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U.S. Forest Service, Director,
Forest Management, Range Management and Vegetation Ecology,
201 14th Street SW,
Washington, DC 20250–1124.

April 16, 2021

RE: Rangeland Management Directives #ORMS-2514

Dear Director,

We appreciate the opportunity to provide comments and recommendations related to the Proposed Rangeland Management Directives Update of the U.S. Forest Service contained in the Forest Service Manual and Forest Service Handbook. Within the documents provided it was unclear what changes are proposed to the current directives, therefore it was assumed that the entire documents were open for comment.

FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK

CHAPTER 10 - TERM GRAZING PERMITS- 12.13 - Forest Service Employees

> Employees of the Forest Service may be eligible to hold any type of a Forest Service permit, including term grazing permits, but they must receive written approval of the responsible official (Forest/Grassland Supervisor or Regional Forester) prior to making application for the grazing permit. (See FSM 6174.1 and/or contact the USDA Office of Ethics concerning employee conduct and employee conflicts of interest).

COMMENT: This statement should be expanded to include former or retired employees to safe guard against possible appearances of a conflicts of interest related to when they were employees.

CHAPTER 10 - TERM GRAZING PERMITS -13.61 - Designation of a Forage Reserve Allotment

> Consider the following when evaluating:
> 1. There must be an appropriate level of environmental analysis and decision, and consultation if required, to allow for authorization of livestock use on the allotment, except in situations such as fire, drought, or other emergency displacement of permittees from normally assigned allotments (36 CFR 222.3(c)(2)(i)(E)). If the current environmental analysis is not sufficient for designation, schedule the allotment and determine the appropriate priority with other allotments being analyzed.
> 2. The Forest Service may be responsible for maintenance of structural or nonstructural range improvements that had previously been assigned to the allotment permittee. This maintenance will be assigned to any permittee(s) authorized to use the forage reserve allotment.

COMMENT: Maintenance and repair of range improvements is the greatest weakness of the forage reserve proposal, without these improvements, allotments are not useful for the purpose proposed. "May be responsible" indicates that it is not the intent of the Forest Service to do these maintenance and repairs. Later it reads, "Even if these MOUs are not recommended, they may be the only option available to keep the allotment infrastructure intact and/or to avoid vacating or closing the allotment.", also indicating that the Forest Service has no intention of maintaining these range improvements. A preferred option to "vacating or closing" is to issue a term grazing permit.

One reason to maintain and repair range improvements, particularly water, is for wildlife purposes. By not keeping the waters operational the Service is concentrating wildlife (predators and prey) on the active allotments or private property, which is increasing the potential for conflicts.

CHAPTER 10 - TERM GRAZING PERMITS- 13.7 - Official Agency Policy on Third Party Arrangements or Permit Buyouts by External Groups

If a permittee waives their grazing privileges back to the Forest Service, there can be no guarantee or agreement, whether written or verbal, regarding waived grazing capacity allocation, based upon buyout agreements between permittees and conservation groups, or other outside parties.

COMMENT: It is encouraging that the agency isn't developing new rules for "permit buyouts" and allowing exceptions for these third parties. Allowing a third party to dictate the use of the grazing privilege would be an exception that nobody else enjoys. However, if the Forest Service is going to classify these allotments as "forage reserves" rather than a term grazing allotments, the third party is getting their wish partially met with the removal of the term grazing permit.

CHAPTER 10 - TERM GRAZING PERMITS- 15.3 - Number, Kind and Class of Livestock, Period of Use, and Grazing Allotment

NOTE also: The AUM definition for capacity and permitting (1.0, with or without calf at side) is not the same thing as an AUM (1.32) as shown in the RIMS database calculations.

COMMENT: Different definitions for an AUM is confusing, please clarify and provide an explanation and the documentation (regulations or laws) relating to the use of different definitions.

CHAPTER 10 - TERM GRAZING PERMITS- 15.43 - Special Terms and Conditions

The authorized officer should require the permittee to provide monitoring information related to livestock operation compliance shown in Part 2 of the terms and conditions of the permit, such as actual livestock numbers grazed, time period of grazing, livestock distribution, structural and nonstructural improvement condition, improvement maintenance activities conducted, vegetation use, and other terms of the permit. Discuss these requirements fully with the permittee prior to initiation and offer any training necessary to achieve desired permittee performance.

COMMENT: The requirement for "monitoring information" is unclear, is "vegetation use" quantitative or qualitative? Although monitoring is defined as "The collection and analysis of repeated observations or measurements over time to detect changes in conditions and values and evaluate progress toward meeting a resource or management objective", it is unclear how observations by different individuals, with different values and perceptions could be used to detect changes in "conditions and values". According to the directives the agency, permittee, and third parties are "monitoring", however, the specifics of what type of monitoring and its usefulness or defensibility are not mentioned. We recommend that monitoring throughout the directives be more specific on the monitoring types (qualitative or quantitative, observation or measurements). Another critical component of monitoring that should also be addressed is "when" the monitoring should be done. There are examples of monitoring that takes place when it is convenient and not when the indicators should be measured.

CHAPTER 10 - TERM GRAZING PERMITS- 16.1 - Modification of Term Grazing Permit to Conform to Law or to Address Rangeland Resource Conditions

Grazing permits may be modified to provide for cooperative range development projects. The development work, specifications, permittee and Forest Service responsibilities may be described in the AOI, by certified letter, and/or by permit modification forms. A permittee's failure to satisfactorily complete the development as specified in the modification constitutes a violation of the terms and conditions of the grazing permit unless the Forest Service failed to complete its obligations.

COMMENT: This is unclear, does the "modification" of the term permit include the permittee or is this strictly a Forest Service decision, without any input from the permittee? The AOI, certified letter and/or permit modification forms, make it appears to be something done without involvement of the permittee. Exhibit 01 contains statements like "Title of improvements constructed or maintained as a result of this modification shall be and remain vested in the Unites States Government" and "Failure to fulfill the terms of this modification is a violation of the Permittee's grazing permit and may be cause for suspension or cancellation of the permit in whole or in part.", which make it critical that the permittee is involved and agrees to the modification. Section 16.11 - Modification Procedure, states that the permittee "should" be involved, leaving it as discretionary. We recommend changing "should" to "must" throughout this section.

CHAPTER 10 - TERM GRAZING PERMITS 16.12 - Modifications That Result in Increased Numbers or Seasons of Use

The number of livestock or season of use authorized by a grazing permit may be temporarily or permanently increased to:

1. Take advantage of additional grazing capacity resulting from the permittee's direct involvement in improvement work or more intensive management. The amount of the increase will be in proportion to the permittee's role in the improvement work or intensive management.
2. Restore reductions made for rangeland resource management or protection purposes when the objectives for which the reductions were made have been accomplished and documented. Allocation of this increased capacity shall be among those permittees (or their successors in interest) in proportion to the amount of the reduction sustained within the previous 10 years

COMMENT: Increases should not be limited to the "proportion to the permittee's role" or "in proportion to the amount of the reduction sustained within the previous 10 years". First, it took more than 10 years, to result in natural resource conditions that need restoration. Second, without the contributions of the permittee, improvements would likely not happen, therefore both parties benefit without these limitations and the permittee would be incentivized as their benefit/cost ratio increases.

CHAPTER 10 - TERM GRAZING PERMITS 16.14 - Permittee Requests to Convert Kind or Class of Livestock or to Make Other Modifications

Conversions in the kind or class of livestock may result in a corresponding change in permitted numbers. Changes in numbers should not be based on differences in forage consumption rates (AUM conversion factors) but on the ability to meet annual use standards and the relative impacts that the change may have on the rangeland resources across the allotment(s). Additional issues related to changes in the level of livestock management that would be needed should also be considered. The authorized officer must exercise caution in this process. Rarely can change in kind or class be evaluated using an AUM conversion factor. Change in kind and class of livestock generally results in different areas of the allotment being used, changes in herd and band practices, changes in distribution, changes in use rates, etc.

COMMENT: While I don't disagree with the above statement, it should be noted that the AUM conversion factors is a starting place, a plan and objectives should also be discussed and agreed upon relating to the "stock and monitor approach" including: the initial stocking rate, objectives and indicators to be monitored, and when adjustments in stocking will be made, with timelines on the objectives and adjustments (adaptive management). We suggest adding these elements to this section.

CHAPTER 10 - TERM GRAZING PERMITS 16.35 – Willfulness and Public Health and Safety Exceptions

Take action immediately in instances where the violation has an immediate impact on public health and safety and prompt action is necessary to avert the threat (see 5 U.S.C 558(c)). Examples might be where a break in the allotment boundary fence has occurred and livestock are

discovered inside a fenced rural airport boundary, or within a fenced public thoroughfare rightof-way.

COMMENT: It is assumed that the "exceptions" refers to the need to issue a Notice of a Noncompliance, but it is unclear on whether "take action immediately" is supposed to mean "institute permit suspension or cancellation proceedings" or get the livestock off of the right-of-way, as in the example? This is a poor example, because a "break in the allotment boundary fence" along a highway is highly unlikely to be a willful act of the livestock owner. If this is an example of willfulness and public health and safety issue, how would you prove that the permittee and not a human visitor or wildlife, willfully broke the fence? We recommend a better example or greater explanation.

CHAPTER 10 - TERM GRAZING PERMITS 16.36 - Repeated Incidents of Non-Compliance

While they may be entitled to a "second chance," permittees are not entitled to unlimited chances to correct repeated incidents of non-compliance regarding the same or closely related permit terms or conditions. Such an approach could lead to a never-ending cycle of permittee violation,

COMMENT: Understanding the need to prevent "a never-ending cycle of permittee violations", there needs to be consideration for the multiple-use landscape with the public having unlimited access, wildlife and wild horses that break fences and natural causes like trees falling on the fences. Although a previous example (page 110) stated "Examples of such minor violations could include a minor number of livestock being in the wrong pasture due to a gate being left open or a fence segment in need of emergency repair, a minor number of livestock that may have wandered off the allotment, or finding a few stray livestock that could not be found when a pasture was cleared or at the end of the grazing season.", 16.36 appears to only allow a "second chance", even though the violations are beyond the control of the permittee. We recommend that this statement is clarified as not including "minor violations".

CHAPTER 10 - TERM GRAZING PERMITS 16.6 - Permit Cancellation to Devote the Lands to Another Public Purpose

Under Section 402(g) of FLPMA, the permittee is entitled to reasonable compensation for the adjusted value of their interest in authorized permanent improvements on NFS lands that are to be devoted to another public purpose that precludes livestock grazing. This only applies if it was the current permittee who contributed to construction of the specific improvements. See chapter 70 and FSM 2248.

COMMENT: "reasonable compensation for the adjusted value of their interest" is very different from "only applies if it was the current permittee who contributed to construction of the specific improvements", an "interest" could have been purchased from the previous permittee and has been maintained and repaired, therefore the "interest" has a value and should be compensated instead of limiting it to "construction". We recommend deleting "This only applies if it was the current permittee who contributed to construction of the specific improvements."

FSM 2200 - RANGELAND MANAGEMENT, CHAPTER - ZERO CODE

FSM 2200 - RANGELAND MANAGEMENT 2201.53 - Livestock Grazing

Federal law prohibits grazing cattle without a permit on lands within the National Forest System.

COMMENT: Please provide a citation for this federal law. What is the specific statute language?

FSM 2200 - RANGELAND MANAGEMENT 2201.55 - Ownership Claims by Others

Regarding claims of ownership involving Federal lands, the established rule is that land ownership decisions are construed favorably to the Government, unless there is clear language in law directing otherwise, and that if there are doubts they are resolved for the Government, not against it.

COMMENT: Please provide citations for the statement "if there are doubts they are resolved for the Government, not against it".

Essentially, pioneer rights are equivalent to "possessory" or "occupancy" rights that typically have the sanction of State or Territorial legislation, or; local laws, customs and decisions of the courts; or "aboriginal" title or "possessory" or "occupancy" rights dating from a time prior to U.S. acquisition through "treaty" (i.e. Guadalupe-Hidalgo, 1848, or the Oregon-Northwest Treaty with Great Britain, 1846). This same possessory or occupancy right of "actual settlers" gives the settler a "color of title" which has been referred to as the "preference" right. The preference is the preferred right to acquire the government's "legal title" when the land occupied or in the possession and use of the pioneer is eventually opened to settlement.

COMMENT: The original "grazing privilege" was also referred to as a "preference right" associated with the preference to the renewal of a grazing permit and the related authorized livestock was termed "preference numbers". Please address this change in terminology and the reasoning for the change.

FSM 2200 - RANGELAND MANAGEMENT 2205 – DEFINITIONS

Apparent Trend. An interpretation of trend based on observation and professional judgment at a single point in time. An assessment, using professional judgment, based on a one-time observation. It includes consideration of such factors as plant vigor, abundance of seedlings and young plants, accumulation or lack of plant residues on the soil surface, and soil surface characteristics (i.e. crusting, gravel pavement, pedestalled plants, and sheet or rill erosion) (see Interagency Technical Reference 1734-4).

COMMENT: It is not possible to determine a "trend" from a "one-time observation". This definition appears more like an "opinion". We recommend deleting this from your directives.

Frequency (of use as a management tool). The number of times forage plants are defoliated during the grazing period. (see Reed, Floyd, Roy Roath, and Dave Bradford. 1999. The Grazing Response Index: A Simple and Effective Method to Evaluate Grazing Impacts. Rangelands 21(4): 3-6.)

COMMENT: The science and Society for Range Management defines frequency as:
"Frequency- The ratio between the number of sample units that contain a species and the total number of sample units." Society for Range Management. 1998. Glossary of terms used in range management, fourth edition. Edited by the Glossary Update Task Group, Thomas E. Bedell, Chairman. Used with permission. (https://globalrangelands.org/glossary/F?term=)
We recommend this definition.

Grazing Intensity. The degree of herbage removed through grazing and trampling by livestock. Grazing intensity may be described in terms of herbage removed during the grazing and/or growing period or as a utilization level at the end of the growing period. It is important to clearly define how intensity is being viewed and described. Removal of leaf material, when the plant is actively growing can affect root growth which in turn affects future leaf growth. Sufficient leaf area is essential to support plant functions through photosynthesis. Heavy to severe intensity or utilization can affect current plant development and growth as well as growth during subsequent growing seasons (see Reed, Floyd, Roy Roath, and Dave Bradford. 1999. The Grazing Response Index: A Simple and Effective Method to Evaluate Grazing Impacts. Rangelands 21(4): 3-6).

COMMENT: This appears to be the definition of "use" or "utilization". We don't think that you can differentiate "herbage removal" by livestock grazing and non-livestock grazing. We recommend that you consider "stubble heights" or "residual forage" to actively manage sufficient leaf area.

Grazing Period. The length of time grazing livestock or wildlife occupy a specific land area. The length of time a pasture is exposed to grazing affects many variables such as potential for regrowth of plant material, soil impacts and animal behavior. The grazing period influences the intensity of grazing and the frequency of grazing. It can also influence items tied to animal behavior such as trailing, and trampling such as between loafing and watering areas.

COMMENT: How does the Forest Service intend to determine when wildlife occupy a specific land area? If the Forest Service is using this to make management decisions or determine compliance with terms and conditions, then there is a need to quantify when and how many wildlife and livestock are grazing and what are

the outcomes for each class of animals. Please explain how this will be determined when there is a combination of livestock and wildlife occupancy.

Indicator. A measure or measurement of an aspect of a sustainability criterion. Indicator has also been defined as a quantitative or qualitative variable that can be measured or described to show trends in a corresponding ecological attribute when observed periodically. Indicators are quantifiable performance measures of outcomes or objectives for attaining criteria designed to assess progress toward desired conditions (see FSM 1905).

COMMENT: The sentence, "A measure or measurement of an aspect of a sustainability criterion." Needs more definition than an aspect of a criterion. First, the indicator is "a quantitative or qualitative variable" then in the following sentence they are quantifiable, it appears that you are somehow converting qualitative variables (observations or opinions) into quantifiable measurements to give them credibility. We recommend only using quantitative data, if indicators are "quantifiable performance measures".

Monitoring. The collection and analysis of repeated observations or measurements over time to detect changes in conditions and values and evaluate progress toward meeting a resource or management objective. A monitoring activity may include an information needs assessment; planning and scheduling; data collection, classification, mapping, data entry, storage and maintenance; product development; evaluation; and reporting phases (see FSM 1940.5).

COMMENT: Why not use the Society for Rangeland Management definition of monitoring?

Monitoring (rangelands)
The orderly collection, analysis, and interpretation of resource data to evaluate progress toward meeting management objectives. This process must be conducted over time in order to determine whether or not management objectives are being met. (https://globalrangelands.org/glossary/M?term=)

Repeated qualitative "observations", unless done by the same person will not be comparable, due to individual, bias, values, or perspectives.

Rangeland Restoration. The process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Rangeland restoration is an intentional activity that initiates or accelerates the recovery of an ecosystem with respect to its health, integrity, and sustainability.

COMMENT: We recommend adding definitions for degraded ecosystem, damaged ecosystem, destroyed ecosystem, ecosystem health and ecosystem integrity.

Seasonal Utilization. The amount of utilization that has occurred before the end of the growing season (see Interagency Technical Reference 1734-3, page 1).

COMMENT: How is Utilization determined before the end of the growing season, when utilization is defined as

"Utilization. The proportion or degree of the current year's forage production that is consumed or destroyed by animals (including insects). The term may refer either to a single plant species, a group of species, or to the vegetation community as a whole (see Interagency Technical Reference (ITR) 1734-3, page 133)."

Recommend that this be changed to the "degree of use on current standing crop".

Sustainability. "Ecological sustainability" refers to the capability of ecosystems to maintain ecological integrity; "economic sustainability" refers to the capability of society to produce and consume or otherwise benefit from goods and services including contributions to jobs and market and nonmarket benefits; and "social sustainability" refers to the capability of society to support the network of relationships, traditions, culture, and activities that connect people to the land and to one another, and support vibrant communities (see 36 CFR 219.19).

COMMENT: Please define "ecological integrity".

Trend. The direction of change in an attribute as observed over time.

COMMENT: This should be measured or quantifiable data collected by the same repeated methodology and cannot be determined through qualitative monitoring by different individuals.

FSM 2200 - RANGELAND MANAGEMENT
CHAPTER 2250 – RANGELAND MANAGEMENT COOPERATION

CHAPTER 2250 – RANGELAND MANAGEMENT COOPERATION 2250.3 – Policy

Coordinate and cooperate with local residents and organizations in the rural communities in which agency employees live and work.

COMMENT: Where is the coordination and cooperation with those that have a grazing permit? We recommend that coordination and cooperation be with the permittee, that is economically dependent on the rangelands, before cooperating with residents and organizations.

CHAPTER 2250 – RANGELAND MANAGEMENT COOPERATION 2252.21 - Cooperation Regarding Contagious Diseases

Most Allotment Management Plans and Annual Operating Instructions (or similar document) address the disposal of dead animals, but that has typically applied to an animal dying of "natural causes" or being struck by lightning, etc. In such cases, burying and burning are no longer acceptable forms of disposal of the dead animal; instead, the permittee needs to remove the animal or call a rendering service to do so.

COMMENT: Within many Forest Service allotments, topography, forest conditions, closed roads, and off road rules do not make it possible to remove animals or call "a rendering service to do so".

FSH 2209.16 – ALLOTMENT MANAGEMENT HANDBOOK
CHAPTER 10 – ALLOTMENT MANAGEMENT AND ADMINISTRATION

CHAPTER 10 – ALLOTMENT MANAGEMENT AND ADMINISTRATION 10.54 - Decisions to Close Grazing Allotments

Although not required by law or regulation, Agency policy states that an active allotment, forage reserve, or vacant allotment can ONLY be closed through an LMP or a project-level environmental analysis and decision. The analysis should also look at the effects on other resources (e.g. feral horses, ESA listed species, etc.).

COMMENT: The Forest Service now considers unauthorized livestock, "feral horses" as a resource? Are authorized livestock also a resource and were they considered in the analysis and decision as a forage reserve or vacate the allotment?

Thank you for your consideration
Respectfully,

Nick Ashcroft
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