The New West collides with open-range laws

by Ray Ring

Kent Knudson picked up a rifle and opened fire, defending his 40 acres in Arizona, and got handcuffed and hauled to jail.

John Ward, driving a truckload of hay in Oregon one night, rounded a curve and smashed into 1,300 pounds of bad news.

Brad Dorendorf, mayor of tiny Bovill, Idaho, tried to negotiate with an invading horde that chomped flowers and defecated everywhere in his town.

All three, and countless other people around the West, have been drawn into the struggle over another remnant of the Old West: open-range laws. Where open-range laws are in effect, ranchers don’t have to fence in their livestock. If the neighbors want to keep cows off their land, they have to fence the beasts out. The principle dates back to the 1800s, when cattle barons let their herds roam over public land and any private land that wasn’t fenced off.

Thirteen Western states still have some kind of open-range law, according to The Associated Press. Yet as the West fills in, more people moving into rural neighborhoods are bothered by livestock straying onto their property, and increased traffic means more accidents involving livestock that stray onto roads. Every year, about a thousand motorists hit livestock on roads in Oregon, Idaho, Montana, Wyoming and Utah, and several die, according to research by The Oregonian newspaper in 1997.

Yet ranchers can’t afford to pay 50 cents to $2 per linear foot to fence all the land their stock grazes, says Steve Pilcher, vice president of the Montana Stockgrowers Association. Much of the grazing land is federal, so either taxpayers would have to pay for fencing, or ranchers would have to abandon their federal leases, Pilcher says. "It could be devastating to local economies in ranching areas."

"It’s an absurd law in the context of modern American society," counters Jon Marvel, an Idaho environmentalist who tried, without success, to organize a national group to reform open-range laws in 1994. Open range can be undone by grassroots efforts. Typically, if enough residents in an area get fed up, they can petition their county governments to hold an election to decide whether their area should be "closed range," meaning, livestock must be fenced in. Such efforts have succeeded in many localities, but they have to overcome
ranchers’ grip on local politics.

John Ward, himself a rancher, had been involved in just such a fight before he hit the cow last September, on state Highway 66 near Ashland, Ore. Ward had been trying to close the range along that highway, and to close another 23,000 acres around his purebred Hereford operation, which was threatened by invasions of another rancher’s cattle. Both those efforts were squashed by other ranchers who pressured county and state governments. Then, that night on the highway, "The cow just trotted down a hill onto the road, boom! — it really plastered my truck," Ward says. His insurance company paid $600 to reimburse the rancher who owned the cow, but only half the cost of a new truck, he adds.

Kent Knudson didn’t take the political route. Knudson, a freelance photographer, came home in January 2003 to find 20 cows trampling his yard near Snowflake, Ariz. He shot and killed one cow, and got charged with one felony count of "shooting livestock of another," which carries a maximum penalty of $150,000 fine and two-and-a-half years in prison, he says.

Knudson, who’s awaiting trial, reports he’s already spent $12,000 on lawyers. He’d lived around Snowflake for 40 years, he says, but now he’s moved to Phoenix partly because the rural culture turned against him. "The whole legal system up there is meant to do anything to help the ranchers."

Open-range laws are true "special-interest legislation," says one of Knudson’s lawyers, Foster Glass, who also represented another notorious shooter — Patrick Shipsey, a doctor and environmentalist who executed 11 cows that kept breaking through fences he’d installed around his 960 acres near John Day, Ore., in 1995 and 1996 (HCN, 11/25/96: Cows, ballot measure gunned down in Oregon).

Shipsey tried to challenge Oregon’s open-range laws, but was convicted of 11 felonies, and sentenced to 15 days in jail. He had to pay $12,199 in fines and restitution, and was required to do 880 hours community service. "His medical practice went to hell," and he also had to move, says Glass.

Many ranchers act responsibly, but one careless individual can give the industry a bad name, as happened last summer in Bovill, Idaho. One rancher’s cattle kept coming right into town, night after night, damaging residents’ yards and other property. The problem has ended now, but only because the rancher fell ill and his operation was taken over by a relative, says mayor Dorendorf: "Unfortunately, that’s what it took."