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Comments: Rangeland Management Directives Comments

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Rangeland Management FSM 2200:

2210.2 -Objectives

In addition to the objectives set forth at FSM 2202, rangeland management planning should be carried out to further the following objectives:

1. Ensure recognition and consideration of rangeland ecosystem health and rangeland management in Land Management Plans (LMPs).
2. Provide for enhanced protection of rangeland ecosystems and restoration of rangeland ecosystems that are not meeting or moving toward desired conditions.
3. Provide for management of rangeland ecosystems and efficient accomplishment of land management goals and objectives in coordination with user groups and individuals.
4. Ensure that project planning efforts contribute toward meeting programmatic resource management direction found in LMPs. 5. Ensure that project planning is conducted in compliance with applicable Federal law and regulation.

[red text] 5. Ensure that rangeland health and land productivity are measured to provide for true assessment of and to move towards good or better range health and to ensure that land productivity is not impaired.

1 does not cover this because your statement needs to be more precise in order that health and productivity are actually covered. [end]

Chapter 2230 Grazing Permit System:

2230-Changes the chapter title from [ldquo]Grazing and Livestock Use Permit System[rdquo] to [ldquo]Grazing Permit System.[rdquo] [red text] Then you should also change the authority to [ldquo]administering the grazing permit system[rdquo] [end]

2230.1 -Authority Refer to 36 CFR 222, subparts A and C, and FSM 2201 for a description of the authority and direction on administering the grazing and livestock use permit system on National Forest System (NFS) lands. [red text] It must be specified throughout the document that these are National Forest System MANAGED lands. The Forest Service does not own but only manages the lands. Some are public domain and others are NOT. Some have specific management protocols when set aside and others can be placed under a baseline umbrella management. In this document it should be very clear and be stated NFSM lands. Statements throughout the handbook would be best, otherwise a bold statement at the beginning, as an educative directive to all, that these lands are managed by, not owned by, the National Forest Service. [end]

2230.2 -Objectives

In addition to the objectives set forth at FSM 2202, objectives of grazing permits are to:

1. Ensure livestock grazing is conducted in compliance with applicable laws, regulations, land management plans (LMPs), and permit terms and conditions

2. Ensure authorized livestock grazing provides for healthy, diverse, sustainable rangelands, which meets or moves toward the desired conditions contained in programmatic and project-level decisions. [red text] Define this more or make another statement: Ensure rangeland health does not fall into poor condition due to any special surface use, project level decision of the land, or management directive for long term use.

Need to add productivity. [ldquo]Sustainable productivity [ldquo]being the key words as lands in poor condition are not ecologically sustainable or productive. (Top soil and forage loss=loss of productivity) [end]

3. Ensure consistency in administration of permitted livestock grazing activities among different units of the National Forest System Managed (NFSM) to the extent practical.

4. Ensure permittees understand and comply with resource management objectives and other requirements associated with the administration of grazing permits

5. Provide permittees with a reasonable expectation of the scope, extent, and duration of the grazing privilege on NFSM lands, recognizing that adjustments may occur due to changes in law or regulation, rangeland resource conditions, management emphasis, or due to new information obtained following the issuance of the permit

[red text] Remove the word privilege and replace it with permit as the grazers are given specific written permits not privileges to graze livestock. A privilege is not something you can take to the bank and do financial statements with but a written permit is proof of grazing access. This step should be done throughout the Handbook. [end]

2230.3 Policy:

4. Acknowledge that grazing permits represent use privileges, not property rights, which may be cancelled, suspended, or modified, in whole or in part, by the Forest Service due to land abuse, nonpayment by the grazer, or due to resource protection for natural causes such as fire, drought, or grasshopper damage; without triggering the requirement to pay just compensation under the Fifth Amendment.

[[red text] Add the bold type above. [end]

[ldquo].. a permit to build a house is not a property right, it is based on a property right; a permit to divert water is not a property right, it is based on an adjudicated water right; and likewise, while a grazing permit is not property although, it is based on an adjudicated prior right, a preference, which is a property right.[rdquo] IDAHO LAW REVIEW30IDAHO L.REV.505(1994 An Agricultural Law Research Article [ldquo]The Right to Graze Livestock on the Federal Lands: The Historical Development of Western Grazing Rights[rdquo] by Frank J. Falen and Karen Budd-Falen

[red text] Public Law 375 CHAPTER 243 AN ACT To authorize the Secretary of the Interior to grant a preference right to users of withdrawn public lands for grazing purposes when the lands are restored from the withdrawal. May 28, 1954 [H. R. 6186] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Taylor Grazing Act (43 U. S. C, 1946 edition, sec. 315 (m)) is amended by adding the following proviso: ""Provided further, That when public lands are restored from a withdrawal, the Secretary may grant an appropriate preference right for a grazing lease, license, or permit to users of the land for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to the time of their restoration." SEC. 2. The first sentence of section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976, 43 U. S. C, 1946 edition, sec. 315), is further amended by striking out the following language: "not exceeding in the aggregate an area of one hundred and forty-two million acres". Approved May 28, 1954. [end]

2231-Term Grazing Permits:

2. Manage grazing allotments and permitted livestock operations to meet or move toward desired rangeland vegetation conditions across the landscape. [red text] Add: toward desired productive and unimpaired rangeland health and vegetation conditions. Desired is too broad a term-and can have negative impacts on the land health. Must be more specific that the conditions desired are a positive influence upon the land. [end]
3. Provide stability for livestock operations dependent on NFSM lands and other livestock operations in the vicinity. [red text] Describe how to provide stability-what does this mean to an observer? How does the Forest Service Management provide stability to the livestock operations? How can this be improved? [end]
4. Manage for sustainable rangelands to provide for the continued presence of family ranches and farms and contribute to the social and economic structure of the rural communities of which they are a part. [red text] Add sustainable and productive rangelands not just sustainable. The Forest Service has many rangelands that are not sustainable over the long term because they have lost their productivity. Both words should be present for an adequate terminology for [ldquo]long-term[rdquo] rangeland definition. [end]
5. Provide opportunities that support the continued presence of working ranches and farms as they are necessary to maintain the open spaces that are needed for vistas, recreation opportunities, and to retain habitat and migration corridors for native species. [red text] Delete # 5 as grazing permits do not really apply to [ldquo]open vistas, recreation and migration corridors[rdquo] [end]

2240.2 -Objectives

2. Ensure that rangeland improvements are designed, constructed, and maintained for optimal effectiveness and cost efficiency [red text] and move the rangeland health into a positive direction [end]

2240.3 -Policy

4. Include plans, specifications, and maintenance requirements for rangeland improvements as terms and conditions of grazing permits.

5. Design and construct/implement rangeland improvements to minimize adverse effects to National Forest System (NFSM) lands, wildlife and other resources [red text] and to neighboring landowners. [end]

9. Hold the titles to permanent rangeland improvements unless specifically designated otherwise. Temporary structures to manage livestock, such as corrals and dipping vats, may be exempt. These temporary structures must be removed by the permittee when their use is no longer needed. [red text] Titles to permanent rangeland improvements will be traded with land ownership. [end]

2241 -STRUCTURAL RANGELAND IMPROVEMENTS

[red text] A section ought to be included for wildlife management, vegetative planting, and experimental type fencing (i.e. prairie dog fencing) . Some of these are included under 2247.13a funding but the responsibility of maintenance should be included here. Or in an added section Any wildlife fencing, prairie dog control fencing, and vegetative planting fencing, or temporary fencing erected on NFSM lands is the sole responsibility of the Forest Service to maintain or remove. It is also the responsibility of the Forest Service to make sure none of the fencing erected will limit or negatively impact grazing livestock in an allotment to where the allotment size is cut long term without just compensation. The maintenance is still the Forest Service[rsquo]s responsibility, and if destroyed by floods or fire, it is the Forest Service[rsquo]s responsibility to clean up any remaining wire and posts as expeditiously as possible-within 2 months of the destruction weather permitting. These type fences are not and should not be the lessees[rsquo] responsibility unless they specifically agree to do so without permit restrictions. i.e. the planting fencing in the bottom of Antelope Creek-when a flood occurs who cleans up all the wire so wildlife and livestock do not get entangled? Must not be the permittees responsibility for cleanup! [end]

2242 -Nonstructural Rangeland Improvements

Implement practices and treatments not involving the construction or installation of structures that are designed to change vegetative composition, improve production of forage, control patterns of use, provide water, stabilize soil and water conditions, and provide habitat for livestock and wildlife. [red text] What are examples of nonstructural rangeland improvements? State several. i.e. herbicide spraying? [end]

2242.2 -Invasive Plants and Noxious Weeds

[red text] Other than grazing or specific livestock use permits how else are invasive and noxious weeds dealt with? Whose responsibility is it to manage them? The Range manager of the FS sets up treatments? In coordination with the lessee? Link this section with 2252.4 to make it clearer who is in charge and what can be done. [end]

2242.4 -Animal Damage Control

[red text] If wild boars or other unwanted species move in on the allotments is the Forest Service set up to do immediate remedial treatment without doing MOUs, amendments, etc. [end]

2243 -Maintenance of Improvements

The requirement that grazing permittees are to maintain all existing rangeland improvements(as well as cost-share in the funding of new improvements)is one of the factors used in calculating the costs of grazing livestock on NFS lands to determine the grazing fee formula [red text] Again note that the Forest Service has the responsibility to maintain all structural improvements not built by the lessee; such as wildlife fencing, prairie dog control fencing, and vegetative planting fencing, or other temporary fencing erected on NFSM lands unless the lessee specifically agrees to their maintenance-without threats of any negative affects to their grazing permit. This is especially important for those fences erected in creek bottoms which are highly susceptible to flood damage. [end]

2244 -Rangeland Improvements Within Wilderness Areas

[red text] Any fences separating Wilderness Areas from permitted NFSM lands should be the responsibility of the FS to pay for. The lessee can maintain but should not have to pay for the materials to upkeep the fence between lessee allotments and neighboring Congressionally designated Wilderness lands. [end]

2247.13a -Fences

Current Agency policy shall determine funds for fences that are needed to support other activities such as developed recreation sites or a fish and wildlife enclosure. [red text] Fences built for vegetation planting, wildlife enclosures or recreation sites are the responsibility of the Forest Service to maintain, NOT the allotment permittee[rsquo]s, and when their effectiveness goal has been accomplished then it is the Forest Service[rsquo]s responsibility to remove such fences in a timely and efficient manner. Case in point-the tree planting fences placed in the bottom of Antelope Creek. [end]

2248.2 -Compensation Determination

Compensation shall be based on the adjusted value of the permittee[rsquo]s investment that is present market value of the improvement and may not exceed the fair market value of the permittee[rsquo]s investment at the time of permit cancellation[hellip][hellip]. Compensation shall not be based on the value of the improvement contribution to the land for grazing use. [red text] So how is this determined? How is the fair market value of an investment in some land determined such as water diversion ditches, fencing, water ponds etc? Coordination between all concerned permittee[rsquo]s and associated grazing board and Forest Service. This must not be just a one supervisor decision. [end]

2250.3-Policy

3. Develop and maintain a strong relationship with the livestock industry by working with local, State, and national livestock organizations. [red text] And by being a good neighbor to adjoining landowners. [end]

2251.3

Cooperation with Grazing Associations and Grazing Districts Grazing associations and grazing districts are organized under State statutes for the purpose of cooperative management of permitted livestock grazing activities. [red text] Grazing Associations were set forth in the Taylor Grazing Act of 1934. Coordination should occur here not just cooperation, as per mentioned on page 19 of Chapter 90.- [end]- The AOI is normally developed with the permittee during the annual winter or spring coordination meetings. AOIs should clearly and concisely identify the obligations of the permittee and the Forest Service, clearly articulate annual grazing management requirements, and monitoring necessary to document compliance

2252 -INTERAGENCY COOPERATION

The Forest Service collaborates with other government agencies to improve coordination in the management of rangelands and livestock grazing.

[red text] Add coordination to some of these sections in this subchapter. [end]

2252.21 -Cooperation Regarding Contagious Diseases

Most Allotment Management Plans and Annual Operating Instructions (or similar document) address the disposal of dead animals, but that has typically applied to an animal dying of [ldquo]natural causes[rddquo] or being struck by lightning, etc. In cases of infectious disease deaths, burying and burning are no longer acceptable forms of disposal of the dead animal; instead, the permittee needs to remove the animal or call a rendering service to do so. [red text] Make this is clearer, that it is for infectious-diseased animals not those killed by natural causes, i.e. snakebite, lightning, drowning. [end]

2252.22 -Cooperation Regarding Transmittable Diseases

Most of these types of diseases are sexually transmitted; trichomoniasis (trich) is probably the most well-known. Vaccination of the affected animals is the method of control. Since treatment is a matter of livestock management, cooperation is largely between permittees and veterinarians. Statutes can vary from State to State, but trich testing is required by most States, and infected livestock are sold for slaughter.

[red text] What about the CDC on plague and its transmission to humans? [end]

2252.3 -Cooperation Regarding Estray Livestock

The Forest Service shall cooperate with State livestock brand boards, sanitary boards, or other appropriate agencies in determining ownership of estray (stray) or unbranded livestock in accordance with the law of the State where they are located. Stray or unbranded animals are usually unauthorized livestock [ndash]animals not owned by the holder of a grazing permit. They are usually horses or cattle, but could be any species of livestock. See FSH 2209.13, chapter 80 for procedures concerning unauthorized livestock. Locating and identifying unauthorized livestock is usually done by rangeland management personnel, but all efforts to remove the stray animals, including notices of violation, mandatory court appearances, or impoundment, will involve agency law enforcement personnel[hellip].animals that are impounded by the Forest Service may be sold or otherwise disposed of, or should be released to the proper State or county authority for immediate possession and subsequent disposition in accordance with State law [red text] Usually if the owner is found and notified or if the neighbors might have an idea on whose the animals might be; the correct owners will remove the animals that got out without help. Not everyone knows when they have cattle out. Do not panic until it is determined that the animals do not have a known owner. Any of our neighbors[rsquo] livestock in our pastures are strays but there is no need to go to this length of time and trouble. This section needs clarification it deals with animals that are truly estray not just from one of the neighbors[rsquo] herds. [end]

2252.4 -Cooperation Regarding Noxious Weeds and Invasive Species

Management of noxious weeds and invasive species is not a rangeland vegetation or livestock management responsibility any more than it is for all other resource programs. However, treatment of invasive species nearly always falls within the assigned duties of rangeland management specialists, even when the invasive species are not rangeland vegetation species. [red text] Tie this to previous paragraph2242.2 Invasive Plants and Noxious Weeds.

Some mention should be made of agricultural pests here due to possible drastic surface changes. Agricultural pests are a type of invasive species due to the damage the negative impacts they cause. Mention must be made of coordinated management dealing with all invasive species (could be prairie dogs, boars, wild horses, wandering buffalo, etc.) not just unwanted plants. [end]

Some specific MOUs pertaining to the administration of rangelands include:

6. Memorandum of Understanding with APHIS on the Management of Grasshoppers and Mormon Crickets on National Forest System Lands (FSM 1543.12). May 30, 2002.

[red text] What about an MOU with grazing associations and local conservation groups about p/d management (if present) and forage protection from other invasive species and over-utilization of the forage base. These should be included here as well. [end]

Chapter 10: Term Grazing Permits

11-Reinstates an earlier policy that 90 percent of the permitted animals must be placed on the allotment for at

least a majority of the permitted use season (rather than just one day) in order to validate the permit in full.

[red text] What about the issue of drought and p/d destruction when there is not grass available to graze 90% for a majority of the permitted use season[mdash]this must be stipulated as an exception. The permit should be considered validated if because of resource destruction caused by prairie dogs, grasshoppers, drought, hail or fire there is not enough forage to graze for a majority of the permitted season use. The exceptions should be listed here and also noted elsewhere. There is a very good reason this directive was changed or deleted previously as it is not a reality in several areas of the TBNG due to drought and p/d infestation. Even though validation is for initial permits not those used for many years in the past the instance still applies that there may not be forage for that year to run 90% of the permitted livestock due to extenuating circumstances. [end]

11.1-Clarifies that term grazing permits are a privilege, not a property right pursuant to 36 CFR part 222.3(b).

[red text] Grazing rights are a property right which are different than grazing permits issued by grazing associations. Related but different entities. [end] [ldquo]Shufflebarger v. Commissioner. The question in Shufflebarger was whether a preference was a property right for tax purposes, In that case, the court stated: It seems to us abundantly clear that the statute and the regulations contemplate that once the right to a fair and just allotment of grazing lands has been acquired under the established procedures [the adjudication process], that right, subject to some adjustment if it should become necessary for protection of the range or for a more equitable distribution among preference holders, is to be regarded as an indefinitely continuing right, In reaching its holding, the court recognized that the only way to acquire a preference (after the initial adjudication) is by purchase or inheritance, Because the preference is not created by the federal government, but rather is bought and sold by private individuals, the Internal Revenue Service determined that the preference is, in fact, a property right.[rdquo] IDAHO LAW REVIEW30IDAHO L.REV.505(1994) An Agricultural Law Research Article [ldquo]The Right to Graze Livestock on the Federal Lands: The Historical Development of Western Grazing Rights[rdquo] by Frank J. Falen and Karen Budd-Falen

11.2-Clarifies the duration of term grazing permits is 10 years, except under certain instances when they can be issued for a shorter period of time.

[red text]Give solid examples of what denotes certain instances and what limits the Forest Service from issuing term permits for shorter periods of time-what are the parameters? This comes much later in handbook but need link or clarification here. Again, too broad of interpretation. [end]

11.3-Clarifies a term grazing permit with multiple allotments should be administered as separate allotment-by-allotment permits.

[red text] The pros and cons of this are: What is the purpose? This is fine but need to clarify the why of this directive so it will be understood more in depth. [end]

11.51 -Term Grazing Permit

This permit (Form FS-2200-10) authorizes livestock grazing use (36 CFR 222.3) on NFS lands or lands under Forest Service control and may be issued to individual(s) or other legal entities who meet eligibility and qualification requirements (see section 12). [red text] Replace the underlined with: lands under National Forest Service Management [end]

11.52-Clarifies that private lands permitted under term permits with on-and-off provisions are also waived to the Government for establishing permitted numbers and seasons of use, as well as for access to all private lands necessary for allotment administration, and requires modification of Form FS-2200-10e

[red text] Make the time period clear it is for the length of the term permit not open ended[mdash]just a short notation to clarify. [end]

11.54-Implements the use of Standard Grazing Agreement FS-2200-135 for grazing associations and grazing districts operating on all National Grasslands except for the Dakota Prairie Grasslands units in Region 1, Standard Grazing Agreement FS-2200-136 for use on all national grasslands on the Dakota Prairie Grasslands in Region 1, Standard Grazing Agreement FS-2200-137for grazing associations operating on national forests in the West(Regions 1-6), and Standard Grazing AgreementFS-2200-138for grazing associations operating on national forests in the East (Regions 8 and 9)

[red text] Each grazing association has its unique problems and geography therefore a [ldquo]standard[rdquo] one size fits all situation does not work without additional changes as needed for each association land area. Individual grazing associations in the same local might be able to work out similar agreements but each area also has its specific issues for only that area. Very little is similar between states so an umbrella agreement will not work combining various states into a standardized agreement.

Grazing agreements in the Thunder Basin National Grasslands ought to stipulate that grouse habitat will be protected and prairie dog habitat might cause loss of AUMs within an allotment due to Forest Service management. What type of compensation is relevant? Each area is NOT the same between states. Each state has different statutes and this should be reflected in each state[rsquo]s association grazing agreements. [end]

12.1-Adds clarification as to how a citizen of a foreign country must be in the process of becoming a naturalized citizen in order to be eligible to apply for a term grazing permit.

[red text] Must be a naturalized citizen as the process can take years and may not actually materialize into citizenship so wait until actual citizenship papers received. Anyone can say they have started the process but will they actually finish? Only actual citizens should be able to apply for a grazing permit, not those on visas, green cards or [ldquo]waiting[rdquo]. [end]

Also see 12.1 b: The requirement to be a U.S. citizen was originally established in the1862 Homestead Act. The Enlarged Homestead Act of 1909, doubling the allowed acreage from 160 to 320, retained the citizenship requirement. The Stock-Raising Homestead Act of 1916 increasing the allowed size to 640 acres likewise retained the citizenship requirement. The Taylor Grazing Act of 1934 that created the Bureau of Land management (BLM) likewise required U.S. citizenship for eligibility to hold a grazing permit. [red text] It makes more sense that a term permittee must be a citizen of the U. S. not just an applicant. [end]

12.1-Regarding eligibility of entities to hold a term grazing permit, changes the phrase authorized to conduct business in the State(s) [ldquo]where the permitted grazing activity would occur[rdquo] to [ldquo]where the qualifying base property is located[rdquo]. Since entities can be authorized in one State and be permitted to run on an allotment in an adjacent State, eligibility requirements for each State may need to be met.

[red text] Another reason to not have a standard agreement between other states; each state has different base lines and this must be taken into account. [end]

Chapter 20: Grazing Agreements:

FSH 2209.13 -GRAZING PERMIT ADMINISTRATION HANDBOOKCHAPTER 20 -GRAZING AGREEMENTS

[ldquo]Waived Lands[rdquo] means the private, State, and other agency lands within a grazing allotment on

which the Association permits livestock numbers and seasons of use through issuance of an Association Term Private Land Grazing Permit or the [ldquo]off[rdquo] portion of an Association Term Grazing Permit. The member or non-member relinquishes control of the waived lands, for grazing purposes only, to the Association. [red text] Time frame -be more explicit- this waiving is only for the length of the term permit. [end]

Page 8: (provided to them by their association term permit) misspelled

Page 10: Under grazing agreements, grazing associations participate in the day-to-day management of their members[rsquo] livestock grazing activities on NFS lands. [red text] No they do not! The grazing associations set a baseline for management the lessees must meet to be in compliance but the grazing associations do NOT deal with day to day issues of each members livestock grazing activities. [end]

A grazing agreement requires successful cooperative management by way of a clear and mutual understanding of the association's plans and objectives, as well as laws, regulations and Forest Service policies. [red text] Coordinated would be a better word here as the agreement is a coordinated effort between the Forest Service, Grazing Association and the permittee. [end]

Page 16: [ldquo]Waived Lands[rdquo] means the private, State, and other agency lands within a grazing allotment on which the Association permits livestock numbers and seasons of use through issuance of an Association Term Private Land Grazing Permit or the [ldquo]off[rdquo] portion of an Association Term Grazing Permit. The member or non-member relinquishes control of the waived lands, for grazing purposes only, to the Association. [red text] Make this clearer the waived lands are for the length of the permit only. [end]

Page 20: The presence of working ranches in the West is necessary to maintain the open spaces that are needed for vistas, recreation opportunities, and to retain habitat and migration corridors for native species -- [red text] delete this section not relevant [end]

Page 23: FS responsibilities:

10. Require the Association to implement conservation practices on Association administered lands that are necessary to obtain proper livestock use and resource management. Add here or separate the following:

17. [red text] Work in coordination with the Association to make sure the production of the land is not impaired and the land has long term sustainable management.

18. Make sure land management directives do not impair conservation of good land health and long-term sustainable productivity of the land and each allotment. [end]

Page 27:

12. Any disagreement between the Association and the Forest Service regarding an interpretation of the Secretary[rsquo]s rules and regulations shall be resolved in favor of the Forest Service[rsquo]s interpretation [red text] Request mediation in accordance with 36 CFR 214 and work towards a COORDINATED SOLUTION. If every disagreement is only going to be resolved in favor of the Forest Service then that is a dictatorship not a cooperative, coordinated meeting of the minds as dictated by grazing and management laws. The Forest Service does not rule absolute! [end]

16.The Association shall hold the United States harmless from all loss, expense, liability, or other obligation of any nature arising out of any accident or occurrence arising from, or on account of, negligent or other wrongful acts or omissions of the Association, its members, or any of its or their officers, directors, employees, agents, contractors, or subcontractors, or other persons acting on its or their behalf or under its or their control causing

injury to persons or property while carrying out activities pursuant to this Grazing Agreement

[red text] But: The Forest Service is responsible for any actions be they negligent, wrongful acts or omissions that cause harm, loss, expense, liability or injury to any persons, livestock, harm to private property. This is true especially for management directives such as burns that get out of control and destroy private property and livestock loss. The Forest Service is and should be liable for incompetence or purposeful management decisions that do cause harm to neighboring private lands. [end]

Chapter 30: TEMPORARY GRAZING AND LIVESTOCK USE PERMITS

32.2 -Qualification Requirements: Applicants for temporary grazing permits and livestock use permits are not required to own either base property or the livestock to be grazed unlike applicants for term grazing permits. [red text] The applicant should be required to own one or the other, or leasing the livestock on a share basis to have some sort of managed ownership for temporary grazing permits. [end]

Chapter 60: Records

Page 11: All implementation and compliance monitoring should be maintained with effectiveness monitoring as the combination of these data sets is invaluable for making management decisions. Implementation monitoring includes, but is not limited to annual indicators such as utilization/stubble height, inspection reports and photos, actual use, staff field notes and emails by year. This should be made available to the permittee. [red text] Do the permittees realize they could, should get this? Why not add this information to a permit -either that the monitoring information is available or send it to the permittee after data surveys are completed. [end]

Chapter 70: Compensation for Permittee interest in rangeland improvements.

73 -WAIVER OF INTEREST IN PERMANENT RANGE IMPROVEMENTS

The only exception to this restriction is if the current permittee reorganizes into a different entity for estate planning purposes. The previous permittee must be an individual of the new entity formed for estate planning purposes to remain eligible for compensation under this situation.

All future right of improvement compensation ceases upon the death of that original permittee, even if the newly formed family entity continues to operate on the allotment(s)(seechapter10,sec.16.6of this Handbook [red text] As long as the permanent range improvement is in existence and still being utilized then why stop the compensation to the operating family---discuss this further; also include maybe coordinated one time payments vs annual payments. Give examples here and explain why the payment should, could, would stop even though the permanent range improvement is still functioning. [end]

Chapter 80 Grazing Fees:

Grazing allotments vary tremendously by elevation, topography, vegetation (including amounts of heavy timber), ease or difficulty of access, even weather patterns. But the off-date shown on the face of the grazing permit is designed to meet resource management objectives as well as livestock management logistics. The off-date is when all permitted livestock are to have been gathered and removed from the allotment. The off-date is not when

the gathering starts. There is no written, or unwritten, grace period

[red text] Weather can play a key role in ability to gather livestock. There must be included here a grace period because a blizzard, excessive rain, or similar can make it impossible to gather livestock and should be duly noted that Mother Nature can and does interfere now and then as do personal family unexpected losses. Instead of an official grace period a notation could be made here that a weather event happened which scattered livestock or the family might have had an unexpected death or illness which stalled out the gathering process. There should always be a [ldquo]what if[rddquo] for anything not normal. [end]

Page 27: No funds should not be used to replace or reconstruct needed improvements if the reason for the degraded condition is due to lack of required maintenance by the grazing permittee. [red text] Correct the double negative. [end]

Grazing permittees are expected to cost-share, generally 50:50, for all types of rangeland improvement projects. All improvements constructed or reconstructed with these funds, including those with cost share, will be owned by the government- [red text] unless the land is traded or purchased at some point in the future in which case the ownership of the improvements will go to the new owner. [end]

2209.13 Chapter 90

94.1 -Allotment Management Plans (AMPs)The decision, including the design criteria and monitoring elements may [red text] be [end] directly incorporated

94.1 -Allotment Management Plans (AMPs) When AMPs are drafted in a manner that is consistent with the applicable decision, it is the decision and not the issuance of an AMP that is seen as the final Federal agency action. [red text] Why? Make this clearer. Any decisions must be in writing so there is a paper trail of thought and research going into any resolution. [end]

The AOI should set forth:

5. Monitoring for the current season that may include, among other things, documentation demonstrating compliance with the terms and conditions in the grazing permit, allotment management plan, and annual operating instructions; [red text] and delete this word [end]

Chapter Zero Code:

6. The Taylor Grazing Act of 1934(43 U.S.C. 315 et seq.). Creates public lands in the West and establishes the Bureau of Land Management (BLM). Also requires U.S. citizenship for eligibility to hold a grazing permit or grazing lease. Affirms requirement for the Secretaries of the Interior and Agriculture to coordinate and cooperate with the grazing permittee in preparation of allotment management plans (AMPs).

[red text] This Act did not [ldquo]create[rddquo] public lands only tried to utilize the best use for most unreserved, unappropriated and vacant existing public lands. [end]

[red text] Replace the blue statement with the following: [end] In order to promote the highest use of the public lands pending its final disposal: (This Act) [red text] Established grazing districts for those lands which are chiefly valuable for grazing and raising forage crops; the permits and fees associated with grazing permits, and the

administration of such grazing districts.

BLM was established in 1946 when the General Land Office and U S Grazing Service were merged NOT thru the Taylor Grazing Act.

Note it states coordinate and cooperate both! [end]

9. Multiple Use-Sustained Yield Act (MUSY) of 1960(16 U.S.C. [sect][sect]528 et seq.). Authorizes the Secretary to, among other things: administer national forests for 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.

MUSYA defines the terms "multiple use" and "sustained yield" as follows:

* Multiple use - the "management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people"[3]

* Sustained yield - "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land."[4]

[red text] It should be stressed here the productivity of the land cannot be impaired and (productivity) must be maintained into perpetuity; whether the land is used for recreation, range, timber, watershed, wildlife and fish purposes. [end]

Rangeland Management Directives Comments

Submitted by Denise Langley

Rangeland Management FSM 2200:

2210.2 -Objectives

In addition to the objectives set forth at FSM 2202, rangeland management planning should be carried out to further the following objectives:

1. Ensure recognition and consideration of rangeland ecosystem health and rangeland management in Land Management Plans (LMPs).
2. Provide for enhanced protection of rangeland ecosystems and restoration of rangeland ecosystems that are not meeting or moving toward desired conditions.
3. Provide for management of rangeland ecosystems and efficient accomplishment of land management goals and objectives in coordination with user groups and individuals.
4. Ensure that project planning efforts contribute toward meeting programmatic resource management direction found in LMPs. 5. Ensure that project planning is conducted in compliance with applicable Federal law and regulation.

[red text] 5. Ensure that rangeland health and land productivity are measured to provide for true assessment of

and to move towards good or better range health and to ensure that land productivity is not impaired.

1 does not cover this because your statement needs to be more precise in order that health and productivity are actually covered. [end]

Chapter 2230 Grazing Permit System:

2230-Changes the chapter title from [ldquo]Grazing and Livestock Use Permit System[rdquo] to [ldquo]Grazing Permit System.[rdquo] [red text] Then you should also change the authority to [ldquo]administering the grazing permit system[rdquo] [end]

2230.1 -Authority Refer to 36 CFR 222, subparts A and C, and FSM 2201 for a description of the authority and direction on administering the grazing and livestock use permit system on National Forest System (NFS) lands. [red text] It must be specified throughout the document that these are National Forest System MANAGED lands. The Forest Service does not own but only manages the lands. Some are public domain and others are NOT. Some have specific management protocols when set aside and others can be placed under a baseline umbrella management. In this document it should be very clear and be stated NFSM lands. Statements throughout the handbook would be best, otherwise a bold statement at the beginning, as an educative directive to all, that these lands are managed by, not owned by, the National Forest Service. [end]

2230.2 -Objectives

In addition to the objectives set forth at FSM 2202, objectives of grazing permits are to:

1. Ensure livestock grazing is conducted in compliance with applicable laws, regulations, land management plans (LMPs), and permit terms and conditions
 2. Ensure authorized livestock grazing provides for healthy, diverse, sustainable rangelands, which meets or moves toward the desired conditions contained in programmatic and project-level decisions. [red text] Define this more or make another statement: Ensure rangeland health does not fall into poor condition due to any special surface use, project level decision of the land, or management directive for long term use.
- Need to add productivity. [ldquo]Sustainable productivity [ldquo]being the key words as lands in poor condition are not ecologically sustainable or productive. (Top soil and forage loss=loss of productivity) [end]
3. Ensure consistency in administration of permitted livestock grazing activities among different units of the National Forest System Managed (NFSM) to the extent practical.
 4. Ensure permittees understand and comply with resource management objectives and other requirements associated with the administration of grazing permits
 5. Provide permittees with a reasonable expectation of the scope, extent, and duration of the grazing privilege on NFSM lands, recognizing that adjustments may occur due to changes in law or regulation, rangeland resource conditions, management emphasis, or due to new information obtained following the issuance of the permit

[red text] Remove the word privilege and replace it with permit as the grazers are given specific written permits not privileges to graze livestock. A privilege is not something you can take to the bank and do financial

statements with but a written permit is proof of grazing access. This step should be done throughout the Handbook. [end]

2230.3 Policy:

4. Acknowledge that grazing permits represent use privileges, not property rights, which may be cancelled, suspended, or modified, in whole or in part, by the Forest Service due to land abuse, nonpayment by the grazer, or due to resource protection for natural causes such as fire, drought, or grasshopper damage; without triggering the requirement to pay just compensation under the Fifth Amendment.

[[red text] Add the bold type above. [end]

[ldquo].. a permit to build a house is not a property right, it is based on a property right; a permit to divert water is not a property right, it is based on an adjudicated water right; and likewise, while a grazing permit is not property although, it is based on an adjudicated prior right, a preference, which is a property right.[rdquo] IDAHO LAW REVIEW30IDAHO L.REV.505(1994 An Agricultural Law Research Article [ldquo]The Right to Graze Livestock on the Federal Lands: The Historical Development of Western Grazing Rights[rdquo] by Frank J. Falen and Karen Budd-Falen

[red text] Public Law 375 CHAPTER 243 AN ACT To authorize the Secretary of the Interior to grant a preference right to users of withdrawn public lands for grazing purposes when the lands are restored from the withdrawal. May 28, 1954 [H. R. 6186] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Taylor Grazing Act (43 U. S. C, 1946 edition, sec. 315 (m)) is amended by adding the following proviso: ""Provided further, That when public lands are restored from a withdrawal, the Secretary may grant an appropriate preference right for a grazing lease, license, or permit to users of the land for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to the time of their restoration." SEC. 2. The first sentence of section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976, 43 U. S. C, 1946 edition, sec. 315), is further amended by striking out the following language: "not exceeding in the aggregate an area of one hundred and forty-two million acres". Approved May 28, 1954. [end]

2231-Term Grazing Permits:

2. Manage grazing allotments and permitted livestock operations to meet or move toward desired rangeland vegetation conditions across the landscape. [red text] Add: toward desired productive and unimpaired rangeland health and vegetation conditions. Desired is too broad a term-and can have negative impacts on the land health. Must be more specific that the conditions desired are a positive influence upon the land. [end]

3. Provide stability for livestock operations dependent on NFSM lands and other livestock operations in the vicinity. [red text] Describe how to provide stability-what does this mean to an observer? How does the Forest Service Management provide stability to the livestock operations? How can this be improved? [end]

4. Manage for sustainable rangelands to provide for the continued presence of family ranches and farms and contribute to the social and economic structure of the rural communities of which they are a part. [red text] Add sustainable and productive rangelands not just sustainable. The Forest Service has many rangelands that are

not sustainable over the long term because they have lost their productivity. Both words should be present for an adequate terminology for [ldquo]long-term[rdquo] rangeland definition. [end]

5. Provide opportunities that support the continued presence of working ranches and farms as they are necessary to maintain the open spaces that are needed for vistas, recreation opportunities, and to retain habitat and migration corridors for native species. [red text] Delete # 5 as grazing permits do not really apply to [ldquo]open vistas, recreation and migration corridors[rdquo] [end]

2240.2 -Objectives

2. Ensure that rangeland improvements are designed, constructed, and maintained for optimal effectiveness and cost efficiency [red text] and move the rangeland health into a positive direction [end]

2240.3 -Policy

4. Include plans, specifications, and maintenance requirements for rangeland improvements as terms and conditions of grazing permits.

5. Design and construct/implement rangeland improvements to minimize adverse effects to National Forest System (NFSM) lands, wildlife and other resources [red text] and to neighboring landowners. [end]

9. Hold the titles to permanent rangeland improvements unless specifically designated otherwise. Temporary structures to manage livestock, such as corrals and dipping vats, may be exempt. These temporary structures must be removed by the permittee when their use is no longer needed. [red text] Titles to permanent rangeland improvements will be traded with land ownership. [end]

2241 -STRUCTURAL RANGELAND IMPROVEMENTS

[red text] A section ought to be included for wildlife management, vegetative planting, and experimental type fencing (i.e. prairie dog fencing) . Some of these are included under 2247.13a funding but the responsibility of maintenance should be included here. Or in an added section Any wildlife fencing, prairie dog control fencing, and vegetative planting fencing, or temporary fencing erected on NFSM lands is the sole responsibility of the Forest Service to maintain or remove. It is also the responsibility of the Forest Service to make sure none of the fencing erected will limit or negatively impact grazing livestock in an allotment to where the allotment size is cut long term without just compensation. The maintenance is still the Forest Service[rsquo]s responsibility, and if destroyed by floods or fire, it is the Forest Service[rsquo]s responsibility to clean up any remaining wire and posts as expeditiously as possible-within 2 months of the destruction weather permitting. These type fences are not and should not be the lessees[rsquo] responsibility unless they specifically agree to do so without permit restrictions. i.e. the planting fencing in the bottom of Antelope Creek-when a flood occurs who cleans up all the wire so wildlife and livestock do not get entangled? Must not be the permittees responsibility for cleanup! [end]

2242 -Nonstructural Rangeland Improvements

Implement practices and treatments not involving the construction or installation of structures that are designed to change vegetative composition, improve production of forage, control patterns of use, provide water, stabilize soil and water conditions, and provide habitat for livestock and wildlife. [red text] What are examples of nonstructural rangeland improvements? State several. i.e. herbicide spraying? [end]

2242.2 -Invasive Plants and Noxious Weeds

[red text] Other than grazing or specific livestock use permits how else are invasive and noxious weeds dealt with? Whose responsibility is it to manage them? The Range manager of the FS sets up treatments? In coordination with the lessee? Link this section with 2252.4 to make it clearer who is in charge and what can be done. [end]

2242.4 -Animal Damage Control

[red text] If wild boars or other unwanted species move in on the allotments is the Forest Service set up to do immediate remedial treatment without doing MOUs, amendments, etc. [end]

2243 -Maintenance of Improvements

The requirement that grazing permittees are to maintain all existing rangeland improvements(as well as cost-share in the funding of new improvements)is one of the factors used in calculating the costs of grazing livestock on NFS lands to determine the grazing fee formula [red text] Again note that the Forest Service has the responsibility to maintain all structural improvements not built by the lessee; such as wildlife fencing, prairie dog control fencing, and vegetative planting fencing, or other temporary fencing erected on NFSM lands unless the lessee specifically agrees to their maintenance-without threats of any negative affects to their grazing permit. This is especially important for those fences erected in creek bottoms which are highly susceptible to flood damage. [end]

2244 -Rangeland Improvements Within Wilderness Areas

[red text] Any fences separating Wilderness Areas from permitted NFSM lands should be the responsibility of the FS to pay for. The lessee can maintain but should not have to pay for the materials to upkeep the fence between lessee allotments and neighboring Congressionally designated Wilderness lands. [end]

2247.13a -Fences

Current Agency policy shall determine funds for fences that are needed to support other activities such as developed recreation sites or a fish and wildlife enclosure. [red text] Fences built for vegetation planting, wildlife enclosures or recreation sites are the responsibility of the Forest Service to maintain, NOT the allotment

permittee's, and when their effectiveness goal has been accomplished then it is the Forest Service's responsibility to remove such fences in a timely and efficient manner. Case in point-the tree planting fences placed in the bottom of Antelope Creek. [end]

2248.2 -Compensation Determination

Compensation shall be based on the adjusted value of the permittee's investment that is present market value of the improvement and may not exceed the fair market value of the permittee's investment at the time of permit cancellation[hellip][hellip]. Compensation shall not be based on the value of the improvement contribution to the land for grazing use. [red text] So how is this determined? How is the fair market value of an investment in some land determined such as water diversion ditches, fencing, water ponds etc? Coordination between all concerned permittee's and associated grazing board and Forest Service. This must not be just a one supervisor decision. [end]

2250.3-Policy

3. Develop and maintain a strong relationship with the livestock industry by working with local, State, and national livestock organizations. [red text] And by being a good neighbor to adjoining landowners. [end]

2251.3

Cooperation with Grazing Associations and Grazing Districts Grazing associations and grazing districts are organized under State statutes for the purpose of cooperative management of permitted livestock grazing activities. [red text] Grazing Associations were set forth in the Taylor Grazing Act of 1934. Coordination should occur here not just cooperation, as per mentioned on page 19 of Chapter 90.- [end]- The AOI is normally developed with the permittee during the annual winter or spring coordination meetings. AOIs should clearly and concisely identify the obligations of the permittee and the Forest Service, clearly articulate annual grazing management requirements, and monitoring necessary to document compliance

2252 -INTERAGENCY COOPERATION

The Forest Service collaborates with other government agencies to improve coordination in the management of rangelands and livestock grazing.

[red text] Add coordination to some of these sections in this subchapter. [end]

2252.21 -Cooperation Regarding Contagious Diseases

Most Allotment Management Plans and Annual Operating Instructions (or similar document) address the disposal of dead animals, but that has typically applied to an animal dying of [ldquo]natural causes[rdquo] or being struck by lightning, etc. In cases of infectious disease deaths, burying and burning are no longer acceptable forms of disposal of the dead animal; instead, the permittee needs to remove the animal or call a rendering service to do so. [red text] Make this is clearer, that it is for infectious-diseased animals not those killed by natural causes, i.e. snakebite, lightning, drowning. [end]

2252.22 -Cooperation Regarding Transmittable Diseases

Most of these types of diseases are sexually transmitted; trichomoniasis (trich) is probably the most well-known. Vaccination of the affected animals is the method of control. Since treatment is a matter of livestock management, cooperation is largely between permittees and veterinarians. Statutes can vary from State to State, but trich testing is required by most States, and infected livestock are sold for slaughter.

[red text] What about the CDC on plague and its transmission to humans? [end]

2252.3 -Cooperation Regarding Estray Livestock

The Forest Service shall cooperate with State livestock brand boards, sanitary boards, or other appropriate agencies in determining ownership of estray (stray) or unbranded livestock in accordance with the law of the State where they are located. Stray or unbranded animals are usually unauthorized livestock [ndash]animals not owned by the holder of a grazing permit. They are usually horses or cattle, but could be any species of livestock. See FSH 2209.13, chapter 80 for procedures concerning unauthorized livestock. Locating and identifying unauthorized livestock is usually done by rangeland management personnel, but all efforts to remove the stray animals, including notices of violation, mandatory court appearances, or impoundment, will involve agency law enforcement personnel[hellip]..animals that are impounded by the Forest Service may be sold or otherwise disposed of, or should be released to the proper State or county authority for immediate possession and subsequent disposition in accordance with State law [red text] Usually if the owner is found and notified or if the neighbors might have an idea on whose the animals might be; the correct owners will remove the animals that got out without help. Not everyone knows when they have cattle out. Do not panic until it is determined that the animals do not have a known owner. Any of our neighbors[rsquo] livestock in our pastures are strays but there is no need to go to this length of time and trouble. This section needs clarification it deals with animals that are truly estray not just from one of the neighbors[rsquo] herds. [end]

2252.4 -Cooperation Regarding Noxious Weeds and Invasive Species

Management of noxious weeds and invasive species is not a rangeland vegetation or livestock management responsibility any more than it is for all other resource programs. However, treatment of invasive species nearly always falls within the assigned duties of rangeland management specialists, even when the invasive species are not rangeland vegetation species. [red text] Tie this to previous paragraph2242.2 Invasive Plants and Noxious

Weeds.

Some mention should be made of agricultural pests here due to possible drastic surface changes. Agricultural pests are a type of invasive species due to the damage the negative impacts they cause. Mention must be made of coordinated management dealing with all invasive species (could be prairie dogs, boars, wild horses, wandering buffalo, etc.) not just unwanted plants. [end]

Some specific MOUs pertaining to the administration of rangelands include:

6. Memorandum of Understanding with APHIS on the Management of Grasshoppers and Mormon Crickets on National Forest System Lands (FSM 1543.12). May 30, 2002.

[red text] What about an MOU with grazing associations and local conservation groups about p/d management (if present) and forage protection from other invasive species and over-utilization of the forage base. These should be included here as well. [end]

Chapter 10: Term Grazing Permits

11-Reinstates an earlier policy that 90 percent of the permitted animals must be placed on the allotment for at least a majority of the permitted use season (rather than just one day) in order to validate the permit in full.

[red text] What about the issue of drought and p/d destruction when there is not grass available to graze 90% for a majority of the permitted use season[mdash]this must be stipulated as an exception. The permit should be considered validated if because of resource destruction caused by prairie dogs, grasshoppers, drought, hail or fire there is not enough forage to graze for a majority of the permitted season use. The exceptions should be listed here and also noted elsewhere. There is a very good reason this directive was changed or deleted previously as it is not a reality in several areas of the TBNG due to drought and p/d infestation. Even though validation is for initial permits not those used for many years in the past the instance still applies that there may not be forage for that year to run 90% of the permitted livestock due to extenuating circumstances. [end]

11.1-Clarifies that term grazing permits are a privilege, not a property right pursuant to 36 CFR part 222.3(b).

[red text] Grazing rights are a property right which are different than grazing permits issued by grazing associations. Related but different entities. [end] [ldquo]Shufflebarger v. Commissioner. The question in Shufflebarger was whether a preference was a property right for tax purposes, In that case, the court stated: It seems to us abundantly clear that the statute and the regulations contemplate that once the right to a fair and just allotment of grazing lands has been acquired under the established procedures [the adjudication process], that right, subject to some adjustment if it should become necessary for protection of the range or for a more equitable distribution among preference holders, is to be regarded as an indefinitely continuing right, In reaching its holding, the court recognized that the only way to acquire a preference (after the initial adjudication) is by purchase or inheritance, Because the preference is not created by the federal government, but rather is bought and sold by private individuals, the Internal Revenue Service determined that the preference is, in fact, a property right.[rdquo] IDAHO LAW REVIEW30IDAHO L.REV.505(1994 An Agricultural Law Research Article [ldquo]The Right to Graze Livestock on the Federal Lands: The Historical Development of Western Grazing Rights[rdquo] by Frank J. Falen and Karen Budd-Falen

11.2-Clarifies the duration of term grazing permits is 10 years, except under certain instances when they can be issued for a shorter period of time.

[red text]Give solid examples of what denotes certain instances and what limits the Forest Service from issuing term permits for shorter periods of time-what are the parameters? This comes much later in handbook but need link or clarification here. Again, too broad of interpretation. [end]

11.3-Clarifies a term grazing permit with multiple allotments should be administered as separate allotment-by-allotment permits.

[red text] The pros and cons of this are: What is the purpose? This is fine but need to clarify the why of this directive so it will be understood more in depth. [end]

11.51 -Term Grazing Permit

This permit (Form FS-2200-10) authorizes livestock grazing use (36 CFR 222.3) on NFS lands or lands under Forest Service control and may be issued to individual(s) or other legal entities who meet eligibility and qualification requirements (see section 12). [red text] Replace the underlined with: lands under National Forest Service Management [end]

11.52-Clarifies that private lands permitted under term permits with on-and-off provisions are also waived to the Government for establishing permitted numbers and seasons of use, as well as for access to all private lands necessary for allotment administration, and requires modification of Form FS-2200-10e

[red text] Make the time period clear it is for the length of the term permit not open ended[mdash]just a short notation to clarify. [end]

11.54-Implements the use of Standard Grazing Agreement FS-2200-135 for grazing associations and grazing districts operating on all National Grasslands except for the Dakota Prairie Grasslands units in Region 1, Standard Grazing Agreement FS-2200-136 for use on all national grasslands on the Dakota Prairie Grasslands in Region 1, Standard Grazing Agreement FS-2200-137for grazing associations operating on national forests in the West(Regions 1-6), and Standard Grazing AgreementFS-2200-138for grazing associations operating on national forests in the East (Regions 8 and 9)

[red text] Each grazing association has its unique problems and geography therefore a [ldquo]standard[rdquo] one size fits all situation does not work without additional changes as needed for each association land area. Individual grazing associations in the same local might be able to work out similar agreements but each area also has its specific issues for only that area. Very little is similar between states so an umbrella agreement will not work combining various states into a standardized agreement.

Grazing agreements in the Thunder Basin National Grasslands ought to stipulate that grouse habitat will be protected and prairie dog habitat might cause loss of AUMs within an allotment due to Forest Service management. What type of compensation is relevant? Each area is NOT the same between states. Each state has different statutes and this should be reflected in each state[rsquo]s association grazing agreements. [end]

12.1-Adds clarification as to how a citizen of a foreign country must be in the process of becoming a naturalized citizen in order to be eligible to apply for a term grazing permit.

[red text] Must be a naturalized citizen as the process can take years and may not actually materialize into citizenship so wait until actual citizenship papers received. Anyone can say they have started the process but will they actually finish? Only actual citizens should be able to apply for a grazing permit, not those on visas, green cards or [ldquo]waiting[rdquo]. [end]

Also see 12.1 b: The requirement to be a U.S. citizen was originally established in the1862 Homestead Act. The

Enlarged Homestead Act of 1909, doubling the allowed acreage from 160 to 320, retained the citizenship requirement. The Stock-Raising Homestead Act of 1916 increasing the allowed size to 640 acres likewise retained the citizenship requirement. The Taylor Grazing Act of 1934 that created the Bureau of Land management (BLM) likewise required U.S. citizenship for eligibility to hold a grazing permit. [red text] It makes more sense that a term permittee must be a citizen of the U. S. not just an applicant. [end]

12.1-Regarding eligibility of entities to hold a term grazing permit, changes the phrase authorized to conduct business in the State(s) [ldquo]where the permitted grazing activity would occur[rdquo] to [ldquo]where the qualifying base property is located[rdquo]. Since entities can be authorized in one State and be permitted to run on an allotment in an adjacent State, eligibility requirements for each State may need to be met.

[red text] Another reason to not have a standard agreement between other states; each state has different base lines and this must be taken into account. [end]

Chapter 20: Grazing Agreements:

FSH 2209.13 -GRAZING PERMIT ADMINISTRATION HANDBOOKCHAPTER 20 -GRAZING AGREEMENTS

[ldquo]Waived Lands[rdquo] means the private, State, and other agency lands within a grazing allotment on which the Association permits livestock numbers and seasons of use through issuance of an Association Term Private Land Grazing Permit or the [ldquo]off[rdquo] portion of an Association Term Grazing Permit. The member or non-member relinquishes control of the waived lands, for grazing purposes only, to the Association. [red text] Time frame -be more explicit- this waiving is only for the length of the term permit. [end]

Page 8: (provided to them by their association term permit) misspelled

Page 10: Under grazing agreements, grazing associations participate in the day-to-day management of their members[rsquo] livestock grazing activities on NFS lands. [red text] No they do not! The grazing associations set a baseline for management the lessees must meet to be in compliance but the grazing associations do NOT deal with day to day issues of each members livestock grazing activities. [end]

A grazing agreement requires successful cooperative management by way of a clear and mutual understanding of the association's plans and objectives, as well as laws, regulations and Forest Service policies. [red text] Coordinated would be a better word here as the agreement is a coordinated effort between the Forest Service, Grazing Association and the permittee. [end]

Page 16: [ldquo]Waived Lands[rdquo] means the private, State, and other agency lands within a grazing allotment on which the Association permits livestock numbers and seasons of use through issuance of an Association Term Private Land Grazing Permit or the [ldquo]off[rdquo] portion of an Association Term Grazing Permit. The member or non-member relinquishes control of the waived lands, for grazing purposes only, to the Association. [red text] Make this clearer the waived lands are for the length of the permit only. [end]

Page 20: The presence of working ranches in the West is necessary to maintain the open spaces that are needed for vistas, recreation opportunities, and to retain habitat and migration corridors for native species -- [red text] delete this section not relevant [end]

Page 23: FS responsibilities:

10. Require the Association to implement conservation practices on Association administered lands that are

necessary to obtain proper livestock use and resource management. Add here or separate the following:

17. [red text] Work in coordination with the Association to make sure the production of the land is not impaired and the land has long term sustainable management.

18. Make sure land management directives do not impair conservation of good land health and long-term sustainable productivity of the land and each allotment. [end]

Page 27:

12. Any disagreement between the Association and the Forest Service regarding an interpretation of the Secretary's rules and regulations shall be resolved in favor of the Forest Service's interpretation [red text] Request mediation in accordance with 36 CFR 214 and work towards a COORDINATED SOLUTION. If every disagreement is only going to be resolved in favor of the Forest Service then that is a dictatorship not a cooperative, coordinated meeting of the minds as dictated by grazing and management laws. The Forest Service does not rule absolute! [end]

16. The Association shall hold the United States harmless from all loss, expense, liability, or other obligation of any nature arising out of any accident or occurrence arising from, or on account of, negligent or other wrongful acts or omissions of the Association, its members, or any of its or their officers, directors, employees, agents, contractors, or subcontractors, or other persons acting on its or their behalf or under its or their control causing injury to persons or property while carrying out activities pursuant to this Grazing Agreement

[red text] But: The Forest Service is responsible for any actions be they negligent, wrongful acts or omissions that cause harm, loss, expense, liability or injury to any persons, livestock, harm to private property. This is true especially for management directives such as burns that get out of control and destroy private property and livestock loss. The Forest Service is and should be liable for incompetence or purposeful management decisions that do cause harm to neighboring private lands. [end]

Chapter 30: TEMPORARY GRAZING AND LIVESTOCK USE PERMITS

32.2 -Qualification Requirements: Applicants for temporary grazing permits and livestock use permits are not required to own either base property or the livestock to be grazed unlike applicants for term grazing permits. [red text] The applicant should be required to own one or the other, or leasing the livestock on a share basis to have some sort of managed ownership for temporary grazing permits. [end]

Chapter 60: Records

Page 11: All implementation and compliance monitoring should be maintained with effectiveness monitoring as the combination of these data sets is invaluable for making management decisions. Implementation monitoring includes, but is not limited to annual indicators such as utilization/stubble height, inspection reports and photos, actual use, staff field notes and emails by year. This should be made available to the permittee. [red text] Do the permittees realize they could, should get this? Why not add this information to a permit -either that the monitoring information is available or send it to the permittee after data surveys are completed. [end]

Chapter 70: Compensation for Permittee interest in rangeland improvements.

73 -WAIVER OF INTEREST IN PERMANENT RANGE IMPROVEMENTS

The only exception to this restriction is if the current permittee reorganizes into a different entity for estate planning purposes. The previous permittee must be an individual of the new entity formed for estate planning purposes to remain eligible for compensation under this situation.

All future right of improvement compensation ceases upon the death of that original permittee, even if the newly formed family entity continues to operate on the allotment(s) (see chapter 10, sec. 16.6 of this Handbook [red text]) As long as the permanent range improvement is in existence and still being utilized then why stop the compensation to the operating family---discuss this further; also include maybe coordinated one time payments vs annual payments. Give examples here and explain why the payment should, could, would stop even though the permanent range improvement is still functioning. [end]

Chapter 80 Grazing Fees:

Grazing allotments vary tremendously by elevation, topography, vegetation (including amounts of heavy timber), ease or difficulty of access, even weather patterns. But the off-date shown on the face of the grazing permit is designed to meet resource management objectives as well as livestock management logistics. The off-date is when all permitted livestock are to have been gathered and removed from the allotment. The off-date is not when the gathering starts. There is no written, or unwritten, grace period

[red text] Weather can play a key role in ability to gather livestock. There must be included here a grace period because a blizzard, excessive rain, or similar can make it impossible to gather livestock and should be duly noted that Mother Nature can and does interfere now and then as do personal family unexpected losses. Instead of an official grace period a notation could be made here that a weather event happened which scattered livestock or the family might have had an unexpected death or illness which stalled out the gathering process. There should always be a [ldquo]what if[rddquo] for anything not normal. [end]

Page 27: No funds should not be used to replace or reconstruct needed improvements if the reason for the degraded condition is due to lack of required maintenance by the grazing permittee. [red text] Correct the double negative. [end]

Grazing permittees are expected to cost-share, generally 50:50, for all types of rangeland improvement projects. All improvements constructed or reconstructed with these funds, including those with cost share, will be owned by the government- [red text] unless the land is traded or purchased at some point in the future in which case the ownership of the improvements will go to the new owner. [end]

2209.13 Chapter 90

94.1 -Allotment Management Plans (AMPs) The decision, including the design criteria and monitoring elements may [red text] be [end] directly incorporated

94.1 -Allotment Management Plans (AMPs) When AMPs are drafted in a manner that is consistent with the applicable decision, it is the decision and not the issuance of an AMP that is seen as the final Federal agency action. [red text] Why? Make this clearer. Any decisions must be in writing so there is a paper trail of thought and research going into any resolution. [end]

The AOI should set forth:

5. Monitoring for the current season that may include, among other things, documentation demonstrating compliance with the terms and conditions in the grazing permit, allotment management plan, and annual operating instructions; [red text] and delete this word [end]

Chapter Zero Code:

6. The Taylor Grazing Act of 1934(43 U.S.C. 315 et seq.). Creates public lands in the West and establishes the Bureau of Land Management (BLM). Also requires U.S. citizenship for eligibility to hold a grazing permit or grazing lease. Affirms requirement for the Secretaries of the Interior and Agriculture to coordinate and cooperate with the grazing permittee in preparation of allotment management plans (AMPs).

[red text] This Act did not [ldquo]create[rdquo] public lands only tried to utilize the best use for most unreserved, unappropriated and vacant existing public lands. [end]

[red text] Replace the blue statement with the following: [end] In order to promote the highest use of the public lands pending its final disposal: (This Act) [red text] Established grazing districts for those lands which are chiefly valuable for grazing and raising forage crops; the permits and fees associated with grazing permits, and the administration of such grazing districts.

BLM was established in 1946 when the General Land Office and U S Grazing Service were merged NOT thru the Taylor Grazing Act.

Note it states coordinate and cooperate both! [end]

9. Multiple Use-Sustained Yield Act (MUSY) of 1960(16 U.S.C. [sect][sect]528 et seq.). Authorizes the Secretary to, among other things: administer national forests for 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.

MUSYA defines the terms "multiple use" and "sustained yield" as follows:

* Multiple use - the "management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people"[3]

* Sustained yield - "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land."[4]

[red text] It should be stressed here the productivity of the land cannot be impaired and (productivity) must be maintained into perpetuity; whether the land is used for recreation, range, timber, watershed, wildlife and fish purposes. [end]