

# Ranch lawsuit opposes 'brand new' trespass defense

By MATEUSZ PERKOWSKI  
Capital Press

A trespassing dispute in Wyoming has raised legal questions that livestock groups worry may set a bad precedent for ranchers whose land is adjacent to federal lands.

The lawsuit pits a ranch against hunters who've developed a "brand new legal theory" of public lands access, said Karen Budd-Falen, an attorney for concerned livestock organizations.

The controversy is likely to rise to the appellate level, eventually creating new case law, she said. "I don't think anybody is going to let this go."

Earlier this year, Elk Mountain Ranch filed a trespass complaint accusing several hunters of crossing over its private property in Carbon County, Wyo.

The particulars of the lawsuit have broader implications for ranchers in the West, whose private property commonly alternates with federal rangeland in a "checkerboard" pattern.

The complaint claims the hunters used a stepladder to climb diagonally from the corner of one federal tract to another, violating the ranch's private airspace.

The defendants — Bradley Cape, Zachary Smith, Phillip Yeomans and John Slowensky — have asked a federal judge to dismiss the case, arguing the ranch doesn't have grounds for a lawsuit.

A federal law passed in 1885,



Karen Budd-Falen



Cattle graze on rangeland. Hunters are defending against a ranch's trespass lawsuit by claiming they can't be prohibited from crossing onto public land.

Capital Press File

the Unlawful Inclosures Act, prohibits ranchers from blocking entry or travel across federal land, including the airspace above common corners, the defendants said.

Common corners are often "the only contiguous land route between some sections of the public domain," so the ranch cannot obstruct movement across them, according to their motion.

"Plaintiff has no right to exclude others from the public domain," the defendants said. "This court should not grant plaintiff this right and, accordingly, repeal the UIA by implication."

The ranch urged a federal judge to reject this interpretation of the

UIA because only the U.S. government can enforce that law, which doesn't "imply rights-of-way" across private property.

Last month, U.S. District Judge Scott Skavdahl decided not to dismiss the ranch's lawsuit, but he also refused to throw out the defense theory involving the UIA.

While the prohibition against unlawful enclosures can't be enforced with a "private right of action," the statute can be cited to defend against trespass claims, the judge said.

At this point, however, the factual record in the case isn't sufficient to decide whether the UIA precludes the trespass lawsuit "as

a matter of law," he said.

A national sportsmen's organization, Backcountry Hunters and Anglers, wants to weigh in on the case, arguing that corner-crossing is crucial for ensuring public access to federal land.

About 8.3 million acres of public land are "corner-locked" and cannot be entered any other way, the nonprofit said.

The complaint raises the possibility that private landowners can "close access to millions of acres of public land by threatening to sue or suing for trespass when individuals move from public land to public land over common corners," the group said.

"This case exemplifies the national interest in deciding the fate of those millions of acres of corner-locked public land," the group said.

The Wyoming Stock Growers Association and Wyoming Wool Growers' Association have asked to support the ranch in court, alleging that corner-crossing has never been an "accepted means of accessing federal lands."

The UIA is meant to prevent ranchers from strategically fencing off property to give their cattle exclusive access to federal land, but this ranch simply wants to exclude trespassers from its own property, said Budd-Falen, attorney for the livestock groups.

The lawsuit is probably intended as a test case for the defense's legal theory, which hasn't previously been argued in federal court, said Budd-Falen, who's a former solicitor for the U.S. Interior Department.

This case involves hunters but the UIA theory would apply to anyone trying to access federal land, she said.

If the defense theory is accepted in federal court, it would be harder to keep trespassers off private land, since they'd have a ready explanation for entering otherwise inaccessible federal pastures, Budd-Falen said.

If the UIA is determined to allow corner-crossing, that would likely invite further arguments that private property can be crossed to enter public land, said Budd-Falen.

"I think it's sort of the nose under the camel's tent," she said.

# Effective response and suppression of wildfires are key

By DOUG WARNOCK

Sagebrush ecosystems, such as we find in the more arid sections of the Pacific Northwest, have evolved over time with fire as a normal factor. However, more recent conditions have resulted in higher fire fuel loads, longer fire seasons and more major fires.

## GREENER PASTURES

Doug Warnock



Researchers with Oregon State University, the Interagency Fire Zone and the Fields-Andrews Rangeland

Fire Protection Association in Southeastern Oregon studied ways to improve both response and suppression of wildfires in that area. Here are some of their findings as reported in the June 2022 issue of Rangelands, a publication of the Society for Range Management. Annual grass inva-

sion, a changing climate and land use effects have each contributed to this trend of greater fire hazard on current rangelands. The increase in the early growing annual grasses, such as cheatgrass and medusahead, has caused the fuel load to become mature and dry as much as four weeks earlier than before. This increased the amount of fire fuel. Previously there were more perennials and later maturing annual plants, which made for later maturity and a shorter period of fire danger.

Improving response to wildfire through earlier detection can make a significant difference in outcome. Southeastern Oregon is a remote area with complex topography, which makes fire detection and timely response more difficult.

Over 95% of all wildfire starts are contained in the initial attack. The 5% that escape are costlier and pose more danger to humans and resources. In recent years, early detection technologies have helped improve the ability to respond in a timely and efficient manner.

In sagebrush ecosystems, invasive annual grasses and other plants with low moisture content and those with

volatile oils, such as sagebrush, rabbitbrush and western juniper, provide big challenges for wildfire managers.

Fire weather and existing fuels drive fire behavior, so having more crews, dozers, air tankers or water tenders does not necessarily result in better control or containment.

Fuel breaks are effective in disrupting fuel continuity, reducing fuel accumulation and fire volatility. They also increase the proportion of plants with high moisture content. By reducing flame intensity and the rate of spread, fuel breaks increase the suppression rate and help to reduce the impact of wildfires in sagebrush ecosystems.

Fuel breaks can be made by mowing, discing, chemical application, targeted grazing, or prescribed fire. Vegetative fuel breaks use strips of plants with a higher fire resistance, such as crested wheatgrass or forage kochia.

In recent years, private landowners have played a larger role in wildfire response in Southeastern Oregon. Many of them have land adjacent to the Bureau of Land Management property and are leas-

ing BLM land for cattle grazing. They are very familiar with the land and have a stake in keeping fire damage to a minimum in this area.

They have formed Rangeland Fire Protection Associations that work with the BLM and other agencies in planning and conducting programs and practices to lower the danger and damage from wildfires.

The improved wildland fire response and suppression in Southeastern Oregon helps to protect this area from transitioning to invasive annual grass populations that result from wildfire events and helps in keeping the current sagebrush ecosystem intact. Timely and effective fire suppression will aid in slowing the spread of invasive annual grasses and reducing the frequency of severe fires over time. More information on the Rangeland Fire Protection Associations can be found online.

Doug Warnock, retired from Washington State University Extension, lives on a ranch in the Touchet River Valley where he writes about and teaches grazing management. He can be contacted at [dwarnock-greenerpastures@gmail.com](mailto:dwarnock-greenerpastures@gmail.com).

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