellees object to all references in appellants' argument pertaining to the alleged custom of cattle owners in Alaska as irrelevant, untrue, and without any substantiation in the record at trial.

ARGUMENT

Since 1949, Alaska has had the following statute adopting the common law for this state:

> "So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state." A. S. 01.10.010.

In 1949, Alaska enacted statutes defining a legal fence and providing that the owner of cattle is liable for damages done to lands of another enclosed by a legal fence. A. S. 03.30.010 and A. S. 03.30.040. These fence statutes were repealed in 1977.

Judge Fuld correctly reasoned that the repeal of the fence statutes, to the extent that said statutes abrogated the common law, resulted in the reinstatement of the common law. See 73 AmJur2d Section 384, p. 505. The only issue then is to define the common law liability.

The appellants use the term "open range" in a way that has not been used even in the western grazing states of the United States. Even in the states that rejected the common law rule, there was still liability for trespass of livestock upon private land enclosed by a fence. Thus, the Restatement of Torts Second provides two possible rules of liability applicable to this case. One, the possessor of livestock is liable regardless

of whether the possessor of land maintains a fence. Two, the possessor of livestock is liable only if the possessor of land maintains a fence. See Restatement of Torts, Second, Section 504. It should be noted that the Restatement covers all jurisdictions and refers to newly opened and sparsely settled land under the commentary section.

As to private property, there never was a situation in any state where the livestock owner could turn his livestock loose with complete immunity. This position is what appellants attempt to now maintain is the common law in the State of Alaska at this time.

The term "open range" actually refers to the uses of public lands by livestock men. See Kingery, The Public Grazing Lands, 43 Denver L. J. 329:

> "The tradition of the open range - uncontrolled use of public lands by western livestock men - has meant violence not only between users and would-be-users, but violence to the range itself, caused overgrazing and consequent damaging erosion."

See also Scott, The Range Cattle Industry: Its Effect on Western Land Law, 28 Montana L. Rev. 155, 156:

> "The open range cattle industry was based on the availability of hundreds of thousands of square miles of free and unoccupied public domain."

The days of "open range" on public lands ended at the turn of the century. See Kingery, ibid., Light v. United States

220 U.S. 523 (1911), and Camfield v. United States, 167 U.S. 518 (1897).

As to unenclosed private property, some western states rejected the common law rule of liability and required that the owner of land maintain a fence as a prerequisite to suing the livestock owner for damages due to trespassing cattle.

See Garcia v. Sumrall, 121 P.2d 640, 644 (Ariz. 1942):

> "The obvious purpose and effect of these statutes was to change the common law rule and 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."

See also GaBell's, Inc. v. Flens, 627 P.2d 750, 751 (Colo. 1981):

> "The Colorado Fence Law, section 35-46-102, C.R.S 1973, originally enacted in the latter part of the 19th century, makes the maintenance of a "lawful fence", as defined in section 35-46-101 C.R.S 1973, a condition precedent to recovery of damages caused by trespassing livestock....The statute modified the common law doctrine which held the owner of trespassing livestock strictly liable for their trespasses on the lands of others."

See also Lazarus v Phelps, 152 U.S. 81, 84 (1894).

Kingerly, The Public Grazing Lands, ibid., at page 330 states:

> "Early in their history, the western states had enacted "fence laws" declaring that livestock which inadvertently wander onto unfenced land not belonging to their owners could not be regarded as trespassers."

It is submitted that every western grazing state that has rejected the common law rule of liability has done so by statute. See Garcia v. Sumrall, ibid., SaBell's, Inc. v. Flens, ibid., Lazarus v. Phelps, ibid., Dunbar v. Emigh, 158 P.2d 311, 312 (Mont. 1945), Buford v. Houtz, 133 U.S. 321, 328 (1890), and Carver v. Ford, 591 P2d 305, 307 (Okla. 1979).

It is not even correct to suggest that all western grazing states have rejected the common law rule. See specifically Carver v. Ford, 591 P.2d 305 (Okla. 1979) and Bastian v. King, 661 P.2d 953, 955 (Utah 1983). Apparently, the State of Utah even goes so far as to require that the cattleman fence in his livestock.

Also, the trend in the western grazing states that have rejected the common law rule is to restore the common law rule. See Prosser, Handbook of the Law of Torts, p. 497.

It is submitted that Judge Fuld correctly ruled that the proposition of the rejecting the common law is properly a matter to be addressed by the legislature. Absent a statute to the contrary, Alaska is bound by the common law rule that the cattleman is liable in this instance.

Appellants also refer to "herd districts" and A. S. 03.35.010. A. S. 03.35.010 through A. S. 03.35.070 provide for the non-judicial impounding and sale of trespassing livestock in an area where a grazing district has been established

No grazing district has been established concerning the property involved in the present case. References to "herd districts" and A. S. 03.35.010 are irrelevant.

A letter from former Governor Hammond has also been referred to by the appellants. The letter has no substantive value on the issue of the law of this jurisdiction. In any event, the letter says nothing more than that by repealing the fence laws Governor Hammond was concerned that there would be substantial doubt and uncertainty unless there was further legislation.

As previously stated appellees deny that Alaska custom would allow livestock to trespass on private property with complete immunity. That has never been the custom in any jurisdiction.

CONCLUSION

Appellees submit that the trial court correctly applied the law of this jurisdiction and that the decision and judgment should be affirmed.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

ELTON ANDERSON and
EDNA ANDERSON,

Appellants,

vs.

MICHAEL S. O'MEARA and
JANET V. O'MEARA,

Appellees.

FILED in the Trial Courts
State of Alaska, Third District
at Kenai
JUL 01 1985
Clerk
By Deputy

Case No. 3HO-84-276 SC

OPINION ON APPEAL

This case is on appeal from the District Court at Homer upon the Decision of William H. Fuld, District Court Judge, dated December 19, 1984. The notice of appeal was filed by appellants Elton Anderson and Edna Anderson on January 18, 1985. The Court has read the briefs of appellants and appellees and has heard the arguments of counsel at the hearing for oral argument which took place on June 17, 1985.

It was determined that there are no factual issues raised on this appeal. The question on appeal concerns the legal ruling of the trial court that the owner of livestock is liable for damages caused by the trespass of his livestock upon unenclosed private property of another.

It is the opinion of this Court that by the repeal by the legislature of A. S. 03.30.010 and A. S. 03.30.040 in 1977, the common law rule of liability that the owner of livestock is liable for damages caused by the trespass of his livestock upon the unenclosed private lands of another was reinstated as the law in this state.

The decision and judgment of the trial court is affirmed.

DATED: 7/1

RALPH E. MOODY
Superior Court Judge Pro Tem

WILLIAM R. DEVRIES
ATTORNEY AT LAW
P. O. BOX 8450
HOMER, ALASKA
99603
907/235-7504

IN THE SUPREME COURT OF THE STATE OF ALASKA

ELTON ANDERSON and EDNA ANDERSON, Petitioners, vs. MICHAEL S. O'MEARA and JANET V. O'MEARA, Respondents.	)	Supreme Court No. S-1081

Superior Court No. 3HO-84-276

ORDER

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

On consideration of the petition for hearing, filed on July 16, 1985, and the response to the petition, filed on August 2, 1985,

IT IS ORDERED:

The petition for hearing is denied.

Entered by direction of the court at Anchorage, Alaska on August 30, 1985.

CLERK OF THE SUPREME COURT

David A. Lampen
DAVID A. LAMPEN

[Rabinowitz, Chief Justice and Burke, Justice, dissent and would grant the petition.]

ccs: Justices
Counsel

ACLA 1949

§ 33-3-62. Renewal of brand or mark. Every owner of a brand or mark recorded with the Auditor must, five years after date of recording, renew said brand or mark by making application for renewal in the office of the Auditor. The fee for renewal shall be $1.00. If the owner of any brand or mark shall fail or refuse to make renewal within thirty days after same becomes due, such brand shall no longer be carried on the record of brands and marks in said office. [L 1933, ch 92, § 2, p 176; CLA 1933, § 637; am L 1939, ch 14, § 2, p 82.]

§ 33-3-63. Certified copy of record. At any time after the recording of any brand or mark with the Auditor as provided in this article, the owner thereof may procure from the Auditor a certified copy of the record of such brand or mark by paying therefor the sum of $1.00. [L 1933, ch 92, § 3, p 176; CLA 1933, § 638; am L 1939, ch 14, § 3, p 82.]

COLLATERAL REFERENCES

2 Am Jur 715.

§ 33-3-64. Property in recorded brands or marks: Sale or transfer: Recording instruments of transfer and effect thereof. Any brand or mark recorded in compliance with the requirements of this article shall be the property of the person, firm, or corporation causing such a record to be made and shall be subject to sale, assignment, devise and descent as personal property. Instruments of writing evidencing any such sale, assignment, or transfer, shall be acknowledged, and shall, if such brand or mark is for use on domestic animals other than reindeer, be recorded in the office of the Auditor in a book kept for that purpose, upon the payment to him of a fee of $1.00; and if such brand or mark is for use on reindeer, instruments of writing evidencing sale, assignment, or transfer of same may be recorded with the General Reindeer Supervisor at Nome, Alaska. The recording of any such instrument shall have the same force and effect as to third parties as the recording of instruments affecting real estate, and a certified copy of the record of any such instrument may be introduced in evidence as is now provided for certified copies of instruments affecting real estate. [L 1933, ch 92, § 4, p 176; CLA 1933, § 639; am L 1939, ch 14, § 4, p 82.]

COLLATERAL REFERENCES

2 Am Jur 715.

§ 33-3-65. Reindeer brand or mark as evidence. In all suits at law or in equity or in any criminal proceeding when the title or right of possession is involved, the brand or mark of any reindeer shall be prima facie evidence that the reindeer belongs to the owner of the

brand or mark, and that such owner is entitled to the possession of the said animal at the time of the action; provided such brand or mark has been approved by, and recorded with, the General Reindeer Supervisor; and marks shall be understood to include earmarks, earbuttons, or any other marks used on reindeer to designate ownership thereof. [L 1933, ch 92, § 5, p 177; CLA 1933, § 640; am L 1939, ch 14, § 5, p 83.]

CROSS REFERENCES

List of brands and marks as evidence: § 33-3-67.

COLLATERAL REFERENCES

2 Am Jur 714.

Notes: 51 ALR 1168, 86 ALR 186 (constitutionality of statute making presence of brand on animal prima facie evidence that animal belongs to owner of brand).

NOTES OF DECISIONS

Judicial notice taken by United States Supreme Court of statutory regulations as to branding. New Mexico ex rel. McLean v Denver & R. G. R. Co. (1906) 203 US 38, 27 S Ct 1, 51 L ed 78.

§ 33-3-66. List of brands and marks to be posted. On the first day of July in each year the Auditor shall forward to each United States Commissioner in whose precinct there may be domesticated livestock other than reindeer, a list of all brands and marks recorded in his office; such list shall contain the facsimile of such marks, brands, and earmarks, with the name and residence of the owner and the date of recording the same and of any assignment thereof; the Commissioner shall promptly, securely, and conspicuously post such list in his office; additions thereto shall be made of new brands, or marks, or assignments thereof, as the same are recorded. [L 1933, ch 92, § 7, p 177; CLA 1933, § 642; am L 1939, ch 14, § 7, p 84.]

§ 33-3-67. Use of list in evidence. Such list may be used in evidence in any proceeding in any court where the ownership of domesticated livestock other than reindeer is involved and shall have the same force and effect as if a certified copy of the record of brands or marks of reindeer or other domesticated livestock were introduced. [L 1933, ch 92, § 8, p 177; CLA 1933, § 643; am L 1939, ch 14, § 8, p 84.]

Article 6

Estrays

§ 33-3-71. Record of estrays. The Commissioner of each precinct in this Territory shall keep a suitable book which shall be called "Record of Estrays," wherein he shall keep a record of claims, notices, awards, orders, affidavits and proceedings herein provided relative to estrays. [L 1933, ch 47, § 1, p 95; CLA 1933, § 596.]

A former act relating to estrays (CLA 1913, §§ 676 to 683) was repealed by L 1933, ch 47 § 13, p 99.

COLLATERAL REFERENCES

2 Am Jur 794.

§ 33-3-72. Who may impound. Any person, or his agent, upon whose premises any estray may be running at large, may take up and impound such estray in a reasonably safe place. [L 1933, ch 47, § 2, p 95; CLA 1933, § 597.]

COLLATERAL REFERENCES

2 Am Jur 792.

§ 33-3-73. Notice of taking up or impounding. If the owner or person entitled to possession of such estray is known to the taker-up, the latter shall immediately notify him of such taking up. Should the owner or person entitled to possession of such estray fail, upon receipt of such notice from the taker-up, to immediately take and remove said estray, or should such person or owner entitled to possession of such estray be unknown to the taker-up, the latter shall forthwith give ten days' notice of such taking up by posting, within two miles of the place of taking up, notices in three public places of which one shall be at the nearest post office, if within that distance. Such notices shall contain a reasonably correct description of the estray's sex, breed, size, probable age, natural, artificial and other identifying marks, the name of the taker-up, and the time and place of taking up. [L 1933, ch 47, § 3, p 95; CLA 1933, § 598.]

§ 33-3-74. Surrender of estray to owner upon payment of expenses and damages. If the owner or person entitled to the possession of the estray shall prove previous to the expiration of said ten days' period, his ownership of or possessory right to said estray, the taker-up shall immediately surrender possession thereof to him upon his paying the taker-up one dollar ($1.00) for the latter's services of taking up said estray and posting said notices, and a reasonable

rate for keeping the same together with payment for any damages said estray has caused to the property of the taker-up; if the taker-up knew, at the time of taking up said estray, the owner or person entitled to the possession thereof but failed to notify him as required by Section 3 [§ 33-3-73 herein], then the taker-up shall not recover for taking up, posting or keeping the estray. [L 1933, ch 47, § 4, p 95; CLA 1933, § 599.]

§ 33-3-75. Statement on failure of owner to reclaim estray: Filing: Contents. If, at the expiration of ten days said estray shall not have been reclaimed from him as provided in Section 4 [§ 33-3-74 herein], the taker-up shall file with the Commissioner of the precinct wherein said estray is taken up a verified statement showing such failure and the efforts made by him to find the owner or person entitled to possession of the estray and, also, the damages, if any, he has suffered by said estray running at large upon his premises and the keeping rates, if any, he claims as compensation for keeping said estray. [L 1933, ch 47, § 5, p 96; CLA 1933, § 600.]

§ 33-3-76. Hearing on statement: Assessment of damages: Appeal. The Commissioner, with whom said statement is filed, shall promptly hold a public hearing thereon at which the owner or person entitled to possession of said estray is entitled to be heard; the Commissioner at said hearing shall allow and assess against said estray all such reasonable damages, keeping rates and costs to which it appears said taker-up is justly entitled. Upon request of said taker-up or of the owner or person entitled to possession of said estray, and payment of the required fees, the Commissioner shall appoint three residents of the precinct, who have the qualifications to act as jurors therein, to assess said damages, keeping rates and costs. The decision of the Commissioner or, if he appoint assessors, then of a majority of them, shall be final, but, if the amount involved exceeds Fifty Dollars ($50.00), an appeal shall lie to the District Court as in other civil cases of appeal from the Commissioner's or Justice's court. The assessors shall receive for their services the same compensation as is paid the jurors in the Commissioner's court, to be taxed as costs in the proceeding. [L 1933, ch 47, § 6, p 96; CLA 1933, § 601.]

§ 33-3-77. Public sale of estrays: Notice of sale. Any estray, against whom damages, keeping rates, or costs have been assessed, shall be sold to satisfy them at public auction within not less than two or more than three weeks after such assessment is entered by the Commissioner. The taker-up shall give notice of such sale by publication for not less than once a week for two consecutive weeks in a newspaper published nearest the place where such estray is

taken up and by posting, within two miles of the place of said sale, notices in three public places, of which one shall be the nearest post office if it be within that distance, provided publication may be omitted if no newspaper of general circulation is published within twenty-five miles of the place where said estray is taken up. The notice of sale shall contain a description of said estray's sex, breed, brand, size, probable age, natural, artificial and other identifying marks, the name of the taker-up, the date of taking-up, the date, hour and place of sale, and a statement of the assessed damages, keeping rates, costs and expenses for which said estray will be sold. [L 1933, ch 47, § 7, p 97; CLA 1933, § 602.]

COLLATERAL REFERENCES

2 Am Jur 792.

§ 33-3-78. —— Auctioneer: Bidders: Disposition of proceeds: Title of buyer: Right of owner, mortgagee or other person to retake. Any person, other than the taker-up, may act as auctioneer at such sale, and any person may bid at such sale. The proceeds derived from said sale shall be applied in the following manner: First, costs and expenses of sale; Second, Commissioner's, assessors' and auctioneer's fees, and expenses of publishing and posting notice of sale; Third, keeping rates up to the time of sale, including the aforesaid fee of One Dollar ($1.00); and Fourth, damages done by said estray and assessed as aforesaid. The buyer of the animal, if the proceedings be regular, shall acquire good title to the same superior to all liens, encumbrances and mortgages; Provided, However, the owner, mortgagee, or person entitled to possession of the estray may, at any time before such sale, re-take it upon paying to the taker-up all damages, keeping rates, costs, charges and expenses incurred hereunder up to the time of such re-taking. [L 1933, ch 47, § 8, p 97; CLA 1933, § 603.]

COLLATERAL REFERENCES

2 Am Jur 795.

§ 33-3-79. —— Disposition of excess proceeds of sale. Any excess proceeds derived from said sale, shall be held by the Commissioner in trust for the owner of the estray sold, and shall be paid by the Commissioner to said owner upon the latter's making written, verified claim thereto, with proof of his ownership, to the Commissioner within six months after the date of said sale; if no such claim be made within six months after the date of said sale, he shall thereupon immediately pay such excess proceeds to the Territorial Treasurer who shall cover the same into the Territorial Treasury, and said owner, within seven years thereafter, may recover said money from the Territory in the same manner as though said money had been escheated. [L 1933, ch 47, § 9, p 98; CLA 1933, § 604.]

§ 33-3-80. Penalty for impounding or using estrays contrary to Act. If any person shall take up, impound, or use any estray, except in accordance with the provisions hereof, he shall be liable to a penalty of double the value of such estray, which may be recovered by the owner or person entitled to possession of such estray in any court of the Territory having jurisdiction of the parties. [L 1933, ch 47, § 10, p 98; CLA 1933, § 605.]

§ 33-3-81. Act inapplicable to authorized public officers. The provisions hereof shall not apply to municipal or other public officers who by statute or municipal ordinance are empowered and authorized to take up and impound animals running at large or in contravention of such statutes or municipal ordinance. [L 1933, ch 47, § 11, p 98; CLA 1933, § 606.]

COLLATERAL REFERENCES

2 Am Jur 802.

§ 33-3-82. Commissioner's fees for services in proceedings. For filing, recording, entering and docketing orders and other papers in the proceedings the Commissioner shall charge and receive the same fees charged and received by him for similar services in other proceedings in his court. [L 1933, ch 47, § 12, p 98; CLA 1933, § 607.]

Article 7

Dogs

§ 33-3-91. Killing of vicious or mad dog authorized. It shall be lawful for any person at any time to kill any vicious or mad dog found running at large. [L 1915, ch 37, § 1, p 82; CLA 1933, § 593.]

COLLATERAL REFERENCES

2 Am Jur 719, 731, 799.

Notes: 49 ALR 852 (constitutionality of law regulating right of dogs to run streets), 107 ALR 1323 (owner or keeper of trespassing dog as liable for damages), 92 ALR 732 (liability of owner or occupant of premises for injury to person thereon by dog not owned nor harbored by former), 134 ALR 705 (statutes relating to dogs as affecting right of action for negligently killing or injuring dog), 145 ALR 993 (liability for killing or injuring unlicensed or untagged dog), 49 ALR 853 (constitutionality of law making owner liable for damage done by dog), 79 ALR 1066 (unlicensed dog as nuisance), 79 ALR 1061 (right to kill dog as nuisance), 42 ALR 437 (presence of owner as affecting liability for killing trespassing dog), 8 ALR 74 (constitutionality of statute providing for destruction of dogs running at large).

quarantine, he shall prescribe the conditions and the length of time the animal is subject to quarantine.

(c) If the inspector determines that the animal should be slaughtered or destroyed, he may condemn and have the animal slaughtered or destroyed in the manner he determines. Reimbursement may be allowed for the slaughter or destruction of dairy cattle only. In such case, the inspector and the owner shall appraise the dairy cattle at a fair valuation without regard to the disease. Where they cannot agree as to the value of the animal, the owner and inspector may select a disinterested third party to aid in the appraisement. Where they cannot agree on the selection of a third party, a peace officer in the judicial district where the inspection is made may designate a third disinterested party to act with the inspector and owner to determine the value of the animal. The amount realized from the sale of the carcass of the slaughtered animal shall be paid to the owner of the animal and the inspector shall certify to the commissioner the name and address of the owner, the date the animal was condemned, the appraised value of the animal, together with the net sum realized from the salvage thereof, or which could have been realized. (§ 33-3-16 ACLA 1949; am § 2 ch 181 SLA 1955)

Applied in Martin v. Sheely, 10 Alaska 437, 144 F.2d 754 (9th Cir. 1944).

Sec. 03.45.070. Compensation to owners of dairy cattle destroyed; records to be kept. The commissioner may enter into cooperative agreements with the United States Department of Agriculture for controlling diseases among dairy cattle and may match federal indemnity payments for livestock slaughtered thereunder, from any funds available. He shall keep a record of all payments made, with a copy of the inspector's certification of appraised value and salvage value. (§ 33-3-17 ACLA 1949; am § 3 ch 181 SLA 1955)

Sec. 03.45.080. Record and payment of value of destroyed dairy cattle. The Department of Administration shall keep a record of the appraised value of all dairy cattle slaughtered or destroyed and of the salvage value thereof, stating the date when the animal was slaughtered or destroyed and the name of the inspector who ordered the animal slaughtered or destroyed. The Department of Administration, with the approval of the Department of Natural Resources shall pay the owner of the animal slaughtered or destroyed two-thirds of the difference between the appraised value and the salvage value of the animal slaughtered or destroyed. The appraised valuation of each slaughtered animal may not exceed $175 in the first judicial district and not more than $200 in the second and third judicial districts and not more than $250 in the fourth judicial district. No payment may be made if at the time of inspection, test or destruction, the animal was upon the premises of any person to which it had been sold, shipped or delivered for the purpose of being slaughtered. No payment may be made unless the owner has complied with all lawful quarantine regulations. (§ 33-3-18 ACLA 1949)

Chapter 50. Estrays.

Section
10—110. [Repealed]

Secs. 03.50.010—03.50.110.

Repealed by § 1 ch 66 SLA 1963.

Editor's note.—The repealed chapter derived from §§ 33-3-71 to 33-3-81, ACLA 1949.

Chapter 55. Dogs.

Section
10. Killing of vicious or mad dog authorized
20. Dogs deemed vicious
30. Killing dogs annoying or evincing tendency to bite animals or fowls
40—60. [Repealed]

Sec. 03.55.010. Killing of vicious or mad dog authorized. Any person may lawfully kill any vicious or mad dog running at large. (§ 33-3-91 ACLA 1949)

Cross references.—As to the power of a municipality to regulate licensing, impounding and dispositon of animals, see AS 29.48.035(a)(5). As to killing dogs annoying or evincing tendency to bite animals or fowl, see AS 03.55.030. As to permitting dangerous animals to be at large, see AS 11.60.200.

Am. Jur., ALR and C.J.S. references.—2 Am. Jur., Animals, §§ 4, 6, 7, 29 to 34, 49, 56, 58, 61, 64, 67, 70, 93 to 101, 105, 128, 129, 146, 162 to 165.

Constitutionality of statute or ordinance providing for destruction of dogs running at large, 8 ALR 74; 56 ALR2d 1024.

Constitutionality of statute providing for destruction of dogs as affected by property rights in dogs, 8 ALR 77; 56 ALR2d 1024.

Joint liability of several independent owners of dogs for injury by them, 9 ALR 946; 35 ALR 411; 91 ALR 763.

Liability for killing to protect domestic animal or fowl, 10 ALR 689.

Liability for injuries inflicted by rabid dog, 13 ALR 492.

Presence of owner as effecting liability for killing trespassing dog, 42 ALR 437.

Constitutionality of law making owner liable for damage done by dog, 49 ALR 853.

Right to kill dogs dangerous to human beings as nuisance, 79 ALR 1061.

Killing dogs dangerous to domestic animals as nuisance, 79 ALR 1064.

Liability for injury inflicted by dog exhibited at show, 129 ALR 431.

Civil liability of landowner for killing or injuring trespassing dog, 16 ALR2d 578.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MICHAEL O'MERA, and
JANET O'MERA,

Plaintiffs,

vs

ELSON ANDERSON, and
EDNA ANDERSON,

Defendants.

RECEIVED
12/21/84

CASE NO. 3HO 84-276 SC

D E C I S I O N

This complicated small claims case was heard in several installments while the undersigned was visiting judge at Homer. Judge Hornaday had disqualified himself from hearing this case due to some personal knowledge of the facts. The basic issue in this case is whether the owner of a cattle ranch in the Homer area who had traditionally enjoyed the use of open range as well as many acres of leased range land, was liable when his cattle trespassed on the plaintiff's land which adjoins the Anderson ranch. The case presents the classic confrontation of cattlemen versus farmers that resulted in much litigation throughout the western states. Defendants plead that there is no liability for trespassing cattle on private property unless the property owner has constructed a fence. Defendants argue that the western states have adopted the so-called western common law which requires a farmer or other land owner to erect barriers to wandering cattle and only after the cattle have broken down a fence will the owner of the cattle be liable Plaintiff urges the court to adopt the English common law, which is also the majority common law rule in the United States with the alleged exception of some western states, that the owner

Exhibit "A"

of trespassing cattle is liable in the absence of a specific legislative policy.

The State of Alaska did have a legislative policy adopting the western states approach to liability for wandering cattle. Thus, the fence outlaw act required the land owner to build a fence before he could recover for damages caused by trespassing livestock. However, the Alaska law was repealed in 1977, chapter 55 SLA 1977. I have delayed the decision in this case hoping to get some legislative history on the repeal. However, the tapes sent from Juneau, of the House and Senate hearings on the repeal, are blank and it's my understanding that the master tapes are difficult to understand. Thus, the legislative history on this act is apparently missing. In his message on the repeal, Governor Hammond foresaw the problem that would arise in this case and apparently drew the conclusion that the owner of animals would no longer be able to the landowner.

As a result of plaintiff's efforts to form a closed livestock district which would create liability, the Attorney General took the position that the common law of Alaska did in fact make the owner of trespassing animals liable for any damages caused to ajoining agricultural lands or for other foreseeable torts such as highway accidents. Judge Hornaday, in rejecting the petition for a closed livestock district, cited the common law rule that owners of livestock are liable for damages caused by their trespass.

I have read every case cited by the parties, as well as Law Review articles, and many cases from the western states, not cited by the parties. As far as I can determine very few judicial decisions eliminated the liability of cattle owners for damage created by their cattle. It was the legislatures of the western states responding to the special interests of the cattle owners that resulted in the limitation of liability. That is not to say that the cattle owners did not deserve such legislative relief as

the business of open range ranching makes it impossible to adequately fence in cattle and it certainly makes sense that it would be alot easier for the farmer with less acreage to fence out cattle. However, I conclude that Alaska, like the English "Eastern" and American common law should protect the interests of private property over that of the cattle owner. I see no reason to distinguish between cattle which may trespass on ajoining land or oil company equipment or employees or trespassing hunters. With the exception of certain easements by prescription, the rights of the private property owner in this and other states are absolute as far as free and untrammelled enjoyment subject only to taxation, zoning and some other imitations against noxious use. Under defendant's theory, plaintiff could spend thousands and thousands of dollars improving his land, and planting crops and if defendant's cattle trespass and eat the crops, there is no remedy.

Defendant's testified that since they enjoyed the use of the open range first and plaintiff was a late arrival and a late entrant into the area of public domain, plaintiff should bear the costs of fencing out defendant's cattle. Defendant argues persuasively that the costs of fencing in the miles of property is prohibitive and would force him into bankruptcy. It certainly would be alot cheaper for plaintiff to fence in his 50 or 100 acres on which he might someday engage in large scale farming. Be that as it may, I suggested to the defendants when this case arose that defendants and plaintiffs should cooperate in erecting fences around plaintiff's property.

This case certainly bears out the saying that good fences makes good neighbors. While the legislature may adopt the policy advocated by the defendant that the landowner must build a fence, my previous remarks and the reasoning of Judge Hornaday and other jurists who have considered this issue, convinced me that if anyone has to build a fence, it's the defendant unless the legislature

has acted or should act.

I recognize that there is no decision in Alaska, that the question is a close one and there are good policy reasons to encourage agriculture and to encourage cattle ranching in the Kenai area and other areas in the state. Thus an appelate court could require the landowner to mitigate damages by building a fence around the area to be farmed even though the legislature has left a gap in this area of the law. However, as a court of limited jurisdiction I choose to follow the established common law and decide in that there is liability. (See Prosser on Torts [(4th ed. P 497)]

The question of damages in this case is even more complex than the question of liability. Plaintiff's were seeking to establish a tree farm by importing seedlings and dedicating a few acres in various parcels to the growing of various pine trees, such as scotch pine and other non-native species. Plaintiff's claim the following damages: damage to the trees by defendant's cattle and claim that trees that cost a dollar as seedlings were worth fifteen dollars if sold at retail, that substantial labor had gone into the trees that were allegedly killed by cattle. Plaintiff also claims damages for a broken ladder which allegedly cattle dragged onto a road where the ladder was run over by plaintiff's truck. Cattle identified as belonging to defendant, broke into plaintiff's vegtable garden in the fall of 1980 and destroyed produce, peas, and trampled on strawberries, the value of the vegtable garden, strawberries, peas, lettuce was put at $195.00. The trees were planted in 1980, most of the alleged damage occurred in 1983-84. There was substantial testimony about whether in fact a non-native species of evergreen trees would grow in the Kenai area, plaintiff's conceeded that winter kill, killed a large majority of trees. It was also established that there were cattle belonging to other defendant's grazing in the area. Howeve., defendant's

acknowledged that it would be reasonable to state that 50% of the cattle identified were their cattle and the court would make a finding that plaintiff does not have to prove specific damage by specific cattle and that it would be reasonable to hold defendant liable for 50% of the damages found by the court. There was sufficient instances of where defendant's cattle were identified, grazing around the trees, and in the vegtable garden, so that 50% liabilty is reasonable. Defendant claims that cattle will not eat spruce trees, and will not step on spruce trees. Plaintiff's evidence was that due to the nurturing of the trees that tender grasses were growing around the trees, that there was mass movement of cattle in the spring and fall and that trampling did occur, that the compression of the soil by the cattle, milling around, even if the cattle didn't eat trees, that they inhibited growth and caused a loss of certain trees. Plaintiff has the burden of proof and I would have to find that on the cattle damaging the trees, I can't find that it is more likely than not in view of the conflict of testimony, I would have to find that plaintiff has failed to meet the burden of proof as to cattle killing the trees. On the damaged ladder, the proof of causation is too speculative. On the trespass to the vegtable garden, I find that defendant should be held liable for one-half of $195.00 or $97.50. I also find that the trespassing cattle caused clean-up work, that plaintiff's spent time trying to get the cattle to move, spent time repairing the damage to fields caused by cattle, cleaning up cow-pies etc., and that plaintiff's expended $300.00 or 30 hours of time at $10.00 an hour, half of which is attributable to defendant's, so plaintiff should recover a total of $247.50. Both sides hired attorneys in this case, who while not present at all hearings, diligently briefed the issues of law and plaintiff should be entitled to recover reasonable attorney fees and may submit a request for reasonable attorney fees as

the prevailing party on the issue of liability.

DATED at Anchorage, Alaska, this 14 day of December, 1984.

William H. Fuld
District Court Judge

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

JAN 23 1986

October 1, 1985

MEMORANDUM

TO: Representative Dave Thompson

ATTN: Bob Thomas

FROM: Brad Pierce
Legislative Analyst

RE: Livestock Branding Requirements
Research Request 86-026

You requested this agency to do some research on branding requirements for livestock on open range in Alaska and other western states. In addition, you asked that we examine the statutes of western states to see what liability provisions are in place for damages caused to vehicles that hit livestock on highways passing through open grazing land.

We contacted individuals in the Cooperative Extension Agency, Kodiak Borough, Bureau of Land Management (BLM), and Department of Natural Resources (DNR) to fulfill this request.

Alaska Regulations[1]

The appropriate Alaska statutes and Administrative Code concerning livestock grazing on public land in Kodiak are summarized as follows:

AS 03.35.010 - 03.35.070 creates controlled grazing districts and establishes liability for damages caused by animals within districts.

AS 03.40.010 - 03.40.270 sets up recording procedures for branding and marking livestock as legal proof of ownership.

AS 38.05.020 - 38.05.070 empowers the Division of Lands to sell grazing leases and require prequalification of lessees including submitting development plans.

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[1]Complete copies of the relevant statutes and administrative code are attached.

11 AAC 60.070 requires all livestock permitted on a State grazing lease to be properly identified and marked.

13 AAC 02.505 states that an owner or attendant of livestock may not allow the animals to be on a highway except if they are in a grazing district and attended according to AS 03.35.010.

There appear to be two ways that Alaska law deals with problems caused by roaming livestock, depending on whether they are in a controlled grazing district or not. Within a controlled grazing district, the livestock owner is responsible for containing his animals and for damages caused to other's property. Outside of controlled grazing districts, it is up to property owners to fence out roaming livestock. According to DNR, there is no controlled grazing district at the present time on Kodiak Island.

Alaska law sets up a procedure to brand or mark animals and record them in an official brand book as legal proof of ownership. The regulations for State grazing leases specifically require livestock owners to brand or mark their animals. All of the current grazing leases on the Kodiak road system are in the process of being transferred to DNR, Division of Lands control.[2] Public safety regulations require owners of livestock to keep their animals off the highways and allow Public Safety officers to cite violators.

Western State Statutes

We conducted a search of the statutes of the western states, which revealed that all have some sort of regulations concerning the branding and identification of livestock (attached). In general, a brand inspector is in charge of certifying the ownership of animals before they can be sold or slaughtered. An official brand book is used to record individual identifying brands and is used to verify legal ownership. Three states--Idaho, Arizona and Nevada--have statutory branding requirements for livestock on open range land. Idaho regulations state that the owner of range livestock has no duty to keep his animals off the roadways and is not liable for damages caused by vehicle collisions with his animals.

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[2]One BLM grazing lease is being transferred to Native ownership.

The Situation in Kodiak

We contacted Gene Gade, the Cooperative Extension agent in Kodiak to obtain some specific information about the open range policy on the island. According to Mr. Gade, there is about 85 miles of unfenced roadway on the island through open grazing land. Eight livestock owners are on the road system and have a total of between 500 and 600 head of cattle grazing at any given time. Five of these owners have legitimate grazing leases and three are trespassing on State grazing land.

Mr. Gade suggested that the most critical areas on the road system where collisions frequently occur are at the heads of three bays: Woman's Bay, Middle Bay, and Kalson Bay. The Woman's Bay area apparently has the worst problem and the cattle there are in trespass on land with no grazing lease.

As an advocate of the local livestock industry, Mr. Gade expressed a concern that if ranchers were forced to assume the expense of fencing in their animals, i.e., if a controlled grazing district were established, it might drive them out of business. He advocates periodic handling and tagging or branding of all livestock as a standard business practice.

The grazing leases on the Kodiak road system are in the process of transfer from Bureau of Land Management to State control. The transfer will be completed sometime within the next several months. The Division of Lands has assumed administrative control. We contacted Jim Frechione, DNR Chief of Retained Lands, about the status of these grazing leases and the department's intentions concerning enforcement of its administrative regulations.

The Division of Lands is renegotiating the leases. Present BLM leaseholders must reapply for a State grazing lease and file a development plan with the division. When all of these plans have been collected, the division will examine them closely to determine how much of the leased grazing land will actually be used. According to the Extension Agent, one of the main reasons for the problem of cattle on the roadways is that owners don't manage their herds properly. Rotational grazing, where livestock are herded into the higher elevations during the summer months and allowed to graze on lowlands in the winter, would keep them off the roads for a good portion of the year.

We contacted Keith Quintavell at the Division of Agriculture for more information on the lease renegotiation process. According to him, there will be a meeting of personnel from the Alaska Association of Soil and Water Conservation Districts on October 18 in Kodiak. All of the problems associated with the grazing leases will be discussed. Mr.

Quintavell is sending this agency a copy of the itinerary for this meeting which we will forward to your office as soon as possible. Since all the principals involved with the livestock problems outlined in your research request should be in attendance, this would appear to be an excellent opportunity to resolve this situation.

It appears that the State statutes and administrative code contain sufficient regulatory power to deal with this issue if they are enforced. Other options mentioned by the officials we contacted include: 1) fencing the roadway in the problem areas; 2) establishing a grazing lease at Woman's Bay or removing the trespassing animals; and 3) requiring livestock owners to practice rotational grazing as a precondition for holding a State grazing lease.

We hope we have provided sufficient information to satisfy your request. Please contact us if we can be of further assistance in this matter.

BP

Attachments

Persons Contacted for this Request

Gene Gade - Kodiak Extension Agent 486-6369

Steve Laskowski - Bureau of Land Management 267-1200

Jim Frechione - DNR, Chief of Retained Lands 786-2270

Keith Quintavell - DNR, Division of Agriculture 745-7200

MICHAEL S. O'MEARA
P.O. BOX 1125
HOMER, AK 99603

FEBRUARY 8, 1986

REPRESENTATIVE M. MIKE MILLER
ALASKA STATE LEGISLATURE
POUCH V (MS 3100)
JUNEAU, AK 99811

DEAR REPRESENTATIVE MILLER:

Back in December I wrote to you regarding my concerns about legislation dealing with uncontrolled livestock. It seemed logical that as chairman of the House Judiciary Committee you would be called upon to deal with that type of bill. Since that time it has come to my attention that Representative Dave Thompson's HB 385 has been referred to your committee.

In my opinion this is an excellent bill. It is very simple and fixes responsibility for damage inflicted by uncontrolled domestic animals with their owners, where it belongs. For years this has been the case under common law, but there was a great deal of confusion created because of the existence of statutes which provide for the creation of "controlled livestock districts". Research and subsequent litigation proved that all that such a district does is provide a nonjudicial remedy to people who suffer injury by uncontrolled livestock. Not a bad idea, but it encouraged countless incidents of trespass outside of such districts. Please do what you can to see that HB 385 is passed out of committee.

Since I have had to deal with the problem of uncontrolled livestock on my land for many years, I have given the matter much thought. While I fully support SB 385, I would eventually go beyond it and have made up a number of suggestions for legislation which I have included for your review. As yet I have not managed to get anyone to sponsor them, and it is a bit late for this session, but I will continue to pursue the matter.

Please keep me informed of any action on SB 385 or related matters. Many thanks for taking the time to read this and for giving consideration to my ideas.

Sincerely,

Mike

MICHAEL S. O'MEARA

MIKE O'MEARA
P.O. BOX 1125
HOMER, AK 99603

LEGISLATIVE PROPOSALS FOR ALTERING AS CHAPTER 35. GRAZING DISTRICTS AND AS CHAPTER 40. BRANDS AND MARKS.

CHAPTER 35. GRAZING DISTRICTS

Alterations to this chapter include deletion of the category of grazing district, makes it illegal to let domestic animals roam at large, and provide non-judicial remedies for recovery of damages to private property done by roaming domestic animals.

Section 03.35.010. Creation and restriction in use of controlled livestock districts, is altered so as to eliminate the special classification of land previously referred to as controlled livestock districts.

Further, it is established that it is unlawful for any domestic animal to graze or run at large unless the domestic animal is restrained by fence or tether or is herded on open public domain and tended by a person and prevented from grazing upon privately owned land or upon any roads or highways.

Section 03.35.020. Petition to create, add, or abolish, is deleted.

Section 03.35.030. Notice, hearing, and order, is deleted.

Section 03.35.040. Liability for damages. (a) The owner of land, whether the land is fenced or unfenced, (1) is entitled to recover, from the owner or person having custody and control of a domestic animal, for any injury done by it when grazing or running at large contrary to the provisions of this chapter, and (2) has a lien upon the domestic animal for the amount of the damage done.

Section 03. 35.050. Impounding of animals running at large. The owner of any land may impound a domestic animal trespassing upon his land and keep the animal until damages, together with reasonable charges for capturing, keeping and feeding it, are paid. Within 24 hours after impounding an animal, the person impounding it shall give notice in writing to the owner or claimant of the animal, if the owner is known, or, if the owner is unknown, file a notice of impounding with the district judge for the district and post a copy of the notice in a public place nearest to the enclosure of the impounded animal. If, within five days after receipt of posting of the notice, the owner or claimant fails to claim the animal and pay the reasonable charges for capturing, keeping and feeding it, together with damages and costs, the animal shall be dealt with as in the case of an estray.

Section 03.35.060. Penalty for removing impounded animal. A

person who takes or removes an impounded domestic animal from the possession of the person in whose custody it may be, without his consent, is punishable by a fine of not less than $100 nor more than $500 or by imprisonment for not more than 90 days, or by both. The penalty does not affect the lien on the animal.

Section 03.35.070. Definitions. As used in this chapter (1) "owner of land" includes a feeholder, tenant, contract vendee or other person in actual possession of land; (2) "domestic animal" includes goats, sheep, cattle, horses, swine, or other exotic species which may be kept in place of these more common varieties.

CHAPTER 40. BRANDS AND MARKS.

Alterations to this chapter require owners of domestic animals to brand or otherwise mark them for clear identification and to make those brands or marks a matter of public record.

Sections 10 through 30 and 50 through 270 require further study to determine the need for further changes.

Section 03.40.010. Brands and marks. All domestic animals, as defined in AS Chapter 35, shall carry an easily recognizable brand or mark. Owners of said animals shall apply their unique brand or mark to their animals in a conspicuous place and, in the event that it becomes obliterated by damage or growth of hair or fur, shall immediately restore it. All brands and marks shall be recorded as provided in Section 30 of this chapter and shall be made a matter of public record. Persons so recording a brand or mark shall have the exclusive right to its use.