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Organization: State of Utah Public Lands Policy Coordinating Office

Title: RDCC Coordinator

Comments: The state of Utah (State) has reviewed the proposed Forest Service (USFS) Rangeland Management Directives Updates. The State supports the changes to the Forest Service Directives and applauds the USFS for taking this important action. The directives require modernization. The proposed changes have the potential to help not only livestock grazing permittees, but also all forest users. Moreover, the updated directives safeguard the proper use of public lands, contribute to the health and sustainability of the rangelands, and positively impact the economy and the agricultural industry. For your consideration, the State, in collaboration with the Utah Department of Agriculture and Food (UDAF), provides the following comments and recommendations to ensure that responsible grazing practices continue on public lands.

FSM 2200 - RANGELAND MANAGEMENT MANUAL

Chapter 2240 - Rangeland Improvements

2240.3 - Policy 14 - The USFS needs to manage and maintain range improvements in the absence of permittees. It is costly and ineffective to allow range improvements to remain unattended and deteriorate. Permittees contribute to maintaining the range improvements; however, when absent, the USFS needs to ensure that the established range improvements are well maintained and remain in operable condition.

2240.3 - Policy 17 & 18 - These policy sections should recognize that rangeland improvements and infrastructures cannot be maintained indefinitely; specifically concerning allotment fences. At some point, the infrastructure should be replaced, not maintained. The USFS should develop a policy statement for these situations. USFS should make known whose responsibility it is to replace allotment fences. Additionally, USFA should make known how USFS will manage compliance issues with regard to livestock intrusion and failure to maintain infrastructure when the replacement is to be cost-shared and USFS does not have the budget to contribute. It should not be a zero-sum determination, and permit holders should not be liable for failing to maintain fences that require replacement, not maintenance.

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The sentence, "The requirement that grazing permittees are to maintain all existing rangeland improvements (as well as[hellip]," should be changed to read, "The requirement that grazing permittees are to maintain all assigned rangeland improvements (as well as[hellip]." This change provides consistency of previous paragraphs and upholds the permittees responsible for the rangeland improvements assigned to them.

FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK

CHAPTER 10 - TERM GRAZING PERMITS

12 - Eligibility and Qualification Requirements for Term Grazing Permits - UDAF supports planning and preparing for the future improvement and sustainability of agriculture. Allowing for generational transitions to occur in a manner that reduces difficulty will improve and ensure the sustainability of the agricultural industry and ultimately contribute to the proper care of public lands.

12.21 - Base Property Ownership Requirements - UDAF is concerned that certain portions of this section may deter new farmers and ranchers from career opportunities in the agricultural industry due to the value of the land. An example is in the following paragraph that states, "Leasing base property, were not specifically authorized by a grazing agreement or rules of management (see section 24.11), does not satisfy the base property ownership requirement and can result in the rejection of a term grazing permit application." UDAF recommends the USFS include language that promotes a sustainable agriculture venture to get off to a good start.

USFS should allow and accept a leased base property for a term grazing permit. The grazing permit contains three distinct items that concern ownership: 1. The name on the offered base property is the same as the grazing permit's name; 2. The name is shown on the brand that is found on the permitted livestock and registered with the state; and 3. The name is also the same on the grazing permit. UDAF recommends that the name on the base property does not have to be exact as the name on the grazing permit, but instead it could also be that the person applying for a grazing permit just needs to show control of a property that can be used as a base through a lease or other legal document. This would also match what is already accepted with the BLM for base property control and would better standardize public lands permit administration within the federal agencies.

13.21 - Requirements for Using Grant Authority in Grazing Capacity

Determinations - The final paragraph of this section explains that "Priorities for management of active allotments should be considered when allocating resources to pursue stocking vacant allotments[hellip]" USFS should use this same logic when considering vacating an allotment. If management and staffing are not capable of maintaining range improvements, then that allotment should not be vacated.

15.51 - Postponement Due to Required Non-Use for Resource Protection - USFS should revise this section to include the following language: "A new permittee who can validate and resolve management concerns, does not have to wait until resource management concerns are met to obtain the permit. The permit can be waived with preference to someone else to work on the management concerns, perhaps using different techniques."

16.5 - Legal Background Regarding Mediation - Utah's Agricultural Mediation Program, housed in the Utah Department of Agriculture and Food, is one of the oldest certified agricultural mediation programs in the country. As longtime advocates of agricultural mediation, UDAF is pleased to see mediation addressed in the proposed edits to the Handbook. However, such changes to the Handbook may be premature since the regulations governing certified agricultural mediation programs have not been updated to reflect the statutory changes to mediation in the 2018 Farm Bill. The 2018 Farm Bill substantially increased the scope of issues for which mediation services can be offered, including the addition of a catch-all that allows the Secretary of Agriculture or a certified state's commissioner of agriculture to designate any issues for which the agricultural community will be better served by the availability of mediation. In light of these changes, it is incumbent upon USFS to review and update its regulations governing mediation in 36 CFR Part 222, Subpart B to allow and encourage the use of mediation to address a broader range of USFS activities, programs, and disputes. Mediation services have proven invaluable in grazing disputes for scores of ranchers and rangers across the West, and those benefits should be spread to other USFS programs and in particular to pre-enforcement situations.

16.51 - Expectations of Mediation - USFS should delete this subsection in its entirety as it encourages USFS participants to enter mediations in bad faith, which is antithetical to the basic principles of alternative dispute resolution and the executive orders and legislative acts mandating USFS' utilization of mediation. The subsection's narrative of the na[ively] optimistic certified mediator stopped cold by the "not at all unusual" failure of mediation to reach a compromise in grazing permit disputes due to the intransigence of the permittee is so entirely contrary to Utah's experience. While such an objective is disturbing, in itself, it also belies a misunderstanding of the multitudinous benefits of mediation. Mediations conducted by neutral third party mediators allow the parties to express themselves clearly in a positive, safe environment, working through difficult histories and their attendant emotions to understand each other's perspectives and strengthen their relationships going forward. While the potential reduction in a permit suspension is portrayed in this subsection as a negative outcome, the tremendously improved understanding and communication between rangers and permittees make future compliance far more likely than if the permittee is left feeling angry, misunderstood, and ignored.

Over the last four-plus years, the Utah Agricultural Mediation Program has had a 100 percent success rate mediating grazing permit suspensions, which, based on UDAF's conversations with sister states in the West, appears to be the norm rather than the exception for grazing dispute mediations. A good example of the benefits of mediating grazing disputes is a permit suspension UDAF's state program mediated a year ago. The permittee was a chronic violator of his permit for years and was determined not to back down in his quarrel with the USFS even following a suspension of his grazing permit, though local elected officials attempted to help resolve the dispute. A four-hour mediation session concluded with the rancher and ranger agreeing to a slightly reduced suspension. While the proposed subsection 16.51 of the Handbook would portray this as a negative outcome, in this case, the adjustment to the suspension included a robust plan not only to correct permit deficiencies but also for the parties to work together and make joint trips on the range to identify where additional improvements could be made in the allotment. The district ranger later confided to UDAF's mediator-who had mediated several other permit suspensions in the district-that he was sure the mediation would not be successful, but that now he was optimistic he could have a good working relationship with the rancher going forward. Both parties felt heard and understood, which is a happy ending and is a crucial outcome when the relationships between USFS and ranchers can span generations.

16.52 - Mediation Process - This subsection is a good explanation of the mediation process found in USFS mediation regulations. UDAF especially appreciates the explanation about the involvement of others ("representatives") in the mediation with the approval of all the parties in the mediation. This is a different interpretation than what the Utah office of the USFS has used. This inclusion is welcome and UDAF recommends that it be incorporated into USFS's mediation regulations in 36 CFR Part 222, Subpart B as well.

16.6 - Permit Cancellation to Devote the Lands to Another Public Purpose - In the first paragraph, USFS should delete the reference to bighorn sheep. This is an inappropriate reference. Conflicts between domestic sheep and bighorn sheep should not be the only conflict of resource uses that is referenced and should not be singled out. Therefore, remove the reference and leave the sentence broad so it includes all potential conflicts of resource use. The paragraph should be revised to read: "Grazing permits may be canceled in whole or in part where a decision has been made to devote certain NFS lands to another public purpose that precludes grazing by permitted livestock. Examples of devoting lands to another public purpose are the expansion of an existing military reservation or training ground, expansion of a coal mine, development of a rare earth minerals mine, or a decision to vacate an allotment or portion of an allotment due to conflicts with other resource uses." Additionally, The Utah Division of Wildlife Resources is the wildlife authority for all wildlife in the State of Utah. Decisions and controls over wildlife should be deferred to the State. Any federal lands being devoted to wildlife purposes should be consistent with State plans and desires.

17.21 - Non-use for Resource Protection Primarily Due to Drought or Other

Climatic Conditions - The third paragraph of this section states, "In extreme circumstances, the authorized officer may need to require resource protection non-use associated with these events without permittee agreement." This sentence is troubling and could set a dangerous precedent. USFS personnel should coordinate and collaborate with permittees when making these decisions. The phrase, "without permittee agreement" should be removed or remove the entire sentence.

18.39 - Permit Waiver with No Preferred Applicant - The last sentence of the third paragraph in this section states, "[hellip]unless there is a compelling reason to maintain it as a vacant allotment or pasture." USFS should clarify what would be deemed a "compelling reason" as stated in this sentence and provide examples of what would constitute a compelling reason.

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CHAPTER 90 - Range Land Management Decisions

92.1 - Alternatives - USFS's position that "the no action alternative is typically described and analyzed as a no grazing alternative" is inconsistent with the National Environmental Policy Act ("NEPA") and its implementing Center of Environmental Quality (CEQ) regulations. CEQ Regulations require a no-action alternative in an EIS (40 CFR 1502.14(c)). According to CEQ's published document, NEPA's 40 most asked questions, this no action alternative serves as a benchmark or baseline with which to compare the proposed action. The no action analysis provides a benchmark, enabling decision-makers to compare the magnitude of environmental effects of the action alternatives. Two distinct interpretations of "no action" must be considered, depending on the nature of the proposal being evaluated. "The first situation might involve an action [hellip] where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed." In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed." (see See Question 3, available at <https://www.energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act>) Grazing actions generally fall under this "first situation" as the ongoing grazing program will continue as the new grazing plans are being developed. In these situations, a no grazing alternative is essentially a no management alternative ("a useless academic exercise"), because USFS has no idea what range conditions would be under a no grazing alternative making it impossible to compare effects to the proposed action. The Forest Service NEPA handbook seems to understand this as it says in FSH 1909.15 sec. 14.2 "The no-action alternative provides a baseline for estimating the effects of other alternatives." The no action alternative cannot be both, a baseline to compare effects and an alternative to not allow grazing. The two are mutually exclusive. The USFS should eliminate this position from its handbooks. If USFS wants to analyze a no grazing alternative, it cannot be the baseline alternative to which the proposed action is compared, that is violation of NEPA.

General Comments - USFS should change the rules of permit administration that allow for the leasing of a grazing permit. The USFS currently does not allow that rule. Leasing a permit would fall in line with the BLM who does allow that to occur to another qualified permittee. Uniformity of the grazing permits between the two agencies would allow better flexibility to those who have neighboring allotments. A common scenario would be a BLM allotment and a USFS allotment that border each other but are used together as a grazing system. If the permit on BLM land gets leased to another operator, the leasee cannot just take his/her cattle from BLM to USFS without a lot of hassle and financial risk after being forced to put someone else's brand on their cattle to keep legal with current USFS rules.

The USFS should recognize that the grazing systems used to sequester carbon through time, timing, and intensity of grazing be attributed to the permittees who own the livestock and employ them as a tool for sequestration across public lands. Any potential economic benefit from the purchase of carbon credits through sequestration on USFS allotments should be allowed to directly benefit the livestock permittees.

The state appreciates the opportunity to provide comment and looks forward to continuing working with the Forest Service to ensure that responsible grazing practices continue on public lands. Please call or email if you have further questions.

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2240.6 - Livestock Intrusion [ndash] USFS should remove the fourth paragraph. The paragraph is an opinion, and not an accurate statement. UDAF recommends removing the following statement: [ldquo]Despite the legal Federal position regarding boundary fence policy, authorized officers are frequently finding themselves in situations of controversy, accused of being bureaucrats and [ldquo]poor neighbors,[rdquo] and often attempting to get polarized parties together to fix legal dilemmas that no one wants to accept responsibility for, including State and county elected officials.[rdquo]

2242 Nonstructural Rangeland Improvements - USFS should make clear that the Temporary Grazing or Livestock Use Permit (FS-2200-05) should be authorized under a Categorical Exclusion to NEPA. This allows the nonstructural improvement to occur in the requisite time frame and not be delayed by procedure.

2243 [ndash] Maintenance of Improvements [ndash] The second paragraph states that [ldquo]money from the Range Betterment Fund (RBF) shall not be used for maintenance of structural rangeland improvements.[rdquo] This statement changes a decades-long approach to funding range improvement projects. USFS should clarify and support this claim. For example, paragraph 5 under section 2247.11 authorizes RBF funds for rehabilitation and improvements for things like water developments and fence construction, which seems to contradict paragraph 7, which says RBF funds may not be used for maintaining structural improvements. Rehabilitation, protection, and improvement seem distinguishable from maintenance in this section when in reality they are the same. This issue is further confused under section 2247.13b where trail maintenance funds are used for rehabilitation thus supporting the idea that rehabilitation is maintenance.

The sentence, [ldquo]The requirement that grazing permittees are to maintain all existing rangeland improvements (as well as[hellip]),[rdquo] should be changed to read, [ldquo]The requirement that grazing permittees are to maintain all assigned rangeland improvements (as well as[hellip]).[rdquo] This change provides consistency of previous paragraphs and upholds the permittees responsible for the rangeland improvements assigned to them.

FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK

CHAPTER 10 [ndash] TERM GRAZING PERMITS

12 - Eligibility and Qualification Requirements for Term Grazing Permits - UDAF supports planning and preparing for the future improvement and sustainability of agriculture. Allowing for generational transitions to occur in a manner that reduces difficulty will improve and ensure the sustainability of the agricultural industry and ultimately contribute to the proper care of public lands.

12.21 - Base Property Ownership Requirements [ndash] UDAF is concerned that certain portions of this section may deter new farmers and ranchers from career opportunities in the agricultural industry due to the value of the land. An example is in the following paragraph that states, [ldquo]Leasing base property, were not specifically authorized by a grazing agreement or rules of management (see section 24.11), does not satisfy the base property ownership requirement and can result in the rejection of a term grazing permit application.[rdquo] UDAF recommends the USFS include language that promotes a sustainable agriculture venture to get off to a good start.

USFS should allow and accept a leased base property for a term grazing permit. The grazing permit contains three distinct items that concern ownership: 1. The name on the offered base property is the same as the grazing permit's name; 2. The name is shown on the brand that is found on the permitted livestock and registered with the state; and 3. The name is also the same on the grazing permit. UDAF recommends that the name on the base property does not have to be exact as the name on the grazing permit, but instead it could also be that the person applying for a grazing permit just needs to show control of a property that can be used as a base through a lease or other legal document. This would also match what is already accepted with the BLM for base property control and would better standardize public lands permit administration within the federal agencies.

13.21 - Requirements for Using Grant Authority in Grazing Capacity

Determinations [ndash] The final paragraph of this section explains that [ldquo]Priorities for management of active allotments should be considered when allocating resources to pursue stocking vacant allotments[hellip][rdquo] USFS should use this same logic when considering vacating an allotment. If management and staffing are not capable of maintaining range improvements, then that allotment should not be vacated.

15.51 - Postponement Due to Required Non-Use for Resource Protection [ndash] USFS should revise this section to include the following language: [ldquo]A new permittee who can validate and resolve management concerns, does not have to wait until resource management concerns are met to obtain the permit. The permit can be waived with preference to someone else to work on the management concerns, perhaps using different techniques.[rdquo]

16.5 - Legal Background Regarding Mediation [ndash] Utah's Agricultural Mediation Program, housed in the Utah Department of Agriculture and Food, is one of the oldest certified agricultural mediation programs in the country. As longtime advocates of agricultural mediation, UDAF is pleased to see mediation addressed in the proposed edits to the Handbook. However, such changes to the Handbook may be premature since the regulations governing certified agricultural mediation programs have not been updated to reflect the statutory changes to mediation in the 2018 Farm Bill. The 2018 Farm Bill substantially increased the scope of issues for which mediation services can be offered, including the addition of a catch-all that allows the Secretary of Agriculture or a certified state's commissioner of agriculture to designate any issues for which the agricultural community will be better served by the availability of mediation. In light of these changes, it is incumbent upon USFS to review and update its regulations governing mediation in 36 CFR Part 222, Subpart B to allow and encourage the use of mediation to address a broader range of USFS activities, programs, and disputes. Mediation services have proven invaluable in grazing disputes for scores of ranchers and rangers across the West, and those benefits should be spread to other USFS programs and in particular to pre-enforcement situations.

16.51 - Expectations of Mediation - USFS should delete this subsection in its entirety as it encourages USFS participants to enter mediations in bad faith, which is antithetical to the basic principles of alternative dispute resolution and the executive orders and legislative acts mandating USFS's utilization of mediation. The subsection's narrative of the naively optimistic certified mediator stopped cold by the [ldquo]not at all unusual[rdquo] failure of mediation to reach a compromise in grazing permit disputes due to the intransigence of the permittee is so entirely contrary to Utah's experience. While such an objective is disturbing, in itself, it also belies a misunderstanding of the multitudinous benefits of mediation. Mediations conducted by neutral third party mediators allow the parties to express themselves clearly in a positive, safe environment, working through difficult histories and their attendant emotions to understand each other's perspectives and strengthen their relationships going forward. While the potential reduction in a permit suspension is portrayed in this subsection as a negative outcome, the tremendously improved understanding and communication between rangers and permittees make future compliance far more likely than if the permittee is left feeling angry, misunderstood, and ignored.

Over the last four-plus years, the Utah Agricultural Mediation Program has had a 100 percent success rate mediating grazing permit suspensions, which, based on UDAF's conversations with sister states in the West, appears to be the norm rather than the exception for grazing dispute mediations. A good example of the benefits of mediating grazing disputes is a permit suspension UDAF's state program mediated a year ago. The permittee was a chronic violator of his permit for years and was determined not to back down in his quarrel with the USFS even following a suspension of his grazing permit, though local elected officials attempted to help resolve the dispute. A four-hour mediation session concluded with the rancher and ranger agreeing to a slightly reduced suspension. While the proposed subsection 16.51 of the Handbook would portray this as a negative outcome, in this case, the adjustment to the suspension included a robust plan not only to correct permit deficiencies but also for the parties to work together and make joint trips on the range to identify where additional improvements could be made in the allotment. The district ranger later confided to UDAF's mediator—who had mediated several other permit suspensions in the district—that he was sure the mediation would not be successful, but that now he was optimistic he could have a good working relationship with the rancher going forward. Both parties felt heard and understood, which is a happy ending and is a crucial outcome when the relationships between USFS and ranchers can span generations.

16.52 - Mediation Process - This subsection is a good explanation of the mediation process found in USFS mediation regulations. UDAF especially appreciates the explanation about the involvement of others (representatives) in the mediation with the approval of all the parties in the mediation. This is a different interpretation than what the Utah office of the USFS has used. This inclusion is welcome and UDAF recommends that it be incorporated into USFS's mediation regulations in 36 CFR Part 222, Subpart B as well.

16.6 - Permit Cancellation to Devote the Lands to Another Public Purpose — In the first paragraph, USFS should delete the reference to bighorn sheep. This is an inappropriate reference. Conflicts between domestic sheep and bighorn sheep should not be the only conflict of resource uses that is referenced and should not be singled out. Therefore, remove the reference and leave the sentence broad so it includes all potential conflicts of resource use. The paragraph should be revised to read: "Grazing permits may be canceled in whole or in part where a decision has been made to devote certain NFS lands to another public purpose that precludes grazing by permitted livestock. Examples of devoting lands to another public purpose are the expansion of an existing military reservation or training ground, expansion of a coal mine, development of a rare earth minerals mine, or a decision to vacate an allotment or portion of an allotment due to conflicts with other resource uses." Additionally, The Utah Division of Wildlife Resources is the wildlife authority for all wildlife in the State of Utah. Decisions and controls over wildlife should be deferred to the State. Any federal lands being devoted to wildlife purposes should be consistent with State plans and desires.

17.21 - Non-use for Resource Protection Primarily Due to Drought or Other

Climatic Conditions — The third paragraph of this section states, "In extreme circumstances, the authorized officer may need to require resource protection non-use associated with these events without permittee agreement." This sentence is troubling and could set a dangerous precedent. USFS personnel should coordinate and collaborate with permittees when making these decisions. The phrase, "without permittee agreement" should be removed or remove the entire sentence.

18.39 - Permit Waiver with No Preferred Applicant — The last sentence of the third paragraph in this section states, "[hellip]unless there is a compelling reason to maintain it as a vacant allotment or pasture." USFS should clarify what would be deemed a "compelling reason" as stated in this sentence and provide examples of what would constitute a compelling reason.

CHAPTER 90 [ndash] Range Land Management Decisions

92.1 [ndash] Alternatives [ndash] USFS[rsquo]s position that [ldquo]the no action alternative is typically described and analyzed as a no grazing alternative[rdquo] is inconsistent with the National Environmental Policy Act ([ldquo]NEPA[rdquo]) and its implementing Center of Environmental Quality (CEQ) regulations. CEQ Regulations require a no-action alternative in an EIS (40 CFR 1502.14(c). According to CEQ[rsquo]s published document, NEPA[rsquo]s 40 most asked questions, this no action alternative serves as a benchmark or baseline with which to compare the proposed action. The no action analysis provides a benchmark, enabling decision-makers to compare the magnitude of environmental effects of the action alternatives. Two distinct interpretations of [ldquo]no action[rdquo] must be considered, depending on the nature of the proposal being evaluated. [ldquo]The first situation might involve an action [hellip] where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed.[rdquo] In these cases [ldquo]no action[rdquo] is [ldquo]no change[rdquo] from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the [ldquo]no action[rdquo] alternative may be thought of in terms of continuing with the present course of action until that action is changed.[rdquo] (see See Question 3, available at <https://www.energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act>) Grazing actions generally fall under this [ldquo]first situation[rdquo] as the ongoing grazing program will continue as the new grazing plans are being developed. In these situations, a no grazing alternative is essentially a no management alternative ([ldquo]a useless academic exercise[rdquo]), because USFS has no idea what range conditions would be under a no grazing alternative making it impossible to compare effects to the proposed action. The Forest Service NEPA handbook seems to understand this as it says in FSH 1909.15 sec. 14.2 [ldquo]The no-action alternative provides a baseline for estimating the effects of other alternatives.[rdquo] The no action alternative cannot be both, a baseline to compare effects and an alternative to not allow grazing. The two are mutually exclusive. The USFS should eliminate this position from its handbooks. If USFS wants to analyze a no grazing alternative, it cannot be the baseline alternative to which the proposed action is compared, that is violation of NEPA.

General Comments [ndash] USFS should change the rules of permit administration that allow for the leasing of a grazing permit. The USFS currently does not allow that rule. Leasing a permit would fall in line with the BLM who does allow that to occur to another qualified permittee. Uniformity of the grazing permits between the two agencies would allow better flexibility to those who have neighboring allotments. A common scenario would be a BLM allotment and a USFS allotment that border each other but are used together as a grazing system. If the permit on BLM land gets leased to another operator, the leasee cannot just take his/her cattle from BLM to USFS without a lot of hassle and financial risk after being forced to put someone else's brand on their cattle to keep legal with current USFS rules.

The USFS should recognize that the grazing systems used to sequester carbon through time, timing, and intensity of grazing be attributed to the permittees who own the livestock and employ them as a tool for sequestration across public lands. Any potential economic benefit from the purchase of carbon credits through sequestration on USFS allotments should be allowed to directly benefit the livestock permittees.

The state appreciates the opportunity to provide comment and looks forward to continuing working with the Forest Service to ensure that responsible grazing practices continue on public lands. Please call or email if you have further questions.