Data Submitted (UTC 11): 4/16/2021 11:00:00 AM
First name: Bob
Last name: King
Organization: Wyoming Coalition of Local Governments
Title: Chairman
Comments: Please see the attached cover letter and comment tables (3 documents total) for the comments by the Wyoming Coalition of Local Governments.

The Wyoming Coalition of Local Governments ([ldquo]Coalition[rdquo] or [ldquo]CLG[rdquo]) has reviewed the U.S Forest Service[rsquo]s ([ldquo]USFS[rdquo]) proposed changes to the agency[rsquo]s grazing handbooks and manuals. The Coalition has several significant concerns that will negatively impact livestock grazing, rural communities, and the custom and culture of Wyoming. The attached tables detail the Coalition[rsquo]s concerns with the alleged recitation of law in the manuals and the agency[rsquo]s interpretation and implementation of that law in the handbooks. The Coalition adopts the Wyoming Department of Agriculture[rsquo]s comments by incorporation here.

WYOMING COALITION OF LOCAL GOVERNMENTSPROPOSED FOREST SERVICE MANUAL 2200 [ndash] CHAPTER ZERO CODE COMMENTS
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1.Generally Applicable to Zero CodeModify and delete pages as discussed below. The previous versions of FSM 2200 Zero Code were less than 14 pages. The 2020 draft is more than 77 pages. The bloat can be traced to an ill-advised attempt to write a history of the Forest Service, a task outside the purpose of a policy manual, repetitive rebuttal of selected theories advanced by advocates, while ignoring theories advanced by other groups which promote the removal of livestock grazing entirely.
2.2201.1-2201.5Commenter urges Forest Service to return to the 2005 FSM 2200 list of authorities and regulations with updates. The additional explanation is both wordy and of limited value.
3.Zero Code exceeds definition of manual and suffers from numerous errors.
As explained in the cover letter, the Forest Service uses the manual and handbook in lieu of issuing regulations pursuant to the Administrative Procedure Act (APA), 5 U.S.C.[sect][sect]551, 553. The laws governing grazing on the National Forest System lands, including the National Grasslands, require the Forest Service to issue regulations. Bankhead-Jones Farm Tenant Act (BJFTA), 7 U.S.C. [sect]1011, Federal Land Policy and Management Act (FLPMA), 43U.S.C. [sect][sect] 1752, 1740, National Forest Management Act, 16 U.S.C. [sect] 1613. While regulations 36 C.F.R. Part 213 exist for the National Grasslands, the Forest Service never issued rules governing livestock grazing on the National Grasslands. Indeed, the Forest Service has not updated its grazing rules since 1977. 36C.F.R. Part 222. Rather than correct this oversight, the FSM attempts to make policy in

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the absence of a rule that the policy would explain.

The Forest Service website states that the manual [ldquo]contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff in more than one unit to plan and execute assigned programs and activities.[rdquo] The federal courts distinguish policy from a regulation that must conform to the APA. A rule adopts binding standards governing third parties, particularly grazing permittees and associations, which have future effect. 5 U.S.C. [sect] 553(a)(3)(A); Gen. Motors Corp. v. Ruckelshaus, 742 F.2d 1561, 1565 (D.C. Cir. 1984).
4.2201 Authority
This authority requires allowsfor the issuance of necessary regulations.FLPMA and NFMA require the agencies to issue rules to implement the laws. Prior to 1976, the Forest Service contended that the federal property exemption in the APA, 5 U.S.C. [sect] 551, gave the agency the discretion not to issue rules. Previous laws from 1897 and 1950 authorized the Forest Service to issue rules to protect the forest resources. 16 U.S.C. [sect]551. In 1976, Congress made implementation of grazing on national forests subject to mandatory rulemaking and judicial review. 43 U.S.C.[sect] 1740.
5.2201.5This section should be deleted and Forest Service should return to the 2005 edition. An agency policy manual is not the place to list historical laws that have been repealed or have nothing to do with grazing on the National Forest System. The proposed FSM 2201.5 listing the applicable laws also includes explanations which are either incomplete or

erroneous with a bias towards overstating the law.The laws which are still in force should be listed in chronological order.
2201.1 Laws
1. The 1906 Forest Reserve Agriculture Entry Act plus the Homestead Act of 1862. If USDA certified the land was agricultural, the homesteader could make an entry for up to 160 acres within a forest reserve. Opens millions of acres ofpublic land, mostly in theWest, to any U.S. citizenwilling to settle on and farm160 acres for at least 5 yearsto receive title. TheHomestead Act of 1891 andThe Enlarged Homestead Actof 1909 doubles the allowedacreage for citizens from 160to 320. The Stock-RaisingHomestead Act of 1916increases the allowed size to640 acres for ranchingpurposes and likewiseretains the citizenshiprequirement.Delete entirely. The Homestead Act and the 1906 Forest Reserve Agriculture Entry Acts were repealed in 1976. 43 U.S.C. [sect] 1701, n. 704(a) and did not relate to livestock grazing.
2. Organic Administration Act of 1897 (16 U.S.C. [sect]475 et seq.). Provided the main statutory basis for the management of forest reserves in the United States. and authorized theThe FSM inaccurately states the purposes of the Organic Act. The law limited the purposes of the National Forests to [ldquo]improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United

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establishment of regulationsgoverning the occupancy anduse of forest reserves. Inaddition, the Act provides forthe establishment ofregulations to focus onconserving their timber andwater resources for futuregenerations.States; but it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.[rdquo]Section 1, codified at 16 U.S.C. [sect]551, authorized rules to protect the purposes of the National Forests and imposed civil and criminal penalties.
3. Transfer Act of 1905 (16 U.S.C. [sect][sect]472,554 et seq.). Transfer Act of 1905 (16 U.S.C. [sect][sect]472, 554 et seq.). Transfers the forest reserves of the United States from the Department of the Interior, General Land Office, to the Department of Agriculture, Bureau of Forestry. The Act establishes a "service" in the Bureau of Forestry to be designated and known as "The Forest Service." This act was significant because it caused the National Forest Reserves to shift roles from a recreational role to a more economic role usingscience-based management.Delete as irrelevant to the management of National Forest System land for grazing. The explanation lacks authority. No credible history describes the forest reserves managed by DOI as for only recreation. Instead, other accounts, namely G. Pinchot, The Use of the National Forests (USDA 1907) and Gates, P. The History of Public Lands, at 579-582, describe the outcome of the transfer as increasing the US Treasury with fees from timber sales and livestock grazing.
6.25% Act, 16 U.S.C. [sect] 500There is no et seq. The law governing distribution of forest revenues to counties is limited to one section.
7.The Weeks Act, 16 U.S.C.[sect] 515.Congress amended the law in NFMA, 1976, Pub. L. 94[ndash]588, [sect]17(a)(3), Oct. 22, 1976, 90Stat. 2961.
8.Delete reference to Taylor Grazing Act, which appliesThis is another example of the author[rsquo]s overzealous listing of laws without thinking

only to public domain lands.whether the law applies.
9.8. Granger-Thye Act of 1950 (16 U.S.C. [sect][sect]580g, 580h, 580k, 580l et seq.). Authorizes the formation of grazing advisory boards and issuance of Secretary to issue permits to graze for grazing on National Forest NFS lands for a period of time not to exceed 10 years provided that such permits do not limit or restrict any right, title, or interest of the United States in NFS lands or resources. Section 12 authorizes the Secretary to use a portion of grazing fees for range improvement projects for each national forest. on NFS lands.Section 11 of the act authorizes the use of funds for rangeland improvement projects on public and private lands intermingled with or adjacent to outside the national forests if deemed to be in the public interest. NFSunder certain circumstances. (FSM 2204, ex. 01).Many sections of the Granger Thye Act do not pertain to grazing.[sect]580l actually states: [ldquo]The Secretary of Agriculture in regulating grazing on the national forests and other lands administered by him in connection therewith is authorized, upon such terms and conditions as he may deem proper, to issue permits for the grazing of livestock for periods not exceeding ten years and renewals thereof: Provided, That nothing herein shall be construed as limiting or restricting any right, title, or interest of the United States in any land or resources.[rdquo]Section 12 is limited to national forests. FLPMA also amended the fee distribution. 43 U.S.C.[sect] 1751(b).
10.9. Multiple Use-Sustained Yield Act (MUSYA) of 1960 (16 U.S.C. [sect][sect]528-531 et seq.). Authorizes the Secretary to, among other things: administer nationalMUSYA establishes supplemental management objectives,

applies only to national forests and expressly states it does not change management of other lands.The purposes of sections 528 to 531 of this title are declared to be supplemental to, but

forests for the supplemental purposes of outdoor recreation, range, timber, watershed, and wildlife and fish purposes; to develop the surface renewable resources of the national forests for multiple use and sustained yield of several products and services to be obtained from these lands, without impairment of the productivity of the land; and to cooperate with interested state and local governmental agencies and others in the development and management of the national forests.not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title. Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests.

11.Wilderness ActCongress mandates that livestock grazing shall continue. 16 U.S.C. [sect] 1333(d)(4). The 1980 guidelines were necessary to curb zealous efforts by Forest Service to force livestock grazing out of designated wilderness.Unfortunately, a recent study in 2012 proves that the Forest Service ignored congressional direction. Ashcroft, et al., Wilderness Designation and Livestock Grazing: The Gila Example (U. N. Mex. 2012) at 83.

12.NEPANEPA imposes procedures not an outcome and does not require an agency to select the most environmentally beneficial alternative.

13.Wild and Free-Roaming Horses and Burros Act, 16 U.S.C. [sect][sect]1331-1334.Wild and Free-Roaming Horses and Burros Act, 16 U.S.C. [sect][sect]1331-1334, authorizes the protection of wild horse herds where they were determined to be found as of December 1971.In many if not most National Forest System

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units, wild horses or burros were never present.

14.Delete reference to Federal Water Pollution Control Act because Forest Service has no authority to administer.Most land use plans adopt best management practices established by each state.

15.FLPMADelete [para][para]a, b, c. The grazing fee formula was an experimental fee formula adopted in PRIA and expired in 1985. 43 U.S.C. [sect] 1905.President Reagan signed an executive order making the experimental fee formula permanent on Feb. 14, 1986. PRIA also mandated minimum appropriations for range improvements, a minimum $10 million, after 1999. 43 U.S.C. [sect] 1904.[para]d is limited to national forests and public domain[para]e. the law uses the word renewal not issuance of a new permit.[para]f All AMPs are to be prepared and revised [ldquo]in careful and considered cooperation, consultation, and coordination with the permittees[rdquo], state, and private landowners. 43U.S.C. [sect] 1752(d).

Add reference to [ldquo]public lands[rdquo] for [para]g.
Archeological Resource Protection ActLaw was repealed in part and recodified at 50 U.S.C. [sect]30101 in 2014. Pub. L. 113[ndash]287, [sect]7, Dec. 19, 2014, 128 Stat. 3272.
Agriculture Credit ActExplanation is inaccurate. The law recognizes a right to mediation for any person if the state mediation program is accredited by the USDA and for listed issues including [ldquo]Grazing on the National Forest System.[rdquo] 7 U.S.C.[sect] 5101(c)(1)(B)(v).The law does not link the right to mediation to

an appeal and does not limit the right to mediation to cancellation or suspension of the grazing permit. The explanation relies on the regulation, 36 C.F.R. [sect] 251.80, which unlawfully tries to limit the broad grant of mediation. An agency rule that limits rights granted by Congress will be set aside. [CASE].
16.PILT payments are reduced by revenues received from other programs, including oil and gas leasing, coal leasing, and grazing.But PILT funds have nothing to do with livestock grazing and reference to this law should be deleted from FSM 2201.
17.Rescissions Act of 1995This law was never codified, so reference to 7U.S.C. [sect] 5101 should be deleted. This citation is for Agriculture Credit Mediation Act, which was enacted in 1994.The Rescissions Act should also be deleted as the law has been superseded. Forest Service failed to meet the 1996 schedule on many occasions. Central Sierra Envtl. Resource Center v. Stanilslaus National Forest, 304 F. Supp.3d 916 (E.D. 2018) (holding that while the Forest Service had not adhered to the 1996 renewal and NEPA schedule, the congressional measures authorizing renewal superseded the law). The 2014 Defense Appropriations Act made the 1995 Rescissions Act moot, because it amended FLPMA. 43 U.S.C. [sect][sect] 1752(c) and 1752(h).
18.Secure Rural Schools and Community Self- Determination Act (SRSA), 16 U.S.C. [sect] 7101-7153.The PILT is SRSA'scomplement that providespayments to counties fornational grassland acres.Citation is inaccurate. SRSA is codified at 16U.S.C. [sect] 7101-7153. Funding would have expired Sept. 30, 2020, Pub. L. 116-94,[sect]301(a).Bankhead-Jones Farm Tenant Act, 7 U.S.C.[sect] 1012, provides for the counties to receive 25% of the revenues to be used for roads and schools. Revenues paid to the National

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Grassland counties have nothing to do with PILT.
19.Administrative Procedure Act, 5 U.S.C. [sect][sect] 551-559,701-706The law starts at 5 U.S.C. [sect][sect] 551, 553-559;701-706.
20.Independent Offices Appropriation ActDelete this law as it has nothing to do with livestock grazing. Congress superseded it for rights-of-way, 43 U.S.C. [sect] 1761-1763; grazingfees, Ex. Order 12548, 54 Fed. Reg. 5985 (Feb.14, 1986);
21.2201.2 Regulations

[para]5 36 C.F.R. Part 222,Subpart A, citations for authority are wrong!Forest Service rules on grazing cite the Organic Administration Act, 16 U.S.C. [sect][sect] 497, 551, Bankhead-Jones Farm Tenant Act, 7 U.S.C.[sect]1011, Granger-Thye Act, 16 U.S.C. [sect] 580l,
[para]6 36 C.F.R. Part 222,Subpart B, again the citations wrong!Rules adopted in 2013 cite to 7 U.S.C. 5101-5106; 16 U.S.C. [sect][sect] 472, 551. 78 Fed.Reg. 33723, June 5, 2013. FLPMA, 43 U.S.C.[sect] 1752, does not authorize mediation nor memoranda of understanding. Several western states exercised their authority to trigger the [ldquo]careful and considered consultation, cooperation and coordination[rdquo] by way of an MOU sponsoring mediation. The Forest Service entered into an MOU in Colorado that whereby the Forest Service and BLM agreed to participate in mediation of grazing decisions.
[para]7 Grazing feesThe study directed in FLPMA, 43 U.S.C. [sect] 1751 was completed in 1977 and the FLPMA fee formula expired in 1978, 43 U.S.C. [sect] 1901.PRIA adopted an experimental fee formula in 1978 which expired in 1985. The 1977 FederalRegister cited 16 U.S.C. 551; 31 U.S.C. 9701;43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR5985) but the authorities should be updated to

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delete those that have expired.
2201.3 Department Regulation DirectionThis section incorrectly assumes a department can adopt regulations other than pursuant to APA. This is inaccurate. The authorities cited are a mix of stale executive and secretarial orders that have been superseded by regulation, which has the force and effect of law, or by Congress. While historically interesting,[para][para]1-5 should be deleted as there is scant evidence that the management of the National Forest System includes this direction.
[para]6 USDA Secretary Purdue Memo June 12, 2020Secretarial memo does not have independent legal authority. The incoming Secretary is unlikely to share the same views.
22.2201.4 Executive Orders
[para]1 omits the North Dakota Executive Orders 7673 and 7674, 2 Fed. Reg. 1512(1937) signed a few days after the enactment of the BJFTA.These orders applied to LA-ND-1 and LA-ND-2 and were not included in Ex. Order 10046 signed in 1949. The earlier orders implemented the withdrawal of public land adjacent to the acquired lands and established the objectives for the withdrawal.
23.2201.5- 2201.55 Ownership of Federal LandsFederal law clearly establishes ownership of federal lands. 16 U.S.C. [sect] 580l; 43 U.S.C.[sect] 315a. This entire discussion should be deleted. Little if any of the discussion pertains to the grazing program on the National Forest System and on that basis alone it should be deleted.The author fails to distinguish and perhaps did not understand the significant differences in the management of public lands versus management of National Forests or National Grasslands.Other sections consist of poorly stated legal argument. As one example, FSM 2201.55 misstates water rights case law relevant to

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National Forest System in a clumsy effort to refute legal theories advanced in litigation. The citations for authority notably omit state constitutions and state law and well as a long line of U.S. Supreme Court cases holding that the western state water law governs water rights on federal land with the notable exception of a reserved water right. Winters v. United States, 207 U.S. 564, 577 (1908). The reserved water right is limited, moreover to the original purpose of the reservation. United States v. New Mexico, 438 U.S. 696 (1978) (rejected USDA claim for water rights to support multiple uses listed in MUSYA).
FSM 2202
24.FSM 2202.1 National Forest System
Range to rangelandThe proposed 2202 would change all references to range to rangeland. Before PRIA, there was no statutory definition of range or rangeland. PRIA defines rangeland as [ldquo]lands administered by the Secretary of the Interior through the Bureau of Land Management or the Secretary of Agriculture through the Forest Service in the sixteen contiguous Western States on which there is domestic livestock grazing or which the Secretary concerned determines may be suitable for domestic livestock grazing.[rdquo] 43 U.S.C. [sect]1902(a). The PRIA definition does not apply to the National Grasslands. 43 U.S.C. [sect] 1908.
FSM 2202.2 National GrasslandsThe proposed manual would delete this section. There is no sound reason to do so because the National Grasslands are managed pursuant to distinct statutory authority that differs significantly from the National Forests.

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[para]9There is no legal basis for this direction. The Forest Service has no jurisdiction over state or private land. Current regulations only allow the exercise of management if the landowner consents. 36 C.F.R. [sect] 222.2(a). This cannot be revised by manual or handbook.
FSM 2203 [para]5Capability is essential part of management for range.
FSM 2203 [para]6add grazing associations. The associations
25.[para]8
26.[para]9retain grazing associations
27.[para]10Wild Horse Act uses the phrase [ldquo]thriving natural ecological balance.[rdquo] 16 U.S.C. [sect] 1333(a).It is possible to artificially support wild horses but that would not meet the law. Moreover the Forest Service cannot declare a wild horse territory where none existed in 1971. 16 U.S.C.[sect] 1331.
28.[para]12 deletes reference to noxious weedsWhile it is true that invasive plant controls apply to all programs, there is no basis to delete all reference to noxious weed control in the grazing program. Rangeland management is the one program that inventories and monitors weed infestations and this connection should not be removed from policy. Ex. Order 13211 as amended by Ex. Order 13751 established national policy on invasive non-native species.
29.[para]14RetainForest Service should be relying on expertise from state agencies, organizations and ranchers. It is no secret that neither the Forest Service nor the BLM have sufficient number of employees trained in rangeland management. A recreation, wildlife biology, or botany degree is not the same.

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30.FSM 2203.2 National GrasslandsDo not delete.
31.[para]12The obligation to consult, cooperate and coordinate is not dependent on intermingled lands. 36 C.F.R. [sect] 222.3.
32.FSM 2204 Delegation of AuthorityDiscussion does not conform to FSM 1231.03, since the delegations are not limited to positions which report directly to the Deputy Chief.
FSM 2204 creates a number of new authorities and then provides for the delegation of same. In many cases they violate the law, e.g. canceling [ldquo]non-standard grazing agreements.[rdquo] It would be unlawful for the Forest Service to cancel a grazing agreement just because it is [ldquo]non- standard[rdquo] when there is no standard.

COMMENTS ON FSM 2205 DEFINITIONS BYNORTH DAKOTA GRAZING ASSOCIATIONS
#TextComment
General Comments on 2205 DefinitionsPrevious manuals did not have a definitions section. The proposed manual 2205 adopts definitions that can only be adopted through rulemaking. This manual revision more than any other illustrates how the proposed manual is attempting to avoid compliance with rulemaking procedures.If definitions are adopted to enforce the law, then Forest Service must follow rulemaking as prescribed by the APA.The definitions can be grouped into those that copy BLM definitions that were adopted with rulemaking, definitions like allotment

COMMENTS ON FSM 2205 DEFINITIONS BYNORTH DAKOTA GRAZING ASSOCIATIONS
#TextComment
that differ from 36 C.F.R. [sect] 222.1(b)(1), and other definitions that make up new terms. In all respects this manual adds nothing and creates confusion and ultimately litigation.Other terms are useless, such as [ldquo]age of majority.[rdquo] Others are wrong like [ldquo]apparent trend.[rdquo] By definition, trend decisions cannot be made at one point in time and [ldquo]apparent[rdquo] is not a scientific term.Many definitions differ from the law or regulation, while others introduce new termse.g. [ldquo]Administered to Standard[rdquo] which adopt any entirely new criteria to measure compliance with a grazing permit. In several cases the definitions attempt to copy the definitions BLM adopted through rulemaking more than 25 years ago. 43 C.F.R. Part 4300 (Feb. 1995). The Forest Service chose to abandon its own rulemaking effort, thus the manual definitions cannot be described as explaining a rule since there is no rule to explain.Other terms like [ldquo]age of majority[rdquo] are irrelevant to the grazing program and should be deleted.
AllotmentThis should conform to rule 36 C.F.R.[sect] 222.1(b)(1) [ldquo]An allotment is a designated area of land available for livestock grazing.[rdquo]
Strike Animal unitThis section attempts to adopt the Forest Service fat cow theory posited for the Dakota Prairie Grasslands and entirely discredited. The plan concluded that larger cows ate more so the grazing needed to be cut by 40% to account for the [ldquo]fat cows.[rdquo]The Forest Service agreed that the theory

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was scientifically controversial and agreed to Demonstration Project procedures by which the Forest Service and the grazing associations along with the State of North Dakota would work through the capability, trend, and resources issues together. This process was recently renewed for another 10 years. This process has shown there was never any basis to reduce numbers for larger size cows.
AOIsDelete [ldquo]other applicable documents.[rdquo] A grazing permit and respective AMP are the only relevant terms.AOIs are another instance where Forest Service needs to work with the permttee [ldquo]consult, cooperate and coordinate.[rdquo] While AOIs are not an AMP, they modify the AMP based on current resource conditions, i.e. rainfall or snow pack. The [ldquo]three Cs[rdquo] should be an integral part of any interaction with the permittee or grazing association.
Apparent trendThis term should be deleted. It invites poor decisions by condoning a one-time windshield view of the allotment and calling it [ldquo]apparent trend.[rdquo] Trend is the change in resource conditions in response to management as measured over time. There is nothing apparent about trend.The definition uses a lot of the terms BLM adopted in its rangeland health work, which the Forest Service abandoned in 1994.Without the public participation aspects of local rangeland health standards or the accumulated monitoring data used to document the changes, use of these terms will lack the essential context.
AssessmentThis term is defined at 36 C.F.R. [sect]219.6.

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Repeition especially without reference to the 2012 rule is misleading. It is also a term that does not belong in day-to-day management, it is a planning term.
Authorized useBLM term not Forest Service term
Base propertyDelete second sentence. This merely repeats rule with unnecessary [ldquo]At a minimum..... [sect] 222.1(b)(3). There is nominimum and if Forest Service wants to impose a new minimum it must amend the rule.
BenchmarkIf Forest Service is adopting range management terms, these need to be in regulation not randomly selected from reference materials.
BMPs for water qualityForest Service lacks authority to enforce or adopt water quality. Law delegates jurisdiction to EPA, which in turn delegated it to states. As of 2012, all western states adopted BMPs.To the extent manual incorporates Part 219 rules then the definition is also unnecessary.
CancellationRules already define cancel. Delete

Wyoming Coalition of Local Governments on U.S. Forest Service Grazing Handbook 22019.13 Chapters 10-90 & Handbook 22019.16

Existing LanguageProposed RevisionComment
FSH 2209.13 Chapter 10
FSH 2209.13, Ch. 10, [sect]11New Provision [sect]11.5: [ldquo]Term livestock association permits shall be

discontinued (see sec. 11.55 of this chapter).[rdquo]See also New Provision [sect]11.55.There is no rational basis for eliminating livestock associations. The Coalition recognizes that these associations are distinguished from Grazing Associations, but livestock associations perform critical functions. These associations allow permittees to pool resources to complete improvement projects or employ range riders. Individually, a permittee may not be able to do these things and the range benefits from thesynergy created by the association.
FSH 2209.13, Ch. 10, [sect]11New Provision [sect]11.52: [ldquo]On Form 10e, the applicant must waive exclusive grazing management of the private lands involved to the United States for the term of the permit in order to determine livestock numbers and grazing season for the entire allotment (the permittee accepts the FS determination of capacity for the private lands), as well as for allowing access to the private lands necessary for allotment administration.[rdquo]There is no basis in law or fact to grant to the USFS a servitude in the form of [ldquo]exclusive grazing management[rdquo] of the private lands that are part of an on-off permit. The Forest Service has no authority over private lands and this provision, as written, assumes that grazing management on private land does not depend on, or relate to, state water law, conservation easements, mineral extraction, and estate succession concerns. In essence, the USFS demands access and control over private land that would, simultaneously, grant the USFS insight or control over other decisions for ranching families across the country.Moreover, the Coalition seriously doubts that this language would be upheld under the U.S. Constitution in a court of law.Thus, not only does the language appear to lack any foundation, but it also appears to exceed basic tenants of federal authority on private lands.
FSH 2209.13, Ch. 10, [sect]12[sect]12, first three paragraphsThese paragraphs are pejorative, assumptive, unsupported, and ambiguous surplusage. These paragraphs cast permittees as unsophisticated landowners with [ldquo]considerable assets[rdquo] that did not take a [ldquo]paralegal course in college[rdquo] who seek to [ldquo]avoid such things as probate,estate taxes, inheritance taxes, and capital gains.[rdquo]

Existing LanguageProposed RevisionComment
Please strike the first three paragraphs.
FSH 2209.13, Ch. 10, [sect]12[sect]12(b)(5)12(b)(5) discusses the use of quitclaim deeds. Most of the discussion is unsupported, anecdotal, and does not reflect the real and beneficial purposes that a quitclaim deed can provide. A quitclaim is often used in ranching and western families to transfer property due to the simplicity and relationship between the parties. The Forest Service should merely request that the deed be signed in front of a notary and recorded. Theremainder of this section can be deleted.
FSH 2209.13, Ch. 10, [sect]12[sect]12.22(1)First, this lengthy discussion can omit any statement of law and discussion of Supreme Court precedent as a Handbooks implements law and policy but does not develop legal principles.Second, the Handbook reduces Supreme Court holdings to absurdity. Although it is correct that a corporation is not identical to a natural person, it does not follow that a corporation that holds a permit (whose members or shareholders are a father and mother) cannot waive up to 50% of the permit to the son or daughter. The Handbook essentially eliminates the utility of a legal fiction that does not change how the permit would be administered. Rather, the Handbook creates one more obstacle to family succession since most ranches have now afforded themselves the protection of incorporating as a legal entity. This appears to be one more subversive attempt to dismantle families that have triedto ensure that public land ranches continue to operate in the West.
FSH 2209.13, Ch. 10, [sect]13[sect]13.6There is no statutory authority for forage reserves. There are no rules creating forage reserves. Thus, the implementation of a [ldquo]forage reserve[rdquo] in the Handbook is without authority to bind permittees and the public.In practice, a forage reserve has been an area that was effectively retired from grazing despite being suitable for grazing under governing land use plans.This provision should be struck.

Existing LanguageProposed RevisionComment
[sect]13.7The Handbook must recognize that third party permit buyouts do not obligate the USFS to retire an allotment. Those capacity determinations only occur through the NEPA process and permit decisions must be consistent with existing allocations in the land use plan. Thus, if an allotment is determined to be suitable for grazing, the buyout has no impact on the USFS subsequent decision to permit that allotment toanother entity.
FSH 2209.13, Ch. 10, [sect]14[sect]14.23 ([ldquo]The applicant must list the private lands that will be waived to the United States for the term of the permit.[rdquo])[sect]14.24 ([ldquo]Term private land grazing permits should only be issued to persons who waive exclusive grazing use of the lands and if it is in the best interest of the Government to do so.[rdquo])The Coalition repeats its comment from above: there is no basis in law or fact to grant to the USFS a servitude in the form of [ldquo]exclusive grazing management[rdquo] of the private lands that are part of an on-off permit. The Forest Service has no authority over private lands. The rules confirm that [ldquo][a]ssociated private and other public lands should, but only with the consent of the landowner, lessee, or agency, be considered in such designations to form logical range management units.[rdquo] 36 CFR 222.2. There are no rulesthat allow the USFS to assume management of private lands.Moreover, this provision, as written, assumes that grazing management on private land does not depend on, or relate to, state water law, conservation easements, mineral extraction, and estate succession concerns. In essence, the USFS demands access and control over private land that would, simultaneously, grant the USFS insight or control over other decisions for ranching families across the country.The Coalition seriously doubts that this language would be upheld under the U.S. Constitution in a court of law.Thus, not only does the language appear to lack any foundation, but it also appears to exceed basic tenants of federal authority on private lands.
FSH 2209.13, Ch. 10, [sect]15.2 -15.25Section 15.2-25 deleted entirely.The USFS suddenly changes its position with regard to a long used and well established practice that benefits both permittees and forest allotments.

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Grazing associations across the west were formed to aggressively restore the grasslands during the Great Depression. State law defines the objectives and authority of each Association. Associations planted crested wheatgrass, drilled wells, built reservoirs, installed windmills, fences and cattle passes. The combined efforts stabilized grasslands and returned the range to productivity. Without these grazing associations, the effects of the Dust Bowl would have persisted and deepened the economic depression.Associations act on behalf of members under a contract with the Forest Service whereby the association administers the grazing program, issues individual permits to each member, collects fees, uses fees for conservation projects, and administers all aspects of grazing. The association manages the permits and creates operational flexibility for the Forest Service to prioritize other issues and actions while acting as the general overseer of the grazing program.An association also allows, and encourages, succession in the grazing industry which is otherwise cost prohibitive for younger generations. Association members do not own base property individually and thus do not need to front the often prohibitive cost of land, infrastructure and equipment. In other places in the Handbook, the Forest Service admits that younger generations are precluded from pursuing agriculture and livestock grazing because of onerous regulatory frameworks and requirements.It makes no sense to eliminate a mechanism that fosters flexibility, encourages farmer and rancher recruitment, and improves rangelands.
[sect]17.2 ([ldquo]The need for resource protection non-use should be made on an allotment by allotmentbasis.[rdquo])Nonuse should be tailored as narrowly as possible to the area that needs resource protection. Thus, the analysis should occur allotment-by- allotment but the actual nonuse should be limited to the areas that aresensitive, disturbed or should not be grazed. The USFS should also

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evaluate features on the ground including fences or management techniques such as salting or range riders.Finally, this section does not expressly acknowledge that validation ofpermitted numbers may need to be phased in depending on the recover of the area that requires protection.
FSH 2209.13 Chapter 20
No Similar Language23.1, [para]7 [ldquo]The Forest Service may modify the grazing agreement 30 days after written notice to the grazing association to bring the grazing agreement into conformance with changes in law, regulation, policy, or LMP direction; to reflect changes in range improvement status; or to reflect changes in the grazing capacity of the lands identified in the grazingagreement.[rdquo]Handbooks and manuals are statements of policy. Those policies should reflect laws and regulations. Unless the handbooks and manuals reflect changes in laws or regulations, those policies cannot be used as justification for unilateral revocation of grazing agreements. Only changes in law or regulations should be used to change agreements with associations.
No Similar Language23.1, [para]9 [ldquo]Failure of the grazing association to promptly inspect and enforce the terms and conditions of the grazing agreement or grazing association-issued grazing permit terms and conditions, and where necessary address any alleged violations, may lead to action by the Forest Service to suspend or cancelthe grazing agreement.[rdquo]This language appears to demote grazing associations to agents of the Forest Service and eliminates the purpose of the grazing association and ruins the benefit of utilizing grazing associations to benefit forest lands. The grazing associations are not merely an extension of the USFS. Grazing associations administer the permits, resolve issues, and manage the private and public lands with the permittees. The Handbook, therefore, should recognize that the associations have some discretion to work with permittees in administering the association lands.
No Similar LanguageSection 23, Exhibit 1, [para]20 [ldquo]Authorize Forest Service entry on Association controlled lands todetermine whether the livestockCarte blanche authority to access grazing association lands [ndash] including private property [ndash] is unreasonable and there is no rational basis for this term. Access should be requested and granted as necessary.

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grazing activities occurring on the allotments in which these lands are located are consistent with applicable Federal law, regulation, Forest Service policies and procedures, and the terms andconditions of this Agreement.[rdquo]
No Similar Language[sect]24.1 [ldquo]Whenever a member violates any of the terms and conditions of the grazing agreement, association bylaws, or the regulation, limitations, or restrictions imposed by the association pursuant to these bylaws, that member's permit shall be subject to suspension or cancellation by the association Board of Directors. The association will notify the Forest Service of any violations and action taken inresponse.[rdquo]Same as above. This language completely obviates the managerial discretion and purpose of grazing associations. The grazing associations cannot be reduced to ministerial scriveners of the Forest Service if the Forest Service expects to receive the benefits of using grazing associations rather than direct permits.
No Similar Language[sect]25.2 [ldquo]Require the grazing association to pay the bill for collection prior to the placement of livestock, by any member, on allgrazing association administered lands.[rdquo]This provision appears to give the USFS authority over stocking private grounds. The USFS does not have authority over placing livestock on private ground that is administered by the grazing association.
FSH 2209.13, Chapter 90

No Similar Language[sect]94.31The Coalition supports the addition of discussion regarding Annual Operating Instruction meetings being confidential meetings between the permittee and the USFS.
No Similar Language[sect]95.3 [ldquo]In all cases, monitoring mustbe verified by the agency andThis language if too prescriptive. Permittee produced monitoring dataoften is more specific, thorough, and continuous than data that has been

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Conducted according to standardized methods. The monitoring methods to be used as well as where and when monitoring actions are to be conducted, will be documented. Monitoring data that is not collected in the agreed upon manner or that cannot be verified by the agency, may not be accepted or used in allotment planning andadaptive management decisions.[rdquo][ldquo]verified[rdquo] by the USFS. The USFS should not ignore monitoring data if that data provides important insight despite the fact that it might no strictly comply with USFS protocols. The Handbooks should be revised to grant the Authorized Officer discretion to utilize monitoring data if certain indicia of credibility or utility are apparent.
FSH 2209.16, Chapter 10
[sect]10.13 [ldquo]Forage reserve allotments are those allotments where a project-level environmental analysis and decision has been made to authorize use of the allotment forage resources on a periodic, temporary, or otherwise short-term planned basis, under specified management terms and conditions, as a landscape basis tool to improve flexibility in responding to needs (such as drought, fire, restoration, etc.) or opportunities (vegetative manipulation forexample).[rdquo]A forage reserve must be consistent with the governing land use plan and if lands are designated as suitable and operators are willing to graze these lands, a forage reserve violates the USFS consistency requirements. Moreover, since this is fundamentally a grazing decision, the USFS must engage in consultation, coordination and cooperation with permittees before the NEPA process begins.
[sect]10.51 [ldquo]Unlike closing grazing allotments, which should not be done administratively, changing an active allotment to a forage reserve, or to a vacant allotment can also bean administrative decision.[rdquo]A forage reserve is, in the Coalition[rsquo]s experience, a de facto closure of an allotment. Once it is put into reserve status, that allotment does not return to an active and stocked allotment despite being suitable in the land use plan for livestock grazing. Thus, any measure implemented to close an allotment should also be implemented when turning an activestocked allotment to a forage reserve. Moreover, allotment

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improvements often fall into disrepair because the Forest Service does not have the capacity to maintain them to the extent that the permittee did.
[sect]10.52 [ldquo]The decision to change a vacant allotment back to an active allotment may require a site-specific environmental analysis, if one is not already on file. Once this analysis has been completed and the decision made to authorize grazing, the grant process should be utilized to allocate the forage available. (FSH 2209.13, chapter 10,section 13.2)[rdquo]Allotments that have been recently converted to a Forage Reserve should be converted back to an active stocked allotment administratively. This reflects earlier NEPA analysis and conformance with land use plans and rules.
[sect]10.53 Vacating All or Portions of an AllotmentScenarios 4, 5 and 6 reference 36 C.F.R. 222 as support for vacating an allotment. Scenarios 1, 2 and 3, however, do not include any citation to Forest Service rules for support for vacating an allotment. This is likely because Scenario 1 and 2 would violate the consistency requirement found in 16 U.S.C. 1604(i) ([ldquo]Resource plans and permits, contracts, and other instruments for

the use and occupancy of National Forest System lands shall be consistent with the land management plans.[rdquo]).
[sect]10.54 Decisions to Close Grazing AllotmentsGrazing allotments should rarely, if ever, be closed. Closing an allotment essentially binds the agency[rsquo]s hands for a prolonged period of time [ndash] usually until the LUP is amended or revised [ndash] and grazing administration and habitat conditions can change drastically in that time. The Forest Service should retain those acres as available in the event drought, permittee interest, or other conditions increase the interest in thoseacres.
17.12 [ldquo]If an allotment becomes vacant, the first decision should be to attempt to restock it or tocombine it with an adjacent activeFeasibility is a highly ambiguous and fluid concept. There are innumerable factors that could make a decision infeasible. For example, a restocking action could be deemed not feasible if the Authorized Officer is alsoworking on several other projects and personnel do not have time to

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allotment. If these decisions are not feasible, then each allotment that becomes vacant should be evaluated for its potential for designation as a forage reserveallotment.[rdquo]complete the restocking. The Handbook should qualify that [ldquo]feasibility[rdquo] does not include workload or personnel shortages or other administrative obstacles to completing the tasks necessary to restocking.

The Wyoming Coalition of Local Governments ([ldquo]Coalition[rdquo] or [ldquo]CLG[rdquo]) has reviewed the U.S Forest Service[rsquo]s ([ldquo]USFS[rdquo]) proposed changes to the agency[rsquo]s grazing handbooks and manuals. The Coalition has several significant concerns that will negatively impact livestock grazing, rural communities, and the custom and culture of Wyoming. The attached tables detail the Coalition[rsquo]s concerns with the alleged recitation of law in the manuals and the agency[rsquo]s interpretation and implementation of that law in the handbooks. The Coalition adopts the Wyoming Department of Agriculture[rsquo]s comments by incorporation here.

WYOMING COALITION OF LOCAL GOVERNMENTSPROPOSED FOREST SERVICE MANUAL 2200 [ndash] CHAPTER ZERO CODE COMMENTS
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1.Generally Applicable to Zero CodeModify and delete pages as discussed below. The previous versions of FSM 2200 Zero Code were less than 14 pages. The 2020 draft is more than 77 pages. The bloat can be traced to an ill-advised attempt to write a history of the Forest Service, a task outside the purpose of a policy manual, repetitive rebuttal of selected theories advanced by advocates, while ignoring theories advanced by other groups which promote the removal of livestock grazing entirely.
2.2201.1-2201.5Commenter urges Forest Service to return to the 2005 FSM 2200 list of authorities and regulations with updates. The additional explanation is both wordy and of limited value.
3.Zero Code exceeds definition of manual and suffers from numerous errors.
As explained in the cover letter, the Forest Service uses the manual and handbook in lieu of issuing regulations pursuant to the Administrative Procedure Act (APA), 5 U.S.C.[sect][sect]551, 553. The laws governing grazing on the National Forest System lands, including the National Grasslands, require the Forest Service to issue regulations. Bankhead-Jones Farm Tenant Act (BJFTA), 7 U.S.C. [sect]1011, Federal Land Policy and Management Act (FLPMA), 43U.S.C. [sect][sect] 1752, 1740, National Forest Management Act, 16 U.S.C. [sect] 1613. While regulations 36 C.F.R. Part 213 exist for the National Grasslands, the Forest Service never issued rules governing livestock grazing on the National Grasslands. Indeed, the Forest Service has not updated its grazing rules since 1977. 36C.F.R. Part 222. Rather than correct this oversight, the FSM attempts to make policy

in

the absence of a rule that the policy would explain.
The Forest Service website states that the manual [ldquo]contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff in more than one unit to plan and execute assigned programs and activities.[rdquo] The federal courts distinguish policy from a regulation that must conform to the APA. A rule adopts binding standards governing third parties, particularly grazing permittees and associations, which have future effect. 5 U.S.C. [sect] 553(a)(3)(A); Gen. Motors Corp. v. Ruckelshaus, 742 F.2d 1561, 1565 (D.C. Cir. 1984).
4.2201 Authority
This authority requires allowsfor the issuance of necessary regulations.FLPMA and NFMA require the agencies to issue rules to implement the laws. Prior to 1976, the Forest Service contended that the federal property exemption in the APA, 5 U.S.C. [sect] 551, gave the agency the discretion not to issue rules. Previous laws from 1897 and 1950 authorized the Forest Service to issue rules to protect the forest resources. 16 U.S.C. [sect]551. In 1976, Congress made implementation of grazing on national forests subject to mandatory rulemaking and judicial review. 43 U.S.C.[sect] 1740.
5.2201.5This section should be deleted and Forest Service should return to the 2005 edition. An agency policy manual is not the place to list historical laws that have been repealed or have nothing to do with grazing on the National Forest System. The proposed FSM 2201.5 listing the applicable laws also includes explanations which are either incomplete or

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erroneous with a bias towards overstating the law.The laws which are still in force should be listed in chronological order.
2201.1 Laws
1. The 1906 Forest Reserve Agriculture Entry Act plus the Homestead Act of 1862. If USDA certified the land was agricultural, the homesteader could make an entry for up to 160 acres within a forest reserve. Opens millions of acres ofpublic land, mostly in theWest, to any U.S. citizenwilling to settle on and farm160 acres for at least 5 yearsto receive title. TheHomestead Act of 1891 andThe Enlarged Homestead Actof 1909 doubles the allowedacreage for citizens from 160to 320. The Stock-RaisingHomestead Act of 1916increases the allowed size to640 acres for ranchingpurposes and likewiseretains the citizenshiprequirement.Delete entirely. The Homestead Act and the 1906 Forest Reserve Agriculture Entry Acts were repealed in 1976. 43 U.S.C. [sect] 1701, n. 704(a) and did not relate to livestock grazing.
2. Organic Administration Act of 1897 (16 U.S.C. [sect]475 et seq.). Provided the main statutory basis for the

management of forest reserves in the United States. and authorized theThe FSM inaccurately states the purposes of the Organic Act. The law limited the purposes of the National Forests to [ldquo]improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United

establishment of regulationsgoverning the occupancy anduse of forest reserves. Inaddition, the Act provides forthe establishment ofregulations to focus onconserving their timber andwater resources for futuregenerations.States; but it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.[rdquo]Section 1, codified at 16 U.S.C. [sect]551, authorized rules to protect the purposes of the National Forests and imposed civil and criminal penalties.
3. Transfer Act of 1905 (16 U.S.C. [sect][sect]472,554 et seq.). Transfer Act of 1905 (16 U.S.C. [sect][sect]472, 554 et seq.). Transfers the forest reserves of the United States from the Department of the Interior, General Land Office, to the Department of Agriculture, Bureau of Forestry. The Act establishes a "service" in the Bureau of Forestry to be designated and known as "The Forest Service." This act was significant because it caused the National Forest Reserves to shift roles from a recreational role to a more economic role usingscience-based management.Delete as irrelevant to the management of National Forest System land for grazing. The explanation lacks authority. No credible history describes the forest reserves managed by DOI as for only recreation. Instead, other accounts, namely G. Pinchot, The Use of the National Forests (USDA 1907) and Gates, P. The History of Public Lands, at 579-582, describe the outcome of the transfer as increasing the US Treasury with fees from timber sales and livestock grazing.
6.25% Act, 16 U.S.C. [sect] 500There is no et seq. The law governing distribution of forest revenues to counties is limited to one section.
7.The Weeks Act, 16 U.S.C.[sect] 515.Congress amended the law in NFMA, 1976, Pub. L. 94[ndash]588, [sect]17(a)(3), Oct. 22, 1976, 90Stat. 2961.
8.Delete reference to Taylor Grazing Act, which appliesThis is another example of the author[rsquo]s overzealous listing of laws without thinking

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only to public domain lands.whether the law applies.
9.8. Granger-Thye Act of 1950 (16 U.S.C. [sect][sect]580g, 580h, 580k, 580l et seq.). Authorizes the formation of grazing advisory boards and issuance of Secretary to issue permits to graze for grazing on National Forest NFS lands for a period of time not to exceed 10 years provided that such permits do not limit or restrict any right, title, or interest of the United States in NFS lands or resources. Section 12 authorizes the Secretary to

use a portion of grazing fees for range improvement projects for each national forest. on NFS lands.Section 11 of the act authorizes the use of funds for rangeland improvement projects on public and private lands intermingled with or adjacent to outside the national forests if deemed to be in the public interest. NFSunder certain circumstances. (FSM 2204, ex. 01).Many sections of the Granger Thye Act do not pertain to grazing.[sect]580l actually states: [ldquo]The Secretary of Agriculture in regulating grazing on the national forests and other lands administered by him in connection therewith is authorized, upon such terms and conditions as he may deem proper, to issue permits for the grazing of livestock for periods not exceeding ten years and renewals thereof: Provided, That nothing herein shall be construed as limiting or restricting any right, title, or interest of the United States in any land or resources.[rdquo]Section 12 is limited to national forests. FLPMA also amended the fee distribution. 43 U.S.C.[sect] 1751(b).

10.9. Multiple Use-Sustained Yield Act (MUSYA) of 1960 (16 U.S.C. [sect][sect]528-531 et seq.). Authorizes the Secretary to, among other things: administer nationalMUSYA establishes supplemental management objectives, applies only to national forests and expressly states it does not change management of other lands.The purposes of sections 528 to 531 of this title are declared to be supplemental to, but

forests for the supplemental purposes of outdoor recreation, range, timber, watershed, and wildlife and fish purposes; to develop the surface renewable resources of the national forests for multiple use and sustained yield of several products and services to be obtained from these lands, without impairment of the productivity of the land; and to cooperate with interested state and local governmental agencies and others in the development and management of the national forests.not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title. Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests.

11.Wilderness ActCongress mandates that livestock grazing shall continue. 16 U.S.C. [sect] 1333(d)(4). The 1980 guidelines were necessary to curb zealous efforts by Forest Service to force livestock grazing out of designated wilderness.Unfortunately, a recent study in 2012 proves that the Forest Service ignored congressional direction. Ashcroft, et al., Wilderness Designation and Livestock Grazing: The Gila Example (U. N. Mex. 2012) at 83.

12.NEPANEPA imposes procedures not an outcome and does not require an agency to select the most environmentally beneficial alternative.

13.Wild and Free-Roaming Horses and Burros Act, 16 U.S.C. [sect][sect]1331-1334.Wild and Free-Roaming Horses and Burros Act, 16 U.S.C. [sect][sect]1331-1334, authorizes the protection of wild horse herds where they were determined to be found as of December 1971.In many if not most National Forest System

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units, wild horses or burros were never present.
14.Delete reference to Federal Water Pollution Control Act because Forest Service has no authority to administer.Most land use plans adopt best management practices established by each state.
15.FLPMADelete [para][para]a, b, c. The grazing fee formula was an experimental fee formula adopted in PRIA and expired in 1985. 43 U.S.C. [sect] 1905.President Reagan signed an executive order making the experimental fee formula permanent on Feb. 14, 1986. PRIA also mandated minimum appropriations for range improvements, a minimum $10 million, after 1999. 43 U.S.C. [sect] 1904.[para]d is limited to national forests and public domain[para]e. the law uses the word renewal not issuance of a new permit.[para]f All AMPs are to be prepared and revised [ldquo]in careful and considered cooperation, consultation, and coordination with the permittees[rdquo], state, and private landowners. 43U.S.C. [sect] 1752(d).
Add reference to [ldquo]public lands[rdquo] for [para]g.
Archeological Resource Protection ActLaw was repealed in part and recodified at 50 U.S.C. [sect]30101 in 2014. Pub. L. 113[ndash]287, [sect]7, Dec. 19, 2014, 128 Stat. 3272.
Agriculture Credit ActExplanation is inaccurate. The law recognizes a right to mediation for any person if the state mediation program is accredited by the USDA and for listed issues including [ldquo]Grazing on the National Forest System.[rdquo] 7 U.S.C.[sect] 5101(c)(1)(B)(v).The law does not link the right to mediation to

an appeal and does not limit the right to mediation to cancellation or suspension of the grazing permit. The explanation relies on the regulation, 36 C.F.R. [sect] 251.80, which unlawfully tries to limit the broad grant of mediation. An agency rule that limits rights granted by Congress will be set aside. [CASE].
16.PILT payments are reduced by revenues received from other programs, including oil and gas leasing, coal leasing, and grazing.But PILT funds have nothing to do with livestock grazing and reference to this law should be deleted from FSM 2201.
17.Rescissions Act of 1995This law was never codified, so reference to 7U.S.C. [sect] 5101 should be deleted. This citation is for Agriculture Credit Mediation Act, which was enacted in 1994.The Rescissions Act should also be deleted as the law has been superseded. Forest Service failed to meet the 1996 schedule on many occasions. Central Sierra Envtl. Resource Center v. Stanilslaus National Forest, 304 F. Supp.3d 916 (E.D. 2018) (holding that while the Forest Service had not adhered to the 1996 renewal and NEPA schedule, the congressional measures authorizing renewal superseded the law). The 2014 Defense Appropriations Act made the 1995 Rescissions Act moot, because it amended FLPMA. 43 U.S.C. [sect][sect] 1752(c) and 1752(h).
18.Secure Rural Schools and Community Self- Determination Act (SRSA), 16 U.S.C. [sect] 7101-7153.The PILT is SRSA'scomplement that providespayments to counties fornational grassland acres.Citation is inaccurate. SRSA is codified at 16U.S.C. [sect] 7101-7153. Funding would have expired Sept. 30, 2020, Pub. L. 116-94,[sect]301(a).Bankhead-Jones Farm Tenant Act, 7 U.S.C.[sect] 1012, provides for the counties to receive 25% of the revenues to be used for roads and schools. Revenues paid to the National

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Grassland counties have nothing to do with PILT.
19.Administrative Procedure Act, 5 U.S.C. [sect][sect] 551-559,701-706The law starts at 5 U.S.C. [sect][sect] 551, 553-559;701-706.
20.Independent Offices Appropriation ActDelete this law as it has nothing to do with livestock grazing. Congress superseded it for rights-of-way, 43 U.S.C. [sect] 1761-1763; grazingfees, Ex. Order 12548, 54 Fed. Reg. 5985 (Feb.14, 1986);
21.2201.2 Regulations
[para]5 36 C.F.R. Part 222,Subpart A, citations for authority are wrong!Forest Service rules on grazing cite the Organic Administration Act, 16 U.S.C. [sect][sect] 497, 551, Bankhead-Jones Farm Tenant Act, 7 U.S.C.[sect]1011, Granger-Thye Act, 16 U.S.C. [sect] 580l,
[para]6 36 C.F.R. Part 222,Subpart B, again the citations wrong!Rules adopted in 2013 cite to 7 U.S.C. 5101-5106; 16 U.S.C. [sect][sect] 472, 551. 78 Fed.Reg. 33723, June 5, 2013. FLPMA, 43 U.S.C.[sect] 1752, does not authorize mediation nor memoranda of understanding. Several western states exercised their authority to trigger the [ldquo]careful and considered consultation, cooperation and coordination[rdquo] by way of an MOU sponsoring mediation. The Forest Service entered into an MOU in Colorado that whereby the Forest Service and BLM agreed to participate in mediation of grazing decisions.
[para]7 Grazing feesThe study directed in FLPMA, 43 U.S.C. [sect] 1751 was completed in 1977 and the FLPMA fee formula expired in 1978, 43 U.S.C. [sect] 1901.PRIA adopted an experimental fee formula in 1978 which expired in 1985. The 1977 FederalRegister cited 16 U.S.C. 551; 31 U.S.C. 9701;43 U.S.C. 1751, 1752, 1901; E.O. 12548 (51 FR5985) but the authorities should be updated to

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delete those that have expired.
2201.3 Department Regulation DirectionThis section incorrectly assumes a department can adopt regulations other than pursuant to APA. This is inaccurate. The authorities cited are a mix of stale executive and secretarial orders that have been superseded by regulation, which has the force and effect of law, or by Congress. While historically interesting,[para][para]1-5 should be deleted as there is scant evidence that the management of the National Forest System includes this direction.
[para]6 USDA Secretary Purdue Memo June 12, 2020Secretarial memo does not have independent legal authority. The incoming Secretary is unlikely to share the same views.
22.2201.4 Executive Orders
[para]1 omits the North Dakota Executive Orders 7673 and 7674, 2 Fed. Reg. 1512(1937) signed a few days after the enactment of the BJFTA.These orders applied to LA-ND-1 and LA-ND-2 and were not included in Ex. Order 10046 signed in 1949. The earlier orders implemented the withdrawal of public land adjacent to the acquired lands and established the objectives for the withdrawal.
23.2201.5- 2201.55 Ownership of Federal LandsFederal law clearly establishes ownership of federal lands. 16 U.S.C. [sect] 580l; 43 U.S.C.[sect] 315a. This entire discussion should be deleted. Little if any of the discussion pertains to the grazing program on the National Forest System and on that basis alone it should be deleted.The

author fails to distinguish and perhaps did not understand the significant differences in the management of public lands versus management of National Forests or National Grasslands.Other sections consist of poorly stated legal argument. As one example, FSM 2201.55 misstates water rights case law relevant to

National Forest System in a clumsy effort to refute legal theories advanced in litigation. The citations for authority notably omit state constitutions and state law and well as a long line of U.S. Supreme Court cases holding that the western state water law governs water rights on federal land with the notable exception of a reserved water right. Winters v. United States, 207 U.S. 564, 577 (1908). The reserved water right is limited, moreover to the original purpose of the reservation. United States v. New Mexico, 438 U.S. 696 (1978) (rejected USDA claim for water rights to support multiple uses listed in MUSYA).
FSM 2202
24.FSM 2202.1 National Forest System
Range to rangelandThe proposed 2202 would change all references to range to rangeland. Before PRIA, there was no statutory definition of range or rangeland. PRIA defines rangeland as [ldquo]lands administered by the Secretary of the Interior through the Bureau of Land Management or the Secretary of Agriculture through the Forest Service in the sixteen contiguous Western States on which there is domestic livestock grazing or which the Secretary concerned determines may be suitable for domestic livestock grazing.[rdquo] 43 U.S.C. [sect]1902(a). The PRIA definition does not apply to the National Grasslands. 43 U.S.C. [sect] 1908.
FSM 2202.2 National GrasslandsThe proposed manual would delete this section. There is no sound reason to do so because the National Grasslands are managed pursuant to distinct statutory authority that differs significantly from the National Forests.

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[para]9There is no legal basis for this direction. The Forest Service has no jurisdiction over state or private land. Current regulations only allow the exercise of management if the landowner consents. 36 C.F.R. [sect] 222.2(a). This cannot be revised by manual or handbook.
FSM 2203 [para]5Capability is essential part of management for range.
FSM 2203 [para]6add grazing associations. The associations
25.[para]8
26.[para]9retain grazing associations
27.[para]10Wild Horse Act uses the phrase [ldquo]thriving natural ecological balance.[rdquo] 16 U.S.C. [sect] 1333(a).It is possible to artificially support wild horses but that would not meet the law. Moreover the Forest Service cannot declare a wild horse territory where none existed in 1971. 16 U.S.C.[sect] 1331.
28.[para]12 deletes reference to noxious weedsWhile it is true that invasive plant controls apply to all programs,

there is no basis to delete all reference to noxious weed control in the grazing program. Rangeland management is the one program that inventories and monitors weed infestations and this connection should not be removed from policy. Ex. Order 13211 as amended by Ex. Order 13751 established national policy on invasive non-native species.
29.[para]14RetainForest Service should be relying on expertise from state agencies, organizations and ranchers. It is no secret that neither the Forest Service nor the BLM have sufficient number of employees trained in rangeland management. A recreation, wildlife biology, or botany degree is not the same.

WYOMING COALITION OF LOCAL GOVERNMENTSPROPOSED FOREST SERVICE MANUAL 2200 [ndash] CHAPTER ZERO CODE COMMENTS
COMMENTTEXT CITATIONRECOMMENDED CHANGE
30.FSM 2203.2 National GrasslandsDo not delete.
31.[para]12The obligation to consult, cooperate and coordinate is not dependent on intermingled lands. 36 C.F.R. [sect] 222.3.
32.FSM 2204 Delegation of AuthorityDiscussion does not conform to FSM 1231.03, since the delegations are not limited to positions which report directly to the Deputy Chief.
FSM 2204 creates a number of new authorities and then provides for the delegation of same. In many cases they violate the law, e.g. canceling [ldquo]non-standard grazing agreements.[rdquo] It would be unlawful for the Forest Service to cancel a grazing agreement just because it is [ldquo]non- standard[rdquo] when there is no standard.

COMMENTS ON FSM 2205 DEFINITIONS BYNORTH DAKOTA GRAZING ASSOCIATIONS
#TextComment
General Comments on 2205 DefinitionsPrevious manuals did not have a definitions section. The proposed manual 2205 adopts definitions that can only be adopted through rulemaking. This manual revision more than any other illustrates how the proposed manual is attempting to avoid compliance with rulemaking procedures.If definitions are adopted to enforce the law, then Forest Service must follow rulemaking as prescribed by the APA.The definitions can be grouped into those that copy BLM definitions that were adopted with rulemaking, definitions like allotment

COMMENTS ON FSM 2205 DEFINITIONS BYNORTH DAKOTA GRAZING ASSOCIATIONS
#TextComment
that differ from 36 C.F.R. [sect] 222.1(b)(1), and other definitions that make up new terms. In all respects this manual adds nothing and creates confusion and ultimately litigation.Other terms are useless, such as [ldquo]age of majority.[rdquo] Others are wrong like [ldquo]apparent trend.[rdquo] By definition, trend decisions cannot be made at one point in time and [ldquo]apparent[rdquo] is not a scientific term.Many definitions differ from the law or regulation, while others introduce new termse.g. [ldquo]Administered to Standard[rdquo] which adopt any entirely new criteria to measure compliance with a grazing permit. In several cases the definitions attempt to copy

the definitions BLM adopted through rulemaking more than 25 years ago. 43 C.F.R. Part 4300 (Feb. 1995). The Forest Service chose to abandon its own rulemaking effort, thus the manual definitions cannot be described as explaining a rule since there is no rule to explain.Other terms like [ldquo]age of majority[rdquo] are irrelevant to the grazing program and should be deleted.
AllotmentThis should conform to rule 36 C.F.R.[sect] 222.1(b)(1) [ldquo]An allotment is a designated area of land available for livestock grazing.[rdquo]
Strike Animal unitThis section attempts to adopt the Forest Service fat cow theory posited for the Dakota Prairie Grasslands and entirely discredited. The plan concluded that larger cows ate more so the grazing needed to be cut by 40% to account for the [ldquo]fat cows.[rdquo]The Forest Service agreed that the theory

was scientifically controversial and agreed to Demonstration Project procedures by which the Forest Service and the grazing associations along with the State of North Dakota would work through the capability, trend, and resources issues together. This process was recently renewed for another 10 years. This process has shown there was never any basis to reduce numbers for larger size cows.
AOIsDelete [ldquo]other applicable documents.[rdquo] A grazing permit and respective AMP are the only relevant terms.AOIs are another instance where Forest Service needs to work with the permttee [ldquo]consult, cooperate and coordinate.[rdquo] While AOIs are not an AMP, they modify the AMP based on current resource conditions, i.e. rainfall or snow pack. The [ldquo]three Cs[rdquo] should be an integral part of any interaction with the permittee or grazing association.
Apparent trendThis term should be deleted. It invites poor decisions by condoning a one-time windshield view of the allotment and calling it [ldquo]apparent trend.[rdquo] Trend is the change in resource conditions in response to management as measured over time. There is nothing apparent about trend.The definition uses a lot of the terms BLM adopted in its rangeland health work, which the Forest Service abandoned in 1994.Without the public participation aspects of local rangeland health standards or the accumulated monitoring data used to document the changes, use of these terms will lack the essential context.
AssessmentThis term is defined at 36 C.F.R. [sect]219.6.

COMMENTS ON FSM 2205 DEFINITIONS BYNORTH DAKOTA GRAZING ASSOCIATIONS
#TextComment
Repeition especially without reference to the 2012 rule is misleading. It is also a term that does not belong in day-to-day management, it is a planning term.
Authorized useBLM term not Forest Service term
Base propertyDelete second sentence. This merely repeats rule with unnecessary [ldquo]At a minimum..... [sect] 222.1(b)(3). There is nominimum and if Forest Service wants to impose a new minimum it must amend the rule.
BenchmarkIf Forest Service is adopting range management terms, these need to be in regulation not randomly selected from reference materials.
BMPs for water qualityForest Service lacks authority to enforce or adopt water quality. Law delegates jurisdiction

to EPA, which in turn delegated it to states. As of 2012, all western states adopted BMPs.To the extent manual incorporates Part 219 rules then the definition is also unnecessary.
CancellationRules already define cancel. Delete

Wyoming Coalition of Local Governments on U.S. Forest Service Grazing Handbook 22019.13 Chapters 10-90 & Handbook 22019.16

Existing LanguageProposed RevisionComment
FSH 2209.13 Chapter 10
FSH 2209.13, Ch. 10, [sect]11New Provision [sect]11.5: [ldquo]Term livestock association permits shall be discontinued (see sec. 11.55 of this chapter).[rdquo]See also New Provision [sect]11.55.There is no rational basis for eliminating livestock associations. The Coalition recognizes that these associations are distinguished from Grazing Associations, but livestock associations perform critical functions. These associations allow permittees to pool resources to complete improvement projects or employ range riders. Individually, a permittee may not be able to do these things and the range benefits from thesynergy created by the association.
FSH 2209.13, Ch. 10, [sect]11New Provision [sect]11.52: [ldquo]On Form 10e, the applicant must waive exclusive grazing management of the private lands involved to the United States for the term of the permit in order to determine livestock numbers and grazing season for the entire allotment (the permittee accepts the FS determination of capacity for the private lands), as well as for allowing access to the private lands necessary for allotment administration.[rdquo]There is no basis in law or fact to grant to the USFS a servitude in the form of [ldquo]exclusive grazing management[rdquo] of the private lands that are part of an on-off permit. The Forest Service has no authority over private lands and this provision, as written, assumes that grazing management on private land does not depend on, or relate to, state water law, conservation easements, mineral extraction, and estate succession concerns. In essence, the USFS demands access and control over private land that would, simultaneously, grant the USFS insight or control over other decisions for ranching families across the country.Moreover, the Coalition seriously doubts that this language would be upheld under the U.S. Constitution in a court of law.Thus, not only does the language appear to lack any foundation, but it also appears to exceed basic tenants of federal authority on private lands.
FSH 2209.13, Ch. 10, [sect]12[sect]12, first three paragraphsThese paragraphs are pejorative, assumptive, unsupported, and ambiguous surplusage. These paragraphs cast permittees as unsophisticated landowners with [ldquo]considerable assets[rdquo] that did not take a [ldquo]paralegal course in college[rdquo] who seek to [ldquo]avoid such things as probate,estate taxes, inheritance taxes, and capital gains.[rdquo]

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Please strike the first three paragraphs.
FSH 2209.13, Ch. 10, [sect]12[sect]12(b)(5)12(b)(5) discusses the use of quitclaim deeds. Most of the discussion is unsupported, anecdotal, and does not reflect the real and beneficial purposes that a quitclaim deed can provide. A quitclaim is often used in ranching and western families to transfer property due to the simplicity and relationship between the parties. The Forest Service should merely request that the deed be signed in front of a notary and recorded. Theremainder of this section can be deleted.
FSH 2209.13, Ch. 10, [sect]12[sect]12.22(1)First, this lengthy discussion can omit any statement of law and discussion of Supreme Court precedent as a Handbooks implements law and policy but does not develop legal principles.Second, the Handbook reduces Supreme Court holdings to absurdity. Although it is correct that a corporation is not identical to a natural person, it does not follow that a corporation that holds a permit (whose members or shareholders are a father and mother) cannot waive up to 50% of the permit to the son or daughter.

The Handbook essentially eliminates the utility of a legal fiction that does not change how the permit would be administered. Rather, the Handbook creates one more obstacle to family succession since most ranches have now afforded themselves the protection of incorporating as a legal entity. This appears to be one more subversive attempt to dismantle families that have triedto ensure that public land ranches continue to operate in the West.
FSH 2209.13, Ch. 10, [sect]13[sect]13.6There is no statutory authority for forage reserves. There are no rules creating forage reserves. Thus, the implementation of a [ldquo]forage reserve[rdquo] in the Handbook is without authority to bind permittees and the public.In practice, a forage reserve has been an area that was effectively retired from grazing despite being suitable for grazing under governing land use plans.This provision should be struck.

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[sect]13.7The Handbook must recognize that third party permit buyouts do not obligate the USFS to retire an allotment. Those capacity determinations only occur through the NEPA process and permit decisions must be consistent with existing allocations in the land use plan. Thus, if an allotment is determined to be suitable for grazing, the buyout has no impact on the USFS subsequent decision to permit that allotment toanother entity.
FSH 2209.13, Ch. 10, [sect]14[sect]14.23 ([ldquo]The applicant must list the private lands that will be waived to the United States for the term of the permit.[rdquo])[sect]14.24 ([ldquo]Term private land grazing permits should only be issued to persons who waive exclusive grazing use of the lands and if it is in the best interest of the Government to do so.[rdquo])The Coalition repeats its comment from above: there is no basis in law or fact to grant to the USFS a servitude in the form of [ldquo]exclusive grazing management[rdquo] of the private lands that are part of an on-off permit. The Forest Service has no authority over private lands. The rules confirm that [ldquo][a]ssociated private and other public lands should, but only with the consent of the landowner, lessee, or agency, be considered in such designations to form logical range management units.[rdquo] 36 CFR 222.2. There are no rulesthat allow the USFS to assume management of private lands.Moreover, this provision, as written, assumes that grazing management on private land does not depend on, or relate to, state water law, conservation easements, mineral extraction, and estate succession concerns. In essence, the USFS demands access and control over private land that would, simultaneously, grant the USFS insight or control over other decisions for ranching families across the country.The Coalition seriously doubts that this language would be upheld under the U.S. Constitution in a court of law.Thus, not only does the language appear to lack any foundation, but it also appears to exceed basic tenants of federal authority on private lands.
FSH 2209.13, Ch. 10, [sect]15.2 -15.25Section 15.2-25 deleted entirely.The USFS suddenly changes its position with regard to a long used and well established practice that benefits both permittees and forest allotments.

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Grazing associations across the west were formed to aggressively restore the grasslands during the Great Depression. State law defines the objectives and authority of each Association. Associations planted crested wheatgrass, drilled wells, built reservoirs, installed windmills, fences and cattle passes. The combined efforts stabilized grasslands and returned the range to productivity. Without these grazing associations, the effects of the Dust Bowl would have persisted and deepened the economic depression.Associations act on behalf of members under a contract with the Forest Service whereby the association administers the grazing program, issues individual permits to each member, collects fees, uses fees for conservation projects, and administers all aspects of grazing. The association manages the permits and creates operational flexibility for the Forest Service

to prioritize other issues and actions while acting as the general overseer of the grazing program.An association also allows, and encourages, succession in the grazing industry which is otherwise cost prohibitive for younger generations. Association members do not own base property individually and thus do not need to front the often prohibitive cost of land, infrastructure and equipment. In other places in the Handbook, the Forest Service admits that younger generations are precluded from pursuing agriculture and livestock grazing because of onerous regulatory frameworks and requirements.It makes no sense to eliminate a mechanism that fosters flexibility, encourages farmer and rancher recruitment, and improves rangelands.
[sect]17.2 ([ldquo]The need for resource protection non-use should be made on an allotment by allotmentbasis.[rdquo])Nonuse should be tailored as narrowly as possible to the area that needs resource protection. Thus, the analysis should occur allotment-by- allotment but the actual nonuse should be limited to the areas that aresensitive, disturbed or should not be grazed. The USFS should also

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evaluate features on the ground including fences or management techniques such as salting or range riders.Finally, this section does not expressly acknowledge that validation ofpermitted numbers may need to be phased in depending on the recover of the area that requires protection.
FSH 2209.13 Chapter 20
No Similar Language23.1, [para]7 [ldquo]The Forest Service may modify the grazing agreement 30 days after written notice to the grazing association to bring the grazing agreement into conformance with changes in law, regulation, policy, or LMP direction; to reflect changes in range improvement status; or to reflect changes in the grazing capacity of the lands identified in the grazingagreement.[rdquo]Handbooks and manuals are statements of policy. Those policies should reflect laws and regulations. Unless the handbooks and manuals reflect changes in laws or regulations, those policies cannot be used as justification for unilateral revocation of grazing agreements. Only changes in law or regulations should be used to change agreements with associations.
No Similar Language23.1, [para]9 [ldquo]Failure of the grazing association to promptly inspect and enforce the terms and conditions of the grazing agreement or grazing association-issued grazing permit terms and conditions, and where necessary address any alleged violations, may lead to action by the Forest Service to suspend or cancelthe grazing agreement.[rdquo]This language appears to demote grazing associations to agents of the Forest Service and eliminates the purpose of the grazing association and ruins the benefit of utilizing grazing associations to benefit forest lands. The grazing associations are not merely an extension of the USFS. Grazing associations administer the permits, resolve issues, and manage the private and public lands with the permittees. The Handbook, therefore, should recognize that the associations have some discretion to work with permittees in administering the association lands.
No Similar LanguageSection 23, Exhibit 1, [para]20 [ldquo]Authorize Forest Service entry on Association controlled lands todetermine whether the livestockCarte blanche authority to access grazing association lands [ndash] including private property [ndash] is unreasonable and there is no rational basis for this term. Access should be requested and granted as necessary.

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grazing activities occurring on the allotments in which these lands are located are consistent with applicable Federal law, regulation, Forest Service policies and procedures, and the terms andconditions of this Agreement.[rdquo]

No Similar Language[sect]24.1 [ldquo]Whenever a member violates any of the terms and conditions of the grazing agreement, association bylaws, or the regulation, limitations, or restrictions imposed by the association pursuant to these bylaws, that member's permit shall be subject to suspension or cancellation by the association Board of Directors. The association will notify the Forest Service of any violations and action taken inresponse.[rdquo]Same as above. This language completely obviates the managerial discretion and purpose of grazing associations. The grazing associations cannot be reduced to ministerial scriveners of the Forest Service if the Forest Service expects to receive the benefits of using grazing associations rather than direct permits.
No Similar Language[sect]25.2 [ldquo]Require the grazing association to pay the bill for collection prior to the placement of livestock, by any member, on allgrazing association administered lands.[rdquo]This provision appears to give the USFS authority over stocking private grounds. The USFS does not have authority over placing livestock on private ground that is administered by the grazing association.
FSH 2209.13, Chapter 90
No Similar Language[sect]94.31The Coalition supports the addition of discussion regarding Annual Operating Instruction meetings being confidential meetings between the permittee and the USFS.
No Similar Language[sect]95.3 [ldquo]In all cases, monitoring mustbe verified by the agency andThis language if too prescriptive. Permittee produced monitoring dataoften is more specific, thorough, and continuous than data that has been

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Conducted according to standardized methods. The monitoring methods to be used as well as where and when monitoring actions are to be conducted, will be documented. Monitoring data that is not collected in the agreed upon manner or that cannot be verified by the agency, may not be accepted or used in allotment planning andadaptive management decisions.[rdquo][ldquo]verified[rdquo] by the USFS. The USFS should not ignore monitoring data if that data provides important insight despite the fact that it might no strictly comply with USFS protocols. The Handbooks should be revised to grant the Authorized Officer discretion to utilize monitoring data if certain indicia of credibility or utility are apparent.
FSH 2209.16, Chapter 10
[sect]10.13 [ldquo]Forage reserve allotments are those allotments where a project-level environmental analysis and decision has been made to authorize use of the allotment forage resources on a periodic, temporary, or otherwise short-term planned basis, under specified management terms and conditions, as a landscape basis tool to improve flexibility in responding to needs (such as drought, fire, restoration, etc.) or opportunities (vegetative manipulation forexample).[rdquo]A forage reserve must be consistent with the governing land use plan and if lands are designated as suitable and operators are willing to graze these lands, a forage reserve violates the USFS consistency requirements. Moreover, since this is fundamentally a grazing decision, the USFS must engage in consultation, coordination and cooperation with permittees before the NEPA process begins.
[sect]10.51 [ldquo]Unlike closing grazing allotments, which should not be done administratively, changing an active allotment to a forage reserve, or to a vacant allotment can also bean administrative decision.[rdquo]A forage reserve is, in the Coalition[rsquo]s experience, a de facto closure of an allotment. Once it is put into reserve status, that allotment does not return to an active and stocked allotment despite being suitable in the land use plan for livestock grazing. Thus, any measure implemented to close an allotment should also be implemented when turning an activestocked allotment to a forage reserve. Moreover, allotment

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improvements often fall into disrepair because the Forest Service does not have the capacity to maintain them to the extent that the permittee did.
[sect]10.52 [ldquo]The decision to change a vacant allotment back to an active allotment may require a site-specific environmental analysis, if one is not already on file. Once this analysis has been completed and the decision made to authorize grazing, the grant process should be utilized to allocate the forage available. (FSH 2209.13, chapter 10,section 13.2)[rdquo]Allotments that have been recently converted to a Forage Reserve should be converted back to an active stocked allotment administratively. This reflects earlier NEPA analysis and conformance with land use plans and rules.
[sect]10.53 Vacating All or Portions of an AllotmentScenarios 4, 5 and 6 reference 36 C.F.R. 222 as support for vacating an allotment. Scenarios 1, 2 and 3, however, do not include any citation to Forest Service rules for support for vacating an allotment. This is likely because Scenario 1 and 2 would violate the consistency requirement found in 16 U.S.C. 1604(i) ([ldquo]Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.[rdquo]).
[sect]10.54 Decisions to Close Grazing AllotmentsGrazing allotments should rarely, if ever, be closed. Closing an allotment essentially binds the agency[rsquo]s hands for a prolonged period of time [ndash] usually until the LUP is amended or revised [ndash] and grazing administration and habitat conditions can change drastically in that time. The Forest Service should retain those acres as available in the event drought, permittee interest, or other conditions increase the interest in thoseacres.
17.12 [ldquo]If an allotment becomes vacant, the first decision should be to attempt to restock it or tocombine it with an adjacent activeFeasibility is a highly ambiguous and fluid concept. There are innumerable factors that could make a decision infeasible. For example, a restocking action could be deemed not feasible if the Authorized Officer is alsoworking on several other projects and personnel do not have time to

Existing LanguageProposed RevisionComment
allotment. If these decisions are not feasible, then each allotment that becomes vacant should be evaluated for its potential for designation as a forage reserveallotment.[rdquo]complete the restocking. The Handbook should qualify that [ldquo]feasibility[rdquo] does not include workload or personnel shortages or other administrative obstacles to completing the tasks necessary to restocking.