

Gila County Cattle Growers Association

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April 16, 2021

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U. S. Forest Service
Ms. Kara Chadwick, Director
Forest Management, Range Management & Vegetation Ecology
201 14th Street SW
Washington, DC 20250-1124

Electronically submitted to:

<https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2514>

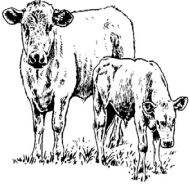
RE: Issuance of proposed directives 85 CFR 82432
Forest Service Manual (FSM) 2200
Forest Service Handbook (FSH) 2209.13
Forest Service Handbook (FSH) 2209.16

Dear Ms. Chadwick:

The Gila County Cattle Growers Association (GCCGA) represents the ranching industry in Gila County, Arizona, with many permittees on the Tonto National Forest (TNF). We maintain a strong working relationship with the Forest Service (FS), Region 3, and staff of the TNF. We are thankful for the opportunity to provide the following comments in the attached matrix on the proposed revisions to directives governing rangeland management, grazing permit and allotment administration.

We support many of the proposed revisions to the Manuals and Handbooks, such as the ability to better manage livestock operations with adaptive management and flexibility in response to environmental or economic condition changes while maintaining proper use and management of rangeland vegetation. We commend the FS for including official policy on Third-Party buyouts and the policy against closing grazing allotments; the FSH2209.13, 94.3 directive that clarifies that as a business meeting the AOI meetings are not open to the public; the addition of the new Allotment Management Handbook, FSH2209.16; and the clarifications of activities allowed in Wilderness Areas.

With added clarifications and pertinent authorities, including recent legislation and case law, FS personnel should better understand the issues and the most appropriate permit administrative actions, using a more collaborative approach.



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GCCGA Comments RE: ORMS 2514

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GCCGA appreciates your consideration of our comments. Please continue to keep us informed of further agency proposals or actions. We look forward to our continued participation in this process. Please feel free to contact us if you have questions about our recommendations.

Sincerely,

A handwritten signature in black ink that reads "Frank DalMolin". The signature is written in a cursive, flowing style.

Frank DalMolin

President

fdalmolin@dalmolincorp.com

ACTIONS REQUESTED, SUBSTANTIVE COMMENTS, ISSUES or CONCERNS:

Proposed Updates to the US Forest Service (FS) Rangeland Management Directives Forest Service Manual (FSM) 2200, Chapters Zero, 10, 20, 30, 40, 50 and 70; Forest Service Handbook (FSH) 2209.13, Chapters 10, 20, 30, 40, 50, 60, 70, 80 and 90; and FSH 2209.16, Chapter 10

Forest Service Manual (FSM)	Topic	Page(s)	Section	Actions Requested, Substantive Comments, Issues
2200 ZERO CODE	Terminology	3, 11	2201.3	<i>We recommend</i> you keep the current title “Secretary’s Administrative Orders,” to retain clarity.
	Laws, correction	5, 9.	2201.1	<i>We recommend you correct</i> the acronym for part 9. Multiple Use-Sustained Yield Act (MUYS A) of 1960, to include the letter “A.”
	Regulations, corrections	10	2201.2 Part 1.	<i>We recommend you retain</i> within the title, “ ADMINISTRATION OF LANDS UNDER TITLE III OF THE BANKHEAD-JONES FARM TENANT ACT BY THE FOREST SERVICE. ”
		10	2201.2 Part 3.	<i>We recommend you add</i> for clarification in the summary for 36CFR218, A and B: (formerly the Administrative Review Procedures at 36 CFR 211.18, B)
		10	2201.2 Part 8.	<i>We recommend you add</i> for clarification in the summary for 36CFR222, D: (formerly Subpart B).
11	2201.2 Part 11.	<i>We recommend you correct</i> part 11. Title 36, Code of Federal Regulations, Part 293.7. to include ALL of 36 CFR 293, as the Blue Range Primitive Area still exists in Arizona!		
2210	Objectives	2	Clarify changes	<p><u>Comments added to clarify recommended changes:</u></p> <p>Imperative words inappropriately used in the "Objective" statements on the following page:</p> <p>PROVIDE = to state something must happen or be done. Imperative/mandate.</p> <p>ENSURE = to make certain, secure, or guarantee (legal definition). Imperative/mandate.</p> <p>Definitions:</p> <p><u>Objectives</u> = (see FSM 2205) define strategies or implementation steps to attain the identified goals. Unlike goals, objectives are specific, measurable, and have a defined completion date. They are more specific and outline the “who, what, when, where, and how” of reaching the goals.</p>

2210	Objectives	2	Clarify changes	<p><u>Goals</u> = are general guidelines that explain what you want to achieve in your community. They are usually long-term and represent global visions such as “protect public health and safety.”</p> <p><u>Note:</u> It is inappropriate to use imperative words that denote a legal obligation or mandatory action when the intent is recommended "Objectives."</p> <p><u>Note:</u> The Forest Service (FS) proposed "Objectives" are not precisely specific or measurable, e.g.: "recognition," "consideration," "efforts." Need to avoid creating ambiguity between goals and objectives.</p> <p><u>Note:</u> As FS directives, the 'who' in the proposed objectives is implied, of course. But, the determiners such as what, when, and where, are not all clear (remember SMART - specific, measurable, achievable, realistic, time-bound) FSM2205.</p> <p>2210.2, #2 below: Desired Conditions are specific ecological conditions or vision statements. The focus = specific conditions. Therefore, it is not realistic to restore an ENTIRE ecosystem, but rather specific conditions within that ecosystem.</p>
2210	Objectives	3	2210.2	<p>1. <i>FS proposed:</i> Ensure recognition and consideration of rangeland ecosystem health and rangeland management in Land Management Plans (LMPs).</p> <p>1. Our recommended change or something similar: When writing Land Management Plans (LMPs), include rangeland ecosystem health concepts and rangeland management procedures within specific and connected program standards and guidelines, by coordinating with each forest program, providing appropriate content and assisting in timely completion.</p> <p>2. <i>FS proposed:</i> Provide for enhanced protection of rangeland ecosystems and restoration of rangeland ecosystems that are not meeting or moving toward desired conditions.</p> <p>2. Our recommended change or something similar: Improve or restore rangeland conditions when they are not meeting or moving toward desired conditions where effective, functional, and achievable on national forest system lands, as defined by site specific analysis.</p> <p>3. <i>FS proposed:</i> Provide for management of rangeland ecosystems and efficient accomplishment of land management goals and objectives in coordination with user groups and individuals.</p>
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2210	Objectives	3	2210.2	<p>.</p> <p>3. Our recommended change or something similar: Assist timely completion of Forest Service land management goals and objectives specific to rangeland management on national forest system lands by coordinating with user groups and individuals.</p> <p>4. <i>FS proposed:</i> Ensure that project planning efforts contribute toward meeting programmatic resource management direction found in LMPs.</p> <p>4. Comment: This is not written as an objective. #5 provides the intended objective here at #4, so no need to repeat.</p> <p>5. <i>FS proposed:</i> Ensure that project planning is conducted in compliance with applicable Federal law and regulation.</p> <p>5. Our recommended change or something similar: Comply with all pertinent laws, regulations, LMP standards and guidelines, and policies, during project planning for national forest system rangelands, including edicts for endemic plants and animals and their primary constituent elements, by having a clear understanding, reviewing and citing or documenting the pertinent edicts that direct each employee and/or term grazing permit holders' day to day activities and/or conduct. Employees are responsible to lead the forest users and/or permittees in this objective.</p>
2220				<p><u>Note:</u> this Chapter is reserved for future use. No comments.</p>
2230	<p>All chapters</p> <p>Moving Manual direction to Handbooks</p>			<p><u>Note:</u> A large part of the current Forest Service Manual 2230 is proposed to be moved to handbooks within FSH2209.13.</p> <p><u>Comments and Questions:</u></p> <p>The scope of direction in Manuals has been primarily for Line officers and primary staff. Handbooks have been the principal guidance for specialists and technicians to carry out the direction from Line officers and primary staff. Both levels need procedural direction.</p> <ol style="list-style-type: none"> 1. Does removing existing direction from Manuals intended for Line Officers and Primary staff remove significant responsibility away from them for which they can be held accountable? 2. The Forest Service must issue a new Guide to the directives with these significant changes. 3. Because the FS is moving Manual direction to Handbooks, will the determination of how binding the direction is remain the same?

2230	Section does not exist in current manual	2, 9	2239 – 2239.9	In the publicly available on the web fs.fed.us directives 9/9/2005 WO, 40 Page, FSM2230, there is no 2239-2239.9 to be moved. What document did the FS retrieve this from? The last time this was in print we believe was in the 1970s.
2230	Objectives of grazing permits	4	2230.2	<p>Please see comments for clarification of changes in 2210.2 “Objectives” above.</p> <ul style="list-style-type: none"> Objectives are realistic targets to reach a goal. <p><u>Specific to FSM 2230.2:</u></p> <ul style="list-style-type: none"> A grazing permit cannot ‘ensure’ something occurs, the forest officer does this. The statements in the Objectives at 2230.2 as written, are not actually objectives of grazing permits, they are primarily Forest officer responsibilities towards the grazing permit holders. The proposed objective at #5, in part, may describe the purpose of the grazing permit with the terms “scope,” “extent,” and “duration” of the grazing activity (which are specifically defined in the permit, not a “reasonable expectation” as stated). NEPA analysis is normally completed on the grazing allotment, thus, providing specific direction added within the grazing permit, such as specific triggers that require adjustments (not a general concept of “recognizing” that adjustments may occur). Changes in law or regulation or new information after the permit is issued, are addressed through other protocols, not directly by the grazing permit. A grazing permit is an approval issued by the government granting permission to graze livestock with site specific directions pertinent to the livestock grazing operation (authorizing specific use, at specific locations, during a specific time) and non-discretionary requirements that must be met to be in compliance with various edicts to retain the use of the permit. <p>We recommend the Objectives be removed as stated based on the rationale above. The statements in the proposed objectives here may be rewritten and incorporated into the Policy statements. Or, changing the leading sentence to “<i>...objectives of the grazing permit system are to assist the Forest officer or Rangeland Management Specialists to:</i>” However, the 5 objectives must still be rewritten or removed, because the grazing permit does not help the officers ensure or provide all of the items listed.</p> <p>With FS skills and experience in place to ensure these concepts are understood, we will not provide examples of more appropriate statements here. We request the FS take a harder look at the content and revise based on our rationale clearly stated above.</p> <p>FSM 2231 Term Grazing Permits, lists “Objectives” for “issuing” grazing permits. Words matter.</p>
2230	Policy	4	2230.3, 3.	Recommend be included: Family members that may be eligible to take over a parents or other family members grazing permit. Also, include reference to FSH2209.13, 12.1.

2230	Policy	5	2230.3, 6	<p>To encourage the transfer of <i>land management practices</i> to other lands is one thing.</p> <ul style="list-style-type: none"> • However, encouraging “when economically feasible” the “transfer” of “these other lands into logical rangeland management units with NFS lands,” tends towards a conflict of interest, or potentially arbitrary and capricious– to encourage employees to encourage owners of other lands to transfer those lands into units of NFS lands. • If this is not the meaning the FS intended, this section must be rewritten. Either way it must be written to be within the pertinent FS binding laws and regulations, and those laws that protect private, county, and state lands.
2230	Consistency	6	2230.6	<p>To state what FSM and FSH “generally” contain minimizes the purpose of each (as they both have policies and procedures and direction. Manuals have primarily been more binding than Handbooks. And, Manuals have a defined audience, as well as Handbooks. Why reduce what has worked in displaying more binding direction, policy and procedures in Manuals, which creates accountability, by moving that direction to Handbooks?)</p>
2230	Records	8	2236	<p><u>We recommend the changes struck out and highlighted within this paragraph:</u> Authorized officers shall must maintain a grazing permittee case file (2230) and permanent electronic record for each person, organization, or other entity currently holding a grazing permit or participating in a memorandum of understanding, which authorizes grazing on NFS lands or other lands under Forest Service control. These case and electronic files are permanent records that should must not be destroyed.</p>
2240	Policy	6	2240.3, 15	<p>15. <i>Limit Forest Service responsibility</i> for fully financing maintenance work to those instances in which the grazing permittee realizes no direct or indirect benefit, in emergency situations like fires where prompt action is required, when fences are constructed for purposes other than permitted livestock management, <i>or to ensure compliance with environmental laws such as the Endangered Species Act.</i></p> <p><u>Comment:</u> The last statement above is significant, relevant to most all rangeland allotment fences. Fencing to control livestock movement is part of analyses reviewed during Section 7 ESA consultation. Therefore, for the FS to limit their responsibility to help finance maintenance work relative to “fires” is inappropriate, particularly when fires are intentionally increased in size without a Burn Plan in place or appropriate level of NEPA and as a result cause significant losses.</p>
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2240	Policy	6	2240.3, 15	<p>#15 FS proposed directive above - Recommend this proposed directive be deleted or rewritten.</p> <ul style="list-style-type: none"> • There are many instances when national forests are “burned” intentionally or purposefully without regard to the millions of dollars that could be lost when structural improvements are intentionally or purposefully burned during those fires. This often occurs because fire managers do not properly manage the structural improvements such as fences by applying known methods or procedures to protect that property. This is willful intent burning without regard to known harmful outcomes to structures. • Willful intent is aggressively and legally addressed in other actions that may affect Forest resources or structures. • Willful intent must also be addressed when intentional and purposeful fires or burning occur without well established and applied protocol to protect improvement structures such as fences. Irresponsible or intentional actions that cause harm must not be acceptable. Millions of dollars have been wasted in the past because of this unethical and unacceptable activity of intentionally burning or not preventing the burning of structural improvements when fire management practices have been shown to do so, such as when fencing or guard-rail is damaged. • In hundreds of other instances, the federal government assists or compensates citizens or other government entities when a disaster strikes. When fires, many of which are intentionally increased in size, thus damaging many structures, and ultimately causing future damage to resources from earth movement and severe erosion, the FS must be accountable for the damaging outcomes they intentionally caused. This is especially important with so many Forest “fires” with purposefully increased acres burned for purported resource benefit, when there is no Burn Plan or NEPA to do so. • Directives must make clear the accountability and responsibility of FS employees with binding direction specific to willful actions that cause structure damage or preventable resource damage. <p>We recommend #15 be deleted or rewritten. This issue should be aggressively addressed in Fire Management and Rangeland directives, ensuring FS employees accountability and responsibility for their actions through binding directives.</p> <p>We recommend a reference to FSM 5130 for wildfire and prescribed fire direction, and there should be a directive specific to addressing structure damage pertinent to concerns noted above.</p>
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2240	Livestock intrusion	7	2240.6	This section must also include a statement defining No-Fence Districts, as some counties have this authority. For example, in Arizona, County Boards of Supervisors have the authority to designate No-Fence Districts. Within a No-Fence District, liability for property damage by stray livestock falls on the livestock owner.
2240	Vegetation Management	9	2242.1	We recommend including “cattle” in the first sentence with sheep or goats: “Use cultural, manual, mechanical, biological (including, but not limited to, animals such as cattle , sheep or goats), chemical, or prescribed fire treatments to eliminate, reduce, perpetuate, or otherwise alter vegetation composition and density.
2240	Rangeland Improvements within Wilderness Areas	11	2244	<u>In addition to FSM 2320, We recommend the FS also include reference to these edicts for more specific information about allowable activities in wilderness areas:</u> <ul style="list-style-type: none"> • 36 CFR 293.6 leading paragraph and (a) and (b); • 36 CFR 293.7, a, and (b); • 36 CFR 293.17, b, (c); 43 CFR 6302.20 (BLM) leading paragraph and (a), (b), (c), (d);
2250	Rangeland Management Cooperation			No comment. We support the directive changes.
2270	Information Management Reports			No comment. We support the directive changes.

Forest Service Handbook (FSH)	Topic	Page(s)	Section	Actions Requested, Substantive Comments, Issues
2209.13, 10	Term Grazing Permits	21	11, 2.	<p><u>Proposed FSH 2209.13, 11 directive:</u> The Authorized Officer may issue a term grazing permit <i>when the following criteria have been met:</i></p> <p>2. The requirements of NEPA <i>have been satisfied</i>... Following the analysis, a decision must be made which authorizes grazing on the allotment.</p> <p style="text-align: center;">*****</p> <p><u>Proposed FSH 2209.13, 90 is shown here in part, from page 6, first paragraph to evaluate consistency in the proposed directives:</u></p> <p>“The terms and conditions in a grazing permit that has expired, or was terminated due to a grazing preference transfer, will be continued under a new permit <i>until the site-specific environmental analysis is completed.</i> (43 U.S.C. §1752(c)(2)).”</p> <p style="text-align: center;">*****</p> <p><u>Proposed FSH 2209.13, 94.2 is also shown here in part, from page 19, second paragraph to evaluate consistent in the proposed directives:</u></p> <p>“The provision codified at 43 U.S.C. §1752(c)(2) that requires the terms and conditions of an expired grazing <i>permit to continue until a new environmental analysis under NEPA is completed</i> does not exempt or exclude grazing permits from the requirements of NEPA; it merely allows for a limited grace period for the agency to conduct the required environmental analysis.”</p> <p style="text-align: center;">*****</p> <p><u>Comment:</u> FSH2209.13, 11, 2. does not clearly correspond to FSH 2209.13, 90, or FSH2209.13, 94.2, as shown above.</p> <p>When there were permits issued years ago, that did not yet have completed NEPA environmental analysis, District Rangers after a 10-year expiration have been issuing a new permit for the same operation if the management has not changed, even though NEPA analysis had not yet been completed.</p>
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2209.13, 10	Term Grazing Permits	21	11, 2.	<p>We recommend: The FS provide additional clarification about under what authority this type of permit issuance can occur, until the FS meets their obligation to complete NEPA analysis.</p> <p>Comment #2: Appropriations Acts are mentioned regarding the Dakota Prairie Grasslands in R-1. But there is no other mention on the use of Appropriations Acts to provide for the renewal or issuance of a term grazing permit, to be able to continue a livestock grazing operation, until there is completed NEPA analysis. This appropriations provision has been authorized in the past.</p> <p>We recommend: The FS provide direction for this appropriations authority to maintain permitted ongoing livestock grazing operations when a 10-year permit has expired, without NEPA analysis completed, if this process may be required.</p>
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