Data Submitted (UTC 11): 2/19/2021 11:00:00 AM
First name: Rocky
Last name: Smith
Organization:
Title:
Comments: Dear Forest Service,

The attached contains the comments of Rocky Smith et al on proposed rangeland directives issued in December, 2020. Please acknowledge receipt of these comments via a reply to this submission.

Thank you,

Rocky Smith

These are the comments of the undersigned on the proposed rangeland management directives accessed at the above web address, and noticed in the Federal Register of December 18, 2020, 85 Fed Reg 82432.

All of the undersigned are individuals and representatives of organizations having a major interest in management of our national forests and grasslands. This includes an interest in regulating livestock grazing to ensure that its impacts, often considerable, will be minimized. We are concerned that, based on the proposed directives, the Forest Service will give too much emphasis to livestock grazing without a comparable effort to limit impacts from this use of national forests and grasslands.

When providing opportunities for public comment on proposed Manual (FSM) and Handbook (FSH) sections. it would be helpful if the Forest Service provided the existing Manual and Handbook sections with the proposed changes, e. g., by denoting additions in colored text and highlighting deletions via strikethroughs. That way, reviewers can see exactly what changes are proposed and focus any comments accordingly. But because the agency did not denote proposed changes, we are commenting on the entire Manual and Handbook chapters provided via the above web link.

THE NEED FOR LIVESTOCK GRAZING ON NATIONAL FOREST SYSTEM LANDS

It must always be remembered that grazing any kind of livestock on national forest lands will involve concentrated use of non-native species. These species, most typically cattle and sheep, did not evolve with the land and thus must be managed carefully to minimize impacts. Cattle, e. g., tend to congregate in riparian areas

and can cause great damage to these areas which are very important for many uses. Damage to streams and riparian communities is extensive. See, e. g., Belsky et al, 1999.

In spite of this, the Forest Service sees a need to increase grazing on its system lands. Noting the decline in grazing use since the 1960s, proposed section 17.22 of FSH 2209.13 states:

There are numerous cases where livestock grazing needs to be reinstated at increased levels across large landscapes to improve vegetative composition and seral stage to meet the needs of numerous resource programs and values.

This represents a strong bias within the agency toward approving livestock grazing, possibly at the expense of the many other uses of national forest land. It is hard to imagine that such grazing improves vegetation conditions, as livestock grazing causes immense damage to native vegetation, soils, and water quality, and frequently helps spread noxious weeds. Grazing also degrades and fragments wildlife habitat and is a major contributor to global warming, as livestock, especially cattle, emit much methane, a greenhouse gas.

Non-native plant species such as Kentucky bluegrass and orchardgrass have been sown in many areas of Colorado[rsquo]s rangelands to provide forage specifically for livestock. This is further introduction of non-native species, which displaces native vegetation and cannot be considered beneficial.

Due to many factors, livestock grazing on most national forests has declined over the last 50 years. Rather than go out of its way to restock allotments with non-native species, this provides a good opportunity for the Forest Service to restore lands damaged by livestock grazing to natural ecosystems, in terms of composition, structure, and function of vegetation communities, and connectivity of habitats for native wildlife and fish species. Less livestock grazing would also cause a reduction in greenhouse gas emissions, easing global warming.

The above-quoted statement from section 17.22 must be deleted.

FSM section 2231, an objective is to:

Provide opportunities that support the continued presence of working ranches and farms as they are necessary to maintain the open spaces that are needed for vistas, recreation opportunities, and to retain habitat and migration corridors for native species.

Livestock grazing operations will hurt much more than help habitat for native wildlife species. Fences, needed to keep animals from wandering off, are especially harmful to many wildlife species. Livestock will also eat forage needed by wild animals such as elk. Livestock help spread noxious weeds, displacing native vegetation which would otherwise be forage for wild animals.

While retaining land in an open condition for livestock grazing may provide vistas, these vistas would also include the livestock and structures needed to support them. This is not desirable for recreationists, who would much rather see land in a predominantly natural condition. And certainly, recreational users do not like to walk amongst domestic animals and their remains.

Generally, livestock grazing is not beneficial to other resources on national forests and grasslands, and often is quite harmful overall. The statement quoted above from FSM 2231 is inappropriate and should be deleted.

MAJOR OVERALL CONCERN [ndash] THE POWER GIVEN TO GRAZING ASSOCIATIONS AND DISTRICTS

Throughout the proposed rangeland directives, the Forest Service, ratifying existing practice, gives much administration authority to grazing associations and districts, which are private corporations, as these entities:

are organized under State statutes for the purpose of cooperative management of permitted livestock and to administer the livestock grazing use distributed to its members through association-issued permits.

FSM 2205. [Footnote: This definition notes that these associations are sometimes referred to as grazing districts. We will use [ldquo]associations[rdquo] to describe these entities.]

Direction allows associations to set the upper limits of how many cattle, sheep, and/or other domestic grazing animals can graze any allotment for which they are permitted. FSH 2209.13, section 12.51a. This should be recognized as a conflict of interest, as a private corporation, the association, gets to determine how many animals its members can graze. This is clearly the fox guarding the chicken coop.

It also amounts to the agency abdicating its responsibility to manage the land and its resources, and to maintain a balance of uses on the national forest and grasslands as required by various laws. The Bankhead-Jones Tenant Farm Act of 1937 ([ldquo]B-J Act[rdquo], 7 U. S. C. 1000 et seq. and 16 U. S. C. 551) gave the

Department of Agriculture jurisdiction over certain formerly private lands that were severely affected during the extreme droughts and concomitant loss of topsoil in the 1930s. These lands were eventually transferred the Forest Service by DOA Secretarial order, as allowed under the B-J Act. They became known as the national grasslands in 1960. As such, they are subject to other laws that govern the national forest system, including the Multiple Use Sustained Yield Act.

Grazing associations are required to ensure their members comply with federal law and regulation, and with direction in land management plans. FSH 2209.13 section 22. They are even given the power to issue notice of non-compliance letters, which are [ldquo]reserved for significant, serious, or repeat violations[rdquo] of permit terms and conditions. FSH 2209.13 section 16.3. And amazingly, associations handle suspensions and cancellations of permits. Id. at 16.4; see also Id. at 23-Exhibit 01, E 18, and id. at 23-Exhibit 03, E 15.

Even more amazingly, the Forest Service relieves itself of the obligation to address violations of laws, regulations, and policies in areas of national forests and grasslands covered by a grazing agreement with an association:

Reserve the right (but not the obligation) to take appropriate administrative action or to prosecute any act or omission involving violations of Federal law, regulation, or Forest Service policies or procedures pertaining to livestock grazing on NFS lands including, but not limited to, excess and unauthorized use or noncompliance with the terms and conditions of this Agreement or the [rules of management].

Id. at 23-Exhibit 01 D (8) (for national grasslands) and 23-Exhibit 03 D (8) (for national forests in the western U. S.); emphasis added. In other words, the Forest Service is not required to ensure compliance with Federal laws and regulations when a permit is issued to a grazing association!

The agency apparently would not even have to keep records associated with grazing done under a grazing agreement with an association. One of the responsibilities of the respective association is to:

Maintain records related to the administration of livestock grazing activities authorized by this Agreement that would otherwise be retained by the Forest Service if it were directly administering livestock grazing through Forest Service term grazing permits.

Id. at 23-Exhibit 01 at 22 and 23-Exhibit 03 at E 19.

As if to further ensure the associations totally control their own grazing administration:

Agency policy is that [] audits of [the records and work of grazing associations] are to be conducted at least once every five years and should include, at a minimum, a review of the association[rsquo]s accounting records and statements, collection procedures, use of fees, and LUP documentation. The association may retain an outside party to conduct the audit if the Forest Service does not have available expertise within the Agency, and all or a portion of the audit can be allowed as an administrative cost.

FSH 2209.13 section 25; emphasis added. See also FSM 2236. In other words, the association can audit itself and get reimbursed for it. [Footnote: Administration costs can be used to reduce grazing fees. See FSH 2209.13, sections 25.4 and 84.21. The criteria for fee reduction specifically allow accountants[rsquo] fees. Section 25.41 and 84.21.]

Under what authority does the Forest Service give its responsibility for grazing administration, including permit suspensions and cancellations, record keeping, and law enforcement, to grazing associations and districts? We see nothing in the B-J Act that allows this for the grasslands, and nothing anywhere that allows it for national forests.[Footnote: FSH 2209.13 section 20 notes that grazing agreements with grazing associations for a term grazing permit are used primarily on the grasslands [ldquo]but are also appropriate to authorize grazing use to grazing associations on National Forests[rdquo].] We strongly believe that the agency should fully administer any grazing permits issued for national forest land or national grasslands. Permittees and any associations representing them should be consulted, but the agency manages the land and thus should exercise full responsibility for how it is managed.

Section 15.43 of FSH 2209.13 presents confusing language on how to respond to archaeological, paleontological, and historic discoveries. For permits issued to grazing associations, field personnel are required to include the following language:

[ldquo]If a previously unidentified archaeological, paleontological, or historic site(s) is encountered during maintenance or construction of any rangeland improvement by the member, permittee, or contractor, that person shall discontinue work in the general area of the site(s) and notify the board of directors immediately, who shall in turn notify the Forest Service authorized officer immediately.[rdquo]

But the following language confounds the above:

This [permit language] will allow permittees to annually maintain their improvements as required by the grazing permit without the additional need for heritage notification or review, provided that work be discontinued upon

discovery of an archaeological, paleontological, or historic site.

Ibid. This language is unnecessary, and at worst, it seems to emphasize continuing work on range improvements at the expense of protecting newly discovered sites. Any discovery of sites should require that the Forest Service be notified, and that the state historical preservation office conduct a review, as appropriate, under the National Historic Preservation Act, and its implementing regulations 36 CFR 800 et seq.

FOREST SERVICE EMPLOYEES SHOULD NOT BE ALLOWED TO HOLD GRAZING PERMITS

Manual section 2250.4 (see also FSH 2209.13, section 12.13) allows agency employees to hold grazing permits. This creates a conflict of interest, as any employee could be granted a permit for activities that the employer is supposed to regulate. Generally, no new permits for livestock grazing on national forests or grasslands should be issued to agency employees.

PHYSICAL OCCUPANCY, USE, AND TITLE

We commend the Forest Service for including a section discussing the use of national forest and grasslands versus ownership, FSM section 2201.55. The text here makes very clear that use of the national forest system does not establish ownership or any kind of legal title to the land used. This is important in the face of attempts over many years by some users to establish ownership of land they have used via permit(s).

However, a definition in section 2201.5 seems to walk this back:

Occupancy and Use of NFS Lands. Occupancy is gaining or having physical possession of, or license in, real property in the absence of legal right or title. Use is the privilege to enjoy the benefits of real property, but the holder of the privilege does not hold title to the property.

Emphasis added. If grazing use (and for that matter, any other use) does not establish ownership or legal title, then it also does allow [ldquo]physical possession[rdquo], as that term clearly implies ownership. Permitted occupancy allows use but does not confer ownership. We recommend changing the first sentence of this definition as follows: [ldquo]Occupancy only allows use in the manner, intensity, and extent allowed by an

approved permit.[rdquo]

WHAT IS RANGELAND?

The definition of rangeland at FSM section 2205 reads in part as follows:

Rangeland includes natural grasslands, savanna, shrublands, most deserts, tundra, alpine communities [Footnote: The difference between [ldquo]tundra[rdquo] and [ldquo]alpine communities[rdquo] is not clear, as tundra is usually defined to be treeless land, generally above timberline.], coastal marshes, wet meadows, riparian areas, woodlands, and forested areas producing herbaceous or woody understory on which grazing by wild or domestic herbivores may occur.

This definition causes problems by allowing or encouraging the Forest Service to permit livestock use in areas where grazing is likely to damage the resource, even if forage is available and may be desirable. Riparian areas, e. g., in the west are critically important to ecological functioning. They should generally not be defined as rangeland, other than as necessary for stock passing through between allotments or pastures, because of their importance to ecological functioning.

Similarly, deserts, alpine communities, and tundra should not be considered rangeland. The vegetation in these areas is often sparse, and the soils are thin and lacking in significant, if any, amounts of organic matter. Thus these soils are easily damaged from trampling by livestock. Soil crust, for example, can easily be destroyed in a short time be livestock use. Damage to these areas from livestock use could be permanent or take decades to recover.

The definition or rangeland needs significant modification.

MANAGING ALLOTMENTS [ndash] FSH 2209.16

Most national forest land is grazed, or at least can be grazed, as more than 70 percent of land in the national forest system is in an allotment. Section 10.1. Ecological damage occurring from livestock grazing is well documented. See, e. g., Fleischner, 1994. However, language in this Handbook makes closing allotments

difficult. Section 10.54 even states:

Rarely should allotments be closed for any reason, because a decision to issue or not issue a grazing permit is easier to manage, than adding or removing an area designated at the forest planning level as available to livestock grazing. Direction to not close grazing allotments is based on the fact that doing so would limit future management options and preclude the Agency[rsquo]s ability to respond to changed conditions.

Emphasis added. There is also language in section 10.2 that discourages closing of allotments.

In truth, the agency has more flexibility when grazing is not allowed, because any level of livestock grazing beyond minor, temporary use will cause impacts and thus affect other resources like wildlife habitat, soil productivity, and water quality. Managers then have to address these issues, i. e., mitigate the impacts of grazing so they do not harm the other uses. But with no grazing, these impacts do not occur, and the land can be allowed to return to natural conditions and thereby more easily and fully support wildlife habitat, intact watershed, and other resources.

The Forest Service should not make it so difficult to close allotments. Rather, it should encourage, as appropriate, analyses, both during and outside of the land management planning process, that examine range, vegetation, and other conditions to assess whether livestock grazing is an appropriate use of specific allotments or larger areas of national forest land.

Given the harsh realities of the livestock business, grazing on national forests has been declining. A number of allotments are vacant. For example, on the Rio Grande National Forest in southwest Colorado, 19 of 42 sheep and goat allotments were vacant as of issuance of the final EIS for the recent (2020) plan revision. Rio Grande Plan FEIS at 158. In 2000, analysis during the revision of the management for the White River National Forest in west-central Colorado, found that 25 allotments, comprising almost 573,000 acres, were vacant. This is 31.7 percent of land within grazing allotments on the White River National Forest. See White River FEIS at 3-339. Similar situations likely exist on most national forests in the western U, S.

It seems likely that many of these allotments should be evaluated for closure. There is no sense keeping them open if there is no interest in grazing them.

According to the discussion of allotment status in proposed FSH 2209.16, allotments are only to be closed after an environmental analysis. However:

The workload required for a LMP non-significant amendment is a compelling reason to avoid closing an allotment in a LMP decision.

Section 10.15. However, this is contradicted by section 10.54, which states in part:

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.

Emphasis original.

Typically, land management plans are prepared with comprehensive analyses, as required by the Planning Rule, 36 CFR 219. This should include analysis of rangeland suitability over the entire unit. If the plan is being revised, then no [ldquo]amendment[rdquo] is required. Site-specific analysis, if needed, can be done at the same time as the plan is being prepared and can tier to the plan[rsquo]s analysis. But if allotments are closed outside of the planning process, additional analysis, possibly including a plan amendment, would be required.

Thus the plan is a very appropriate place to make decisions about closing allotments. Therefore, the above-quoted passage from section 10.15 does not make sense and should be removed. However, separate analyses, i. e., outside the land management planning process, to potentially close allotments should not be discouraged, since plans are only revised infrequently. [Footnote: In Colorado, Region 2, some plans are quite old. For example, the Plan for the Pike-San Isabel National Forests and Comanche-Cimarron Grasslands was approved in 1984. This and three other plans for Colorado national forests and grasslands are well beyond the National Forest Management Act[rsquo]s 15-year maximum time frame for plan revisions. See 16 U. S. C. 1604 (f)(5)(A).]

The following [ldquo]official agency policy[rdquo] needs to be changed:

Even if a grazing allotment is vacated, it will be retained as vacant, not closed. Allotment closure restricts future Agency management options in a world of changing conditions; allotment closures are NOT to be carried out at the request of any third party.

Section 10.6, emphasis original.

An allotment that has been vacant for a certain time period, say two years or more, should be considered for

closure. Closures should also be considered on the basis of credible information provided by third parties, such as: native plant societies, natural heritage programs, watershed protection groups, municipalities, and knowledgeable members of the public at large.

RANGELAND CAPABILITY AND SUITABILITY

FSH 2209.16 section 11.11 lists 10 possible data sets for use in determining the capability of rangelands. Two of them that should be used, where data exists, are listed as optional:

Potential plant community production - from [Terrestrial Ecological Unit Inventory], Common Vegetation Unit, Common Land Unit, or Integrated Resource Inventory

Distance to water from Common Water Unit and/or Range Structural Improvement layer.

The ability of land to produce plant biomass and what species can be produced is obviously a key component of determining whether an area is capable of providing forage for livestock. This item, or some determination of plant biomass production potential, must be required. This information may also be useful in determining suitability for gazing, e. g., an area that produces only a small amount of grass-like plant biomass palatable to stock each year may not be suitable for grazing, as that activity may not be sustainable. Note that for part of the process to determine rangeland capability, there is direction to subtract areas that cannot produce 200 pounds of forage per acre [Footnote: We assume this is intended to say 200 pounds per acre per year, but it should be so stated. Otherwise, it is meaningless, as most land that can produce any plant biomass could probably eventually produce 200 pounds of forage per acre.] See id. at section 11.2 (3).

Distance to water is also an important factor in determining rangeland capability. It is simply not practical, if even possible, to graze stock on land far from water. The process for determining capability encourages removing areas not near water:

Consider subtracting areas that lack available water, or lack the potential to develop water, within approximately three miles of the center of the polygon for grasslands or one-two miles in mountainous rangelands.

Id. at section 11.11 (9).

Section 11.3 states that, because the plan process determinations of suitability use models that are imprecise,

these suitability determinations are not intended to imply that livestock will be precluded from being found on lands that may be modeled as other than capable.

This would appear to negate the utility of such suitability determinations. Livestock must not be allowed on lands that are incapable. This language should be reworded to state something like the following:

Livestock shall generally not be allowed on lands found incapable except for brief, pass-through or after a site-specific analysis shows that any livestock use will not degrade the land and associated resources.

The following passage in 11.3 also undercuts the agency[rsquo]s capability and suitability analyses:

The capability/suitability analysis and suitability determination may or may not provide supporting information for a decision to graze livestock on a specific area.

It seems that in most cases, the analyses would provide information useful in determining whether livestock grazing should be allowed on a certain area of land. Otherwise, why undertake these analyses? Therefore, change the above to the following:

The capability and suitability analyses and determinations shall be used as guidance for assessing where livestock grazing should be allowed in specific areas, along with site-specific analysis of the land(s) in question. Grazing must not be allowed on lands found unsuitable unless a site-specific analysis shows such grazing is appropriate, and impacts to resources would be acceptable. The site-specific analysis can be used to modify acres capable and suitable for grazing.

Section 17.21 discusses resource protection non-use and permittee convenience non-use of forage on an allotment. It states in part the following:

In most cases it would not be appropriate to fill in behind a term grazing permittee in resource protection non-use simply because the non-use was approved in the first place to provide needed rest (such as during or following

drought, wildfire, etc.).

Emphasis added. When would it ever be appropriate to allow use of an allotment when it is being rested to protect resources? Any such use would preclude the area in question from receiving the protection it needs.

ISSUING, SUSPENDING, AND CANCELLING TERM GRAZING PERMITS

FSH 2209. 13, section 11.4 addresses expiring 10-year permits. It states in part:

The authorized officer shall not use the occasion of the expiring permit to effect needed reductions for resource management or improvement.

Emphasis original. This could be interpreted as prohibiting the authorized officer from requiring reductions of stock numbers, season of use, or grazing intensity for any new permit. But such reduction may be necessary to maintain good rangeland conditions and to meet the objectives in the allotment management plan.

Further direction in this section recommends that action be taken to correct any problems during the life of the permit.:

1. If the permittee has not fully complied with the terms and conditions of the expiring permit, the authorized officer should take timely action during the life of the permit to correct any cases of non-compliance according to the uniform suspension and cancellation guidelines set forth in section 16.3.

2. If the permittee[rsquo]s livestock management is resulting in resource problems on the allotment, the authorized officer should immediately work with the permittee to correct the unacceptable conditions, including taking timely permit action, if necessary, according to section 16.3.

Ibid; emphasis original. But note that this seems to contradict direction at FSH 2209.16, section 12.22:

Permit action may become an appropriate response only if objectives have been exceeded in consecutive years or with serious or repeated failure to meet requirements[hellip]

We agree it is preferable for the Forest Service to take action immediately to address resource problems or overstocking in order to correct these problems before they cause more than minor impacts, but the above from FSH 2209.16 discourages this.

Another part of FSH 2209.13, section 11.4 states:

The Forest Service may modify a term grazing permit concurrent with issuance of a new permit following expiration only when appropriate noncompliance procedures, permit modification procedures, or new NEPA supported decisions coincide with the time of issuance, and when one year[rsquo]s notice has been given to the affected permittee(s) as required by 36 CFR 222.4(a)(8).

But what if problems do not arise, or are not considered important, until the permit is about to expire? In this case, the one-year notice period would not have expired, yet a permit could still be reissued.

Unscrupulous permittees could use the provisions of section 11.4 to not comply with permit terms in the permit[rsquo]s final year, knowing or believing that no changes could be made in stock numbers for a new permit, for which they would have preference under section 11.4.

We strongly recommend that direction throughout Manual and Handbook sections addressing grazing clearly state that the Forest Service should address resource problems as soon as they arise, and that failure of the permittee to satisfactorily address these issues in a timely manner can be a consideration in deciding whether to issue a new permit to that permittee. When problems are detected, or first realized to be important, late in a permit term, the directives should state that where necessary, a temporary permit, good for no more than one year, be issued to the permittee(s) prior to issuance of a new 10-year term permit, and that the latter be issued only after the problems have been satisfactorily addressed.

Section 16.4 states that, in addition to suspension and cancellation procedures, the agency shall [ldquo]require the permittee to pay the unauthorized use rate for excess use[rdquo], i. e., for unauthorized livestock grazing on national forest system lands. However, a recently issued draft rule, 85 Fed Reg 69303 et seq., Federal Register of November 2, 2020, the Forest Service proposed modifying 36 CFR 222.50(h) to possibly allow operators grazing excess livestock to escape without penalty in some cases. See our previously submitted comments on this proposed rule, dated December 2, 2020.

As we did in those comments, we strongly urge the agency to charge at least the going rate for forage for operators who graze excess livestock. Indeed, proposed or current sections 81.7 and 81.8 of FSH 2209.13 require payment for forage used by excess stock in most cases. In any case, the Forest Service must ensure that its directives do not contradict laws or regulations.

Section 16.43, addressing suspension of permits, contains the following direction:

If a total suspension action has been taken, notify the permittee each year, in writing, that all fences, water developments, etc. that they are assigned in the permit must be maintained prior to the earliest date that livestock will be entering any of the adjacent pastures or allotments. See Exhibit 01 for an example of a letter to suspend or cancel all or a portion of a term grazing permit, should suspension or cancellation action be necessary.

But if total suspension action has been taken, the permittee would not be allowed to bring stock on to national forest land, thus no stock would be entering.

Is this paragraph intended to apply when 25 percent of a permit has been suspended, per the referenced Exhibit 01 in this section? If so, this should be stated. In any case, this paragraph needs to be deleted or clarified.

SETTING LIMITS ON LIVESTOCK USE

The directives address setting upper limits on livestock use of any given area.

The dependency of local livestock ranchers to hold term grazing permits on NFS grazing allotments in order to round out a properly balanced year-round livestock operation is a key factor to be considered in establishing or changing upper and special limits.

FSH 2209.13, section 12.5. Also:

The general purpose for establishing upper limits is to prevent one grazing permittee or a small percentage of

grazing permittees in a particular area from obtaining a disproportionate share of permitted use on NFS land. Setting the upper limits helps to stabilize local communities by maintaining a wide distribution of grazing use on NFS lands among qualified livestock producers in the local area. [hellip]

Factors and criteria to be used in establishing or revising upper limits include:

1. Total amount of grazing use currently available on NFS lands in the area

2. Local demand for grazing use on National Forest System lands.

3. Dependency of present grazing users on National Forest System lands.

4. Present distribution of term permits by ranch size.

5. Numbers and size of ranches with and without FS grazing permits in local areas.

6. Trends in number and size of ranches and farms.

Id. at 12.51.

This is, to say the least, incomplete. The quotes above indicates that the viability of a permittees[rsquo] operation and community stability are major considerations in determining how many stock can graze a given area. While these factors can be considered, the upper limits for how many animals can be grazed on any allotment or any other area must be, first and foremost, based on the capability of the land to support them and other uses, such as wildlife habitat, maintaining soil productivity and integrity, watershed integrity, recreational opportunity, and other uses. The directives must so state. Only after an area of land is determined to be suitable for livestock grazing, considering impacts on all resources and any other potential uses of the same land, should the factors quoted above be considered.

Section 15.43 of FSH 2209.13, in the examples of special terms and conditions for grazing permits, mentions section 15.11. We do not find this section in the version of chapter 10 made available for public comment. Similarly, section 16.4 references section 15.12c, that does not appear in this handbook.

USE OF LIVESTOCK FOR FUEL REDUCTION

Under FSH 2209.13, section 36.3, livestock use permits (i. e., permits allowing holders to graze livestock for up to one year, could be issued to create fuel breaks or to reduce fire hazards. This is generally not an appropriate practice. Grazing would reduce fuels, but not the continuity of fuel, thus a fire could still spread after grazing. To reduce the connectivity of fuel, stock would have to be allowed to eat complete plants (where that is possible, as with domestic sheep), or otherwise destroy vegetation, e. g., via trampling. In other words, areas denuded of vegetation would have to be created to reduce the possibility of fire spread. Such grazing use, especially if done over a large area, would be very detrimental to soils and probably also to water quality of nearby waterbodies.

Fires in rangeland vegetation mostly consisting of grasses, forbs, and shrubs would normally be low intensity, i. e., fires that would usually be beneficial by recycling nutrients and providing better growth at the start of the following growing season. The exception would be areas with cheatgrass, a non-native grass species spread by cattle. Areas where the vegetation is dominated by cheatgrass burn readily, and when they do, the sites revegetate even more heavily to cheatgrass, making them even more prone to fire.

Under FSH 2209.13, section 86, grazing could be allowed without charge

where the purpose of grazing is:

1. Vegetation manipulation to meet resource objectives. The most common examples might be to control competing vegetation for timber regeneration, or to control noxious weeds or other invasive species.

The first example stated above is also not a good idea. Grazing to remove vegetation that might compete with tree regeneration would result in soil compaction from the livestock traversing the land. This would inhibit or prevent seeds from germinating and poking through the compacted soil surface.

Domestic animal grazing can reduce noxious weed coverage, as horses like to eat thistles, and domestic sheep will consume leafy spurge. However, the animals could excrete the seeds of these plants, spreading the weed coverage even if the number of plants on grazed sites is decreased.

Section 83.2 discusses the use of Range Betterment Funds, a program established by the Federal Land Policy and Management Act, as amended by the Public Rangelands Improvement Act (43 U. S. C. 1751(b)). Concerning priorities for such expenditures, it states:

Priority is assigned to those rangeland improvement projects eligible for funding under the RBF, based upon the relative contribution of each project to: 1) the protection of rangeland from deterioration, 2) the rehabilitation of deteriorated rangeland, and 3) the improvement of forage quality and quantity.

Livestock grazing can be very detrimental to fish and wildlife habitat. See, e. g., Fleischner, 1994. Therefore, the following should be added to these priority criteria:

The need for maintaining or improving habitat for fish and wildlife species that may have been, or could be, adversely affected by livestock grazing.

Adding this priority would be consistent with the Public Rangelands Improvement Act, the :Findings and Declaration of Policy[rdquo] section of which noted that [ldquo]unsatisfactory conditions on public rangelands[hellip]threaten important and frequently critical fish and wildlife habitat[hellip][rdquo]. 43 U. S. C. 1711 (2)(a)(3).

CONCLUSION

The Forest Service[rsquo]s directives must contain clear direction that will help ensure that rangelands are managed in harmony with other resources, as required by the Multiple Use Sustained Yield Act. Livestock grazing should only be permitted where it will: cause minimal impacts to important resources such as soil productivity, watershed integrity, and wildlife habitat, and reduce the contribution livestock grazing makes to greenhouse gas emissions. The capability of the land to handle grazing and the possible impacts to other potential uses must be the key determinants of how many domestic animals can be allowed to graze any area of land.

These directives must not contain any direction that favors livestock grazing over other possible uses, and they must reduce the authority given to grazing associations to administer grazing permits that should be issued and administered by the Forest Service. If allotments remain vacant for more than a few years, they should be considered for closure.

We appreciate this opportunity to comment. Please inform us if and when any of the proposed directives are approved.

Sincerely,

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REFERENCES

Belsky, A. J., A. Matzke, and S. Uselman, 1999. Survey of Livestock Influences on Stream and Riparian Ecosystems in the Western United States. Journal of Soil and Watershed Conservation, (first quarter 1999) 54(1) 419-431.

Fleischner, Thomas L., 1994. Ecological Costs of Livestock Grazing in Western North America.

Conservation Biology, Volume 8, Issue 3 (Sept., 1994), 629-644.

These are the comments of the undersigned on the proposed rangeland management directives accessed at the above web address, and noticed in the Federal Register of December 18, 2020, 85 Fed Reg 82432.

All of the undersigned are individuals and representatives of organizations having a major interest in management of our national forests and grasslands. This includes an interest in regulating livestock grazing to ensure that its impacts, often considerable, will be minimized. We are concerned that, based on the proposed directives, the Forest Service will give too much emphasis to livestock grazing without a comparable effort to limit impacts from this use of national forests and grasslands.

When providing opportunities for public comment on proposed Manual (FSM) and Handbook (FSH) sections. it would be helpful if the Forest Service provided the existing Manual and Handbook sections with the proposed changes, e. g., by denoting additions in colored text and highlighting deletions via strikethroughs. That way, reviewers can see exactly what changes are proposed and focus any comments accordingly. But because the agency did not denote proposed changes, we are commenting on the entire Manual and Handbook chapters provided via the above web link.

THE NEED FOR LIVESTOCK GRAZING ON NATIONAL FOREST SYSTEM LANDS

It must always be remembered that grazing any kind of livestock on national forest lands will involve concentrated use of non-native species. These species, most typically cattle and sheep, did not evolve with the land and thus must be managed carefully to minimize impacts. Cattle, e. g., tend to congregate in riparian areas and can cause great damage to these areas which are very important for many uses. Damage to streams and riparian communities is extensive. See, e. g., Belsky et al, 1999.

In spite of this, the Forest Service sees a need to increase grazing on its system lands. Noting the decline in grazing use since the 1960s, proposed section 17.22 of FSH 2209.13 states:

There are numerous cases where livestock grazing needs to be reinstated at increased levels across large landscapes to improve vegetative composition and seral stage to meet the needs of numerous resource programs and values.

This represents a strong bias within the agency toward approving livestock grazing, possibly at the expense of the many other uses of national forest land. It is hard to imagine that such grazing improves vegetation conditions, as livestock grazing causes immense damage to native vegetation, soils, and water quality, and frequently helps spread noxious weeds. Grazing also degrades and fragments wildlife habitat and is a major contributor to global warming, as livestock, especially cattle, emit much methane, a greenhouse gas.

Non-native plant species such as Kentucky bluegrass and orchardgrass have been sown in many areas of

Colorado[rsquo]s rangelands to provide forage specifically for livestock. This is further introduction of non-native species, which displaces native vegetation and cannot be considered beneficial.

Due to many factors, livestock grazing on most national forests has declined over the last 50 years. Rather than go out of its way to restock allotments with non-native species, this provides a good opportunity for the Forest Service to restore lands damaged by livestock grazing to natural ecosystems, in terms of composition, structure, and function of vegetation communities, and connectivity of habitats for native wildlife and fish species. Less livestock grazing would also cause a reduction in greenhouse gas emissions, easing global warming.

The above-quoted statement from section 17.22 must be deleted.

FSM section 2231, an objective is to:

Provide opportunities that support the continued presence of working ranches and farms as they are necessary to maintain the open spaces that are needed for vistas, recreation opportunities, and to retain habitat and migration corridors for native species.

Livestock grazing operations will hurt much more than help habitat for native wildlife species. Fences, needed to keep animals from wandering off, are especially harmful to many wildlife species. Livestock will also eat forage needed by wild animals such as elk. Livestock help spread noxious weeds, displacing native vegetation which would otherwise be forage for wild animals.

While retaining land in an open condition for livestock grazing may provide vistas, these vistas would also include the livestock and structures needed to support them. This is not desirable for recreationists, who would much rather see land in a predominantly natural condition. And certainly, recreational users do not like to walk amongst domestic animals and their remains.

Generally, livestock grazing is not beneficial to other resources on national forests and grasslands, and often is quite harmful overall. The statement quoted above from FSM 2231 is inappropriate and should be deleted.

MAJOR OVERALL CONCERN [ndash] THE POWER GIVEN TO GRAZING ASSOCIATIONS AND DISTRICTS

Throughout the proposed rangeland directives, the Forest Service, ratifying existing practice, gives much administration authority to grazing associations and districts, which are private corporations, as these entities:

are organized under State statutes for the purpose of cooperative management of permitted livestock and to administer the livestock grazing use distributed to its members through association-issued permits.

FSM 2205. [Footnote: This definition notes that these associations are sometimes referred to as grazing districts. We will use [ldquo]associations[rdquo] to describe these entities.]

Direction allows associations to set the upper limits of how many cattle, sheep, and/or other domestic grazing animals can graze any allotment for which they are permitted. FSH 2209.13, section 12.51a. This should be recognized as a conflict of interest, as a private corporation, the association, gets to determine how many animals its members can graze. This is clearly the fox guarding the chicken coop.

It also amounts to the agency abdicating its responsibility to manage the land and its resources, and to maintain a balance of uses on the national forest and grasslands as required by various laws. The Bankhead-Jones Tenant Farm Act of 1937 ([ldquo]B-J Act[rdquo], 7 U. S. C. 1000 et seq. and 16 U. S. C. 551) gave the Department of Agriculture jurisdiction over certain formerly private lands that were severely affected during the extreme droughts and concomitant loss of topsoil in the 1930s. These lands were eventually transferred the Forest Service by DOA Secretarial order, as allowed under the B-J Act. They became known as the national grasslands in 1960. As such, they are subject to other laws that govern the national forest system, including the Multiple Use Sustained Yield Act.

Grazing associations are required to ensure their members comply with federal law and regulation, and with direction in land management plans. FSH 2209.13 section 22. They are even given the power to issue notice of non-compliance letters, which are [ldquo]reserved for significant, serious, or repeat violations[rdquo] of permit terms and conditions. FSH 2209.13 section 16.3. And amazingly, associations handle suspensions and cancellations of permits. Id. at 16.4; see also Id. at 23-Exhibit 01, E 18, and id. at 23-Exhibit 03, E 15.

Even more amazingly, the Forest Service relieves itself of the obligation to address violations of laws, regulations, and policies in areas of national forests and grasslands covered by a grazing agreement with an association:

Reserve the right (but not the obligation) to take appropriate administrative action or to prosecute any act or omission involving violations of Federal law, regulation, or Forest Service policies or procedures pertaining to livestock grazing on NFS lands including, but not limited to, excess and unauthorized use or noncompliance with

the terms and conditions of this Agreement or the [rules of management].

Id. at 23-Exhibit 01 D (8) (for national grasslands) and 23-Exhibit 03 D (8) (for national forests in the western U. S.); emphasis added. In other words, the Forest Service is not required to ensure compliance with Federal laws and regulations when a permit is issued to a grazing association!

The agency apparently would not even have to keep records associated with grazing done under a grazing agreement with an association. One of the responsibilities of the respective association is to:

Maintain records related to the administration of livestock grazing activities authorized by this Agreement that would otherwise be retained by the Forest Service if it were directly administering livestock grazing through Forest Service term grazing permits.

Id. at 23-Exhibit 01 at 22 and 23-Exhibit 03 at E 19.

As if to further ensure the associations totally control their own grazing administration:

Agency policy is that [] audits of [the records and work of grazing associations] are to be conducted at least once every five years and should include, at a minimum, a review of the association[rsquo]s accounting records and statements, collection procedures, use of fees, and LUP documentation. The association may retain an outside party to conduct the audit if the Forest Service does not have available expertise within the Agency, and all or a portion of the audit can be allowed as an administrative cost.

FSH 2209.13 section 25; emphasis added. See also FSM 2236. In other words, the association can audit itself and get reimbursed for it. [Footnote: Administration costs can be used to reduce grazing fees. See FSH 2209.13, sections 25.4 and 84.21. The criteria for fee reduction specifically allow accountants[rsquo] fees. Section 25.41 and 84.21.]

Under what authority does the Forest Service give its responsibility for grazing administration, including permit suspensions and cancellations, record keeping, and law enforcement, to grazing associations and districts? We see nothing in the B-J Act that allows this for the grasslands, and nothing anywhere that allows it for national forests.[Footnote: FSH 2209.13 section 20 notes that grazing agreements with grazing associations for a term grazing permit are used primarily on the grasslands [ldquo]but are also appropriate to authorize grazing use to grazing associations on National Forests[rdquo].] We strongly believe that the agency should fully administer any grazing permits issued for national forest land or national grasslands. Permittees and any associations

representing them should be consulted, but the agency manages the land and thus should exercise full responsibility for how it is managed.

Section 15.43 of FSH 2209.13 presents confusing language on how to respond to archaeological, paleontological, and historic discoveries. For permits issued to grazing associations, field personnel are required to include the following language:

[ldquo]If a previously unidentified archaeological, paleontological, or historic site(s) is encountered during maintenance or construction of any rangeland improvement by the member, permittee, or contractor, that person shall discontinue work in the general area of the site(s) and notify the board of directors immediately, who shall in turn notify the Forest Service authorized officer immediately.[rdquo]

But the following language confounds the above:

This [permit language] will allow permittees to annually maintain their improvements as required by the grazing permit without the additional need for heritage notification or review, provided that work be discontinued upon discovery of an archaeological, paleontological, or historic site.

Ibid. This language is unnecessary, and at worst, it seems to emphasize continuing work on range improvements at the expense of protecting newly discovered sites. Any discovery of sites should require that the Forest Service be notified, and that the state historical preservation office conduct a review, as appropriate, under the National Historic Preservation Act, and its implementing regulations 36 CFR 800 et seq.

FOREST SERVICE EMPLOYEES SHOULD NOT BE ALLOWED TO HOLD GRAZING PERMITS

Manual section 2250.4 (see also FSH 2209.13, section 12.13) allows agency employees to hold grazing permits. This creates a conflict of interest, as any employee could be granted a permit for activities that the employer is supposed to regulate. Generally, no new permits for livestock grazing on national forests or grasslands should be issued to agency employees.

PHYSICAL OCCUPANCY, USE, AND TITLE

We commend the Forest Service for including a section discussing the use of national forest and grasslands versus ownership, FSM section 2201.55. The text here makes very clear that use of the national forest system does not establish ownership or any kind of legal title to the land used. This is important in the face of attempts over many years by some users to establish ownership of land they have used via permit(s).

However, a definition in section 2201.5 seems to walk this back:

Occupancy and Use of NFS Lands. Occupancy is gaining or having physical possession of, or license in, real property in the absence of legal right or title. Use is the privilege to enjoy the benefits of real property, but the holder of the privilege does not hold title to the property.

Emphasis added. If grazing use (and for that matter, any other use) does not establish ownership or legal title, then it also does allow [ldquo]physical possession[rdquo], as that term clearly implies ownership. Permitted occupancy allows use but does not confer ownership. We recommend changing the first sentence of this definition as follows: [ldquo]Occupancy only allows use in the manner, intensity, and extent allowed by an approved permit.[rdquo]

WHAT IS RANGELAND?

The definition of rangeland at FSM section 2205 reads in part as follows:

Rangeland includes natural grasslands, savanna, shrublands, most deserts, tundra, alpine communities [Footnote: The difference between [ldquo]tundra[rdquo] and [ldquo]alpine communities[rdquo] is not clear, as tundra is usually defined to be treeless land, generally above timberline.], coastal marshes, wet meadows, riparian areas, woodlands, and forested areas producing herbaceous or woody understory on which grazing by wild or domestic herbivores may occur.

This definition causes problems by allowing or encouraging the Forest Service to permit livestock use in areas where grazing is likely to damage the resource, even if forage is available and may be desirable. Riparian areas, e. g., in the west are critically important to ecological functioning. They should generally not be defined as

rangeland, other than as necessary for stock passing through between allotments or pastures, because of their importance to ecological functioning.

Similarly, deserts, alpine communities, and tundra should not be considered rangeland. The vegetation in these areas is often sparse, and the soils are thin and lacking in significant, if any, amounts of organic matter. Thus these soils are easily damaged from trampling by livestock. Soil crust, for example, can easily be destroyed in a short time be livestock use. Damage to these areas from livestock use could be permanent or take decades to recover.

The definition or rangeland needs significant modification.

MANAGING ALLOTMENTS [ndash] FSH 2209.16

Most national forest land is grazed, or at least can be grazed, as more than 70 percent of land in the national forest system is in an allotment. Section 10.1. Ecological damage occurring from livestock grazing is well documented. See, e. g., Fleischner, 1994. However, language in this Handbook makes closing allotments difficult. Section 10.54 even states:

Rarely should allotments be closed for any reason, because a decision to issue or not issue a grazing permit is easier to manage, than adding or removing an area designated at the forest planning level as available to livestock grazing. Direction to not close grazing allotments is based on the fact that doing so would limit future management options and preclude the Agency[rsquo]s ability to respond to changed conditions.

Emphasis added. There is also language in section 10.2 that discourages closing of allotments.

In truth, the agency has more flexibility when grazing is not allowed, because any level of livestock grazing beyond minor, temporary use will cause impacts and thus affect other resources like wildlife habitat, soil productivity, and water quality. Managers then have to address these issues, i. e., mitigate the impacts of grazing so they do not harm the other uses. But with no grazing, these impacts do not occur, and the land can be allowed to return to natural conditions and thereby more easily and fully support wildlife habitat, intact watershed, and other resources.

The Forest Service should not make it so difficult to close allotments. Rather, it should encourage, as

appropriate, analyses, both during and outside of the land management planning process, that examine range, vegetation, and other conditions to assess whether livestock grazing is an appropriate use of specific allotments or larger areas of national forest land.

Given the harsh realities of the livestock business, grazing on national forests has been declining. A number of allotments are vacant. For example, on the Rio Grande National Forest in southwest Colorado, 19 of 42 sheep and goat allotments were vacant as of issuance of the final EIS for the recent (2020) plan revision. Rio Grande Plan FEIS at 158. In 2000, analysis during the revision of the management for the White River National Forest in west-central Colorado, found that 25 allotments, comprising almost 573,000 acres, were vacant. This is 31.7 percent of land within grazing allotments on the White River National Forest. See White River FEIS at 3-339. Similar situations likely exist on most national forests in the western U, S.

It seems likely that many of these allotments should be evaluated for closure. There is no sense keeping them open if there is no interest in grazing them.

According to the discussion of allotment status in proposed FSH 2209.16, allotments are only to be closed after an environmental analysis. However:

The workload required for a LMP non-significant amendment is a compelling reason to avoid closing an allotment in a LMP decision.

Section 10.15. However, this is contradicted by section 10.54, which states in part:

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.

Emphasis original.

Typically, land management plans are prepared with comprehensive analyses, as required by the Planning Rule, 36 CFR 219. This should include analysis of rangeland suitability over the entire unit. If the plan is being revised, then no [ldquo]amendment[rdquo] is required. Site-specific analysis, if needed, can be done at the same time as the plan is being prepared and can tier to the plan[rsquo]s analysis. But if allotments are closed outside of the planning process, additional analysis, possibly including a plan amendment, would be required.

Thus the plan is a very appropriate place to make decisions about closing allotments. Therefore, the above-quoted passage from section 10.15 does not make sense and should be removed. However, separate analyses, i. e., outside the land management planning process, to potentially close allotments should not be discouraged, since plans are only revised infrequently. [Footnote: In Colorado, Region 2, some plans are quite old. For example, the Plan for the Pike-San Isabel National Forests and Comanche-Cimarron Grasslands was approved in 1984. This and three other plans for Colorado national forests and grasslands are well beyond the National Forest Management Act[rsquo]s 15-year maximum time frame for plan revisions. See 16 U. S. C. 1604 (f)(5)(A).]

The following [ldquo]official agency policy[rdquo] needs to be changed:

Even if a grazing allotment is vacated, it will be retained as vacant, not closed. Allotment closure restricts future Agency management options in a world of changing conditions; allotment closures are NOT to be carried out at the request of any third party.

Section 10.6, emphasis original.

An allotment that has been vacant for a certain time period, say two years or more, should be considered for closure. Closures should also be considered on the basis of credible information provided by third parties, such as: native plant societies, natural heritage programs, watershed protection groups, municipalities, and knowledgeable members of the public at large.

RANGELAND CAPABILITY AND SUITABILITY

FSH 2209.16 section 11.11 lists 10 possible data sets for use in determining the capability of rangelands. Two of them that should be used, where data exists, are listed as optional:

Potential plant community production - from [Terrestrial Ecological Unit Inventory], Common Vegetation Unit, Common Land Unit, or Integrated Resource Inventory

Distance to water from Common Water Unit and/or Range Structural Improvement layer.

The ability of land to produce plant biomass and what species can be produced is obviously a key component of determining whether an area is capable of providing forage for livestock. This item, or some determination of plant biomass production potential, must be required. This information may also be useful in determining suitability for gazing, e. g., an area that produces only a small amount of grass-like plant biomass palatable to stock each year may not be suitable for grazing, as that activity may not be sustainable. Note that for part of the process to determine rangeland capability, there is direction to subtract areas that cannot produce 200 pounds of forage per acre [Footnote: We assume this is intended to say 200 pounds per acre per year, but it should be so stated. Otherwise, it is meaningless, as most land that can produce any plant biomass could probably eventually produce 200 pounds of forage per acre.] See id. at section 11.2 (3).

Distance to water is also an important factor in determining rangeland capability. It is simply not practical, if even possible, to graze stock on land far from water. The process for determining capability encourages removing areas not near water:

Consider subtracting areas that lack available water, or lack the potential to develop water, within approximately three miles of the center of the polygon for grasslands or one-two miles in mountainous rangelands.

Id. at section 11.11 (9).

Section 11.3 states that, because the plan process determinations of suitability use models that are imprecise,

these suitability determinations are not intended to imply that livestock will be precluded from being found on lands that may be modeled as other than capable.

This would appear to negate the utility of such suitability determinations. Livestock must not be allowed on lands that are incapable. This language should be reworded to state something like the following:

Livestock shall generally not be allowed on lands found incapable except for brief, pass-through or after a site-specific analysis shows that any livestock use will not degrade the land and associated resources.

The following passage in 11.3 also undercuts the agency[rsquo]s capability and suitability analyses:

The capability/suitability analysis and suitability determination may or may not provide supporting information for a decision to graze livestock on a specific area.

It seems that in most cases, the analyses would provide information useful in determining whether livestock grazing should be allowed on a certain area of land. Otherwise, why undertake these analyses? Therefore, change the above to the following:

The capability and suitability analyses and determinations shall be used as guidance for assessing where livestock grazing should be allowed in specific areas, along with site-specific analysis of the land(s) in question. Grazing must not be allowed on lands found unsuitable unless a site-specific analysis shows such grazing is appropriate, and impacts to resources would be acceptable. The site-specific analysis can be used to modify acres capable and suitable for grazing.

Section 17.21 discusses resource protection non-use and permittee convenience non-use of forage on an allotment. It states in part the following:

In most cases it would not be appropriate to fill in behind a term grazing permittee in resource protection non-use simply because the non-use was approved in the first place to provide needed rest (such as during or following drought, wildfire, etc.).

Emphasis added. When would it ever be appropriate to allow use of an allotment when it is being rested to protect resources? Any such use would preclude the area in question from receiving the protection it needs.

ISSUING, SUSPENDING, AND CANCELLING TERM GRAZING PERMITS

FSH 2209. 13, section 11.4 addresses expiring 10-year permits. It states in part:

The authorized officer shall not use the occasion of the expiring permit to effect needed reductions for resource management or improvement.

Emphasis original. This could be interpreted as prohibiting the authorized officer from requiring reductions of

stock numbers, season of use, or grazing intensity for any new permit. But such reduction may be necessary to maintain good rangeland conditions and to meet the objectives in the allotment management plan.

Further direction in this section recommends that action be taken to correct any problems during the life of the permit.:

1. If the permittee has not fully complied with the terms and conditions of the expiring permit, the authorized officer should take timely action during the life of the permit to correct any cases of non-compliance according to the uniform suspension and cancellation guidelines set forth in section 16.3.

2. If the permittee[rsquo]s livestock management is resulting in resource problems on the allotment, the authorized officer should immediately work with the permittee to correct the unacceptable conditions, including taking timely permit action, if necessary, according to section 16.3.

Ibid; emphasis original. But note that this seems to contradict direction at FSH 2209.16, section 12.22:

Permit action may become an appropriate response only if objectives have been exceeded in consecutive years or with serious or repeated failure to meet requirements[hellip]

We agree it is preferable for the Forest Service to take action immediately to address resource problems or overstocking in order to correct these problems before they cause more than minor impacts, but the above from FSH 2209.16 discourages this.

Another part of FSH 2209.13, section 11.4 states:

The Forest Service may modify a term grazing permit concurrent with issuance of a new permit following expiration only when appropriate noncompliance procedures, permit modification procedures, or new NEPA supported decisions coincide with the time of issuance, and when one year[rsquo]s notice has been given to the affected permittee(s) as required by 36 CFR 222.4(a)(8).

But what if problems do not arise, or are not considered important, until the permit is about to expire? In this case, the one-year notice period would not have expired, yet a permit could still be reissued.

Unscrupulous permittees could use the provisions of section 11.4 to not comply with permit terms in the permit[rsquo]s final year, knowing or believing that no changes could be made in stock numbers for a new permit, for which they would have preference under section 11.4.

We strongly recommend that direction throughout Manual and Handbook sections addressing grazing clearly state that the Forest Service should address resource problems as soon as they arise, and that failure of the permittee to satisfactorily address these issues in a timely manner can be a consideration in deciding whether to issue a new permit to that permittee. When problems are detected, or first realized to be important, late in a permit term, the directives should state that where necessary, a temporary permit, good for no more than one year, be issued to the permittee(s) prior to issuance of a new 10-year term permit, and that the latter be issued only after the problems have been satisfactorily addressed.

Section 16.4 states that, in addition to suspension and cancellation procedures, the agency shall [ldquo]require the permittee to pay the unauthorized use rate for excess use[rdquo], i. e., for unauthorized livestock grazing on national forest system lands. However, a recently issued draft rule, 85 Fed Reg 69303 et seq., Federal Register of November 2, 2020, the Forest Service proposed modifying 36 CFR 222.50(h) to possibly allow operators grazing excess livestock to escape without penalty in some cases. See our previously submitted comments on this proposed rule, dated December 2, 2020.

As we did in those comments, we strongly urge the agency to charge at least the going rate for forage for operators who graze excess livestock. Indeed, proposed or current sections 81.7 and 81.8 of FSH 2209.13 require payment for forage used by excess stock in most cases. In any case, the Forest Service must ensure that its directives do not contradict laws or regulations.

Section 16.43, addressing suspension of permits, contains the following direction:

If a total suspension action has been taken, notify the permittee each year, in writing, that all fences, water developments, etc. that they are assigned in the permit must be maintained prior to the earliest date that livestock will be entering any of the adjacent pastures or allotments. See Exhibit 01 for an example of a letter to suspend or cancel all or a portion of a term grazing permit, should suspension or cancellation action be necessary.

But if total suspension action has been taken, the permittee would not be allowed to bring stock on to national forest land, thus no stock would be entering.

Is this paragraph intended to apply when 25 percent of a permit has been suspended, per the referenced Exhibit 01 in this section? If so, this should be stated. In any case, this paragraph needs to be deleted or clarified.

SETTING LIMITS ON LIVESTOCK USE

The directives address setting upper limits on livestock use of any given area.

The dependency of local livestock ranchers to hold term grazing permits on NFS grazing allotments in order to round out a properly balanced year-round livestock operation is a key factor to be considered in establishing or changing upper and special limits.

FSH 2209.13, section 12.5. Also:

The general purpose for establishing upper limits is to prevent one grazing permittee or a small percentage of grazing permittees in a particular area from obtaining a disproportionate share of permitted use on NFS land. Setting the upper limits helps to stabilize local communities by maintaining a wide distribution of grazing use on NFS lands among qualified livestock producers in the local area. [hellip]

Factors and criteria to be used in establishing or revising upper limits include:

1. Total amount of grazing use currently available on NFS lands in the area

2. Local demand for grazing use on National Forest System lands.

3. Dependency of present grazing users on National Forest System lands.

4. Present distribution of term permits by ranch size.

5. Numbers and size of ranches with and without FS grazing permits in local areas.

6. Trends in number and size of ranches and farms.

Id. at 12.51.

This is, to say the least, incomplete. The quotes above indicates that the viability of a permittees[rsquo] operation and community stability are major considerations in determining how many stock can graze a given area. While these factors can be considered, the upper limits for how many animals can be grazed on any allotment or any other area must be, first and foremost, based on the capability of the land to support them and other uses, such as wildlife habitat, maintaining soil productivity and integrity, watershed integrity, recreational opportunity, and other uses. The directives must so state. Only after an area of land is determined to be suitable for livestock grazing, considering impacts on all resources and any other potential uses of the same land, should the factors quoted above be considered.

Section 15.43 of FSH 2209.13, in the examples of special terms and conditions for grazing permits, mentions section 15.11. We do not find this section in the version of chapter 10 made available for public comment. Similarly, section 16.4 references section 15.12c, that does not appear in this handbook.

USE OF LIVESTOCK FOR FUEL REDUCTION

Under FSH 2209.13, section 36.3, livestock use permits (i. e., permits allowing holders to graze livestock for up to one year, could be issued to create fuel breaks or to reduce fire hazards. This is generally not an appropriate practice. Grazing would reduce fuels, but not the continuity of fuel, thus a fire could still spread after grazing. To reduce the connectivity of fuel, stock would have to be allowed to eat complete plants (where that is possible, as with domestic sheep), or otherwise destroy vegetation, e. g., via trampling. In other words, areas denuded of vegetation would have to be created to reduce the possibility of fire spread. Such grazing use, especially if done over a large area, would be very detrimental to soils and probably also to water quality of nearby waterbodies.

Fires in rangeland vegetation mostly consisting of grasses, forbs, and shrubs would normally be low intensity, i. e., fires that would usually be beneficial by recycling nutrients and providing better growth at the start of the following growing season. The exception would be areas with cheatgrass, a non-native grass species spread by cattle. Areas where the vegetation is dominated by cheatgrass burn readily, and when they do, the sites revegetate even more heavily to cheatgrass, making them even more prone to fire.

Under FSH 2209.13, section 86, grazing could be allowed without charge

where the purpose of grazing is:

1. Vegetation manipulation to meet resource objectives. The most common examples might be to control competing vegetation for timber regeneration, or to control noxious weeds or other invasive species.

The first example stated above is also not a good idea. Grazing to remove vegetation that might compete with tree regeneration would result in soil compaction from the livestock traversing the land. This would inhibit or prevent seeds from germinating and poking through the compacted soil surface.

Domestic animal grazing can reduce noxious weed coverage, as horses like to eat thistles, and domestic sheep will consume leafy spurge. However, the animals could excrete the seeds of these plants, spreading the weed coverage even if the number of plants on grazed sites is decreased.

Section 83.2 discusses the use of Range Betterment Funds, a program established by the Federal Land Policy and Management Act, as amended by the Public Rangelands Improvement Act (43 U. S. C. 1751(b)). Concerning priorities for such expenditures, it states:

Priority is assigned to those rangeland improvement projects eligible for funding under the RBF, based upon the relative contribution of each project to: 1) the protection of rangeland from deterioration, 2) the rehabilitation of deteriorated rangeland, and 3) the improvement of forage quality and quantity.

Livestock grazing can be very detrimental to fish and wildlife habitat. See, e. g., Fleischner, 1994. Therefore, the following should be added to these priority criteria:

The need for maintaining or improving habitat for fish and wildlife species that may have been, or could be, adversely affected by livestock grazing.

Adding this priority would be consistent with the Public Rangelands Improvement Act, the :Findings and

Declaration of Policy[rdquo] section of which noted that [ldquo]unsatisfactory conditions on public rangelands[hellip]threaten important and frequently critical fish and wildlife habitat[hellip][rdquo]. 43 U. S. C. 1711 (2)(a)(3).

CONCLUSION

The Forest Service[rsquo]s directives must contain clear direction that will help ensure that rangelands are managed in harmony with other resources, as required by the Multiple Use Sustained Yield Act. Livestock grazing should only be permitted where it will: cause minimal impacts to important resources such as soil productivity, watershed integrity, and wildlife habitat, and reduce the contribution livestock grazing makes to greenhouse gas emissions. The capability of the land to handle grazing and the possible impacts to other potential uses must be the key determinants of how many domestic animals can be allowed to graze any area of land.

These directives must not contain any direction that favors livestock grazing over other possible uses, and they must reduce the authority given to grazing associations to administer grazing permits that should be issued and administered by the Forest Service. If allotments remain vacant for more than a few years, they should be considered for closure.

We appreciate this opportunity to comment. Please inform us if and when any of the proposed directives are approved.

Sincerely,

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REFERENCES

Belsky, A. J., A. Matzke, and S. Uselman, 1999. Survey of Livestock Influences on Stream and Riparian Ecosystems in the Western United States. Journal of Soil and Watershed Conservation, (first quarter 1999) 54(1) 419-431.

Fleischner, Thomas L., 1994. Ecological Costs of Livestock Grazing in Western North America.

Conservation Biology, Volume 8, Issue 3 (Sept., 1994), 629-644.