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April 15, 2021

U. S. Forest Service
Director, Forest Management
Range Management and Vegetation Ecology
201 14th Street SW, Suite 3SE
Washington, DC 20250-1124.

RE: Rangeland Management Directives

Dear Director,

The Idaho State Department of Agriculture (ISDA) is in receipt of the updates to the Rangeland Management Manual and Handbooks by the United States Forest Service (USFS). ISDA is mandated to provide support, coordination and expertise to Idaho rangeland livestock producers, as well as land and wildlife management agencies for the planning and management of vegetation, grazing permits, and other rangeland resources that are of importance to the livestock industry. See Idaho Code § 22-103(23). In accordance with these mandates, ISDA has developed comments in regards to the updates in coordination with several state of Idaho agencies, including the Governor's Office of Species Conservation (OSC), Idaho Department of Water Resources (IDWR), and the Idaho Department of Fish and Game (IDFG).

FSM 2200 Rangeland Management Manual

Chapter 2240

2240.6- Livestock Intrusion

Paragraph four introduces unnecessary opinion and perceived distaste to the concerned party. ISDA recommends that this paragraph be removed, as the deletion would not change the intended message of this section, and would facilitate a better relationship with the USFS and interested stakeholders.

2243-Maintenance of Improvements

More clarification is needed on the requirement that "grazing permittees are to maintain *all* existing (as well as cost-share in the funding of new improvements) rangeland improvements". Non-structural improvements are not subject to frequent maintenance, but it is unclear if the permittee would be liable for the cost of these improvements. Additionally, the inclusion of "*all*" suggests that permittees are responsible for maintenance of improvements that may not be assigned to them in the instance of a vacant adjacent pasture/allotment. ISDA recommends that the language in this section be updated to clearly identify the type of range improvements the permittees are held responsible for and clear explanation of the parties responsible for improvements in vacant allotments.

2243-Maintenance of Improvements continued

There is contradictory language in the determination in what improvements can be funded through the Rangeland Betterment Fund (RBF). Initially in this section, there is clear indication that the RBF cannot be used for maintenance of structural improvements. Later in the section, item 6 in *2241.11 RBF*, it is indicated that the RBF may be used for “improvement, replacement, new construction, or reconstruction of rangeland improvements”. To avoid further confusion, ISDA suggests that the USFS provides an example of a maintenance project that could not be covered by the RBF and describe how it does not meet the criteria mentioned above.

Chapter 2250

2252.2-Cooperation Regarding Control of Animal Diseases

ISDA and IDFG encourages that the USFS considers identifying the opportunity for cooperation with States regarding potential risks of disease transmission among wildlife and livestock, which could require specific management efforts.

GRAZING PERMIT ADMINISTRATION HANDBOOK

2209.13 Chapter 10

12.21(a) - Conservation Easements and Agricultural Land Trusts

ISDA supports IDGF in the suggestion for updates that would facilitate voluntary conservation easements with the intent to protect conservation values of private agricultural lands, because these easements can also provide public benefits for fish and wildlife resources and associated recreation, which are important to Idaho’s rural communities, culture, and heritage

13.61 Designation of a Forage Reserve Allotment

There is unclear language in this section that can lead to a vast difference in management of these allotments based on interpretation. Item 1 indicates that there must be an environmental analysis and decision made prior to allowing grazing on the allotment. Interpretations of this environmental assessment could be as wide as a project level analysis to a NEPA assessment, which would result in further extending the non-use period or closing the allotment. Due to the difficulty in re-opening a closed allotment, expressed in this document, ISDA suggests clear guidance for all Ranger Districts in the decision to designate forage reserves that would allow for appropriate use of these allotments in times of need.

15.51 - Postponement Due to Required Non-Use for Resource Protection

It is unclear as to why a preference applicant cannot have the permit issued if their management techniques align with the resource needs. ISDA is concerned that allotments in this situation are at risk of being closed due to the validation period. ISDA poses that, instead of closing the allotment due to non-use, consideration of livestock use permits or temporary grazing permits be issued to the preferred applicant to maintain allotment activity.

15.8 - Comparison of Term Grazing Permits with On-and-Off Provisions and Term Private Land Grazing Permits

As acknowledged in this section, ISDA found identifying the difference between On-and-Off Grazing permits and Private Land Grazing permits to be complex. After an in-depth dissection of the table provided in 15.1 Exhibit 01, the minute differences remained difficult to decipher. ISDA is concerned

that the general public will not take the time to sort through the provided language to clarify the matter and it will remain a point of confusion. ISDA suggest an addition of a column, or something similar, to the table to highlight the differing factor for each addressed section.

16.51 - Expectations of Mediation

The tone of this section is negative toward all parties outlined and there is a lot of assumption on the feelings of each party towards the mediation process. ISDA suggests removing this section completely, or outline what the USFS would consider a successful mediation.

16.52 - Mediation Process

In paragraph 7 of this section, it is stated that there should be no intervenors allowed in the mediation processes. ISDA agrees that there should not be any outside parties allowed as it is a confidential matter, however the language excludes responsible parties that may not be listed as the permittee. Some examples include a spouse, child or predecessor of an aging permittee. ISDA suggests the consideration, and the addition of language to this section, to allow the attendance of co-representatives at the request of the permittee.

16.6 - Permit Cancellation to Devote the Lands to Another Public Purpose

ISDA appreciates examples of devotion of lands to other public purpose, however we believe that including the big horn sheep as an example of a conflict with other resources is unnecessary. By including the specific example of big horn sheep conflict, the possibility of a wide spread generalization of any big horn sheep in an allotted pasture will be grounds for cancellation regardless of contamination concerns. ISDA suggests that this example be removed from this section.

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

The State of Idaho appreciates the dedication to protect resources during difficult conditions, however there is language that is concerning and could be expanded on. First, in paragraph three of this section, there is reference to “extreme circumstances”. Further clarification is needed on what the thresholds are for extreme circumstances that could warrant implementation of resource protection measures. We suggest expansion on how an officer would identify and support a claim of an extreme circumstance. Secondly, in the same paragraph, it is stated that a non-use can be authorized without permittee agreement. ISDA is concerned that if this can be done without the permittee’s agreement; where is their involvement in the process? We believe that there is room for expansion on the consultation and coordination with the permittee prior to implementation of non-use for resource protection. Furthermore, the State of Idaho suggests directives that would provide management flexibility, while minimizing impacts to livestock permittees, to address resource protection needs of rangelands damaged by extreme events (e.g., drought and wildfire) that could also benefit fish and wildlife habitats.

17.22 - Non-use for Resource Protection during Landscape-Scale Vegetative Treatments and Rangeland Developments to Increase Grazing Capacity

As stated above, ISDA recognizes the importance of resource protection during difficult conditions or events. In paragraph four of this section, the decision to implement resource protection non-use appears to be without collaboration with the affected permittee. It is unclear if there is a consultative process with the permittees prior to implementing the non-use decision for resource protection. ISDA again suggests the addition or further elaboration of the consultation and coordination with the permittees prior to decision making by the USFS.

17.23: Non-use for Resource Protection Designed to Achieve a Changed Resource Condition through Trial Reductions of Forage Use

The initial statement in this section states; “Occasionally, changing or continuing resource conditions on the allotment may indicate that a change in livestock use levels is needed. The authorized officer may require a trial period of reduced numbers or different seasons to attempt to bring about an improvement or change in vegetative conditions”. The State of Idaho would like to reiterate the need for collaboration with all parties prior to implementing reductions. In the event of an ESA petition or listing that could result in additional future restrictions or designations, such as critical habitat on active allotments, coordination with the permittee is crucial, as well as consultation with State agencies (IDFG, ISDA, OSC) in preparation of the Non-Use Agreement for Resource Protection (Form FS-2200-26). State agencies can assist in developing timelines for seasons of use and deferment/rest, vegetation desired conditions, objectives to be accomplished by the non-use trial period, and what monitoring requirements and timeframes would be most effective to meet resource condition/habitat targets for the species in question.

18.39 - Permit Waiver with No Preferred Applicant

In paragraph three of this section, ISDA is concerned that the use of a broad statement, such as “a compelling reason” is too open to interpretation. We suggest listing historical examples of some of these reasons to maintain it as a vacant pasture.

2209.13 Chapter 20

22- Grazing Agreements

Grazing agreements as listed as Exhibits 01, 03, 04, and 05 of this section, indicate that the expiration date of the agreements is the 28th day of February. This date would not account for leap years. Due to the push for consistency throughout the document to have the permits match the grazing seasons, ISDA suggests updating the agreements to list the expiration date as the last day of February to capture the leap year oddity.

2209.13 Chapter 50

51.35 - Grazing Reductions on National Forest System Lands

ISDA is concerned with the communication method of the decision to reduce permitted numbers based on the allocation to the tribes due to the treaty. This section outlines various instances where a permittee is notified of the reduction and there is no clear indication of consultation or coordination. A certified letter informing the current permittee of such change seems insufficient in informing of the change that the permittee has no control over. ISDA suggests coordination and consultation with the current permittee to accompany the written letter. Additionally, we encourage elaboration on potential interactions and conflicts with new tribal permittees and previous permittees who had adjacent private land in the rotation/management plan. Finally, the allotment selection process by the tribal treaty holder is unclear, we suggest outlining restrictions of the selections if they exist.

2209.13 Chapter 80

81.7- Excess Livestock Use

The following statement is an unnecessary addition to the section that could be misinterpreted as a negative attitude toward sheep grazers. “*For sheep allotments, there is virtually no excuse for the band, or any livestock, to remain on the allotment past the permitted off-date.*” ISDA advises that this statement be removed completely as the intent of the section is clear without this statement.

81.82 – Impoundment and Disposal of Unauthorized Livestock

The third and fourth paragraphs of this section are narratives that are inconsistent with the purpose and tone of the document. As a handbook/manual, it is unnecessary to place blame on the USFS, permittees or private land owners, but to inform the reader of steps to resolve the issue at hand. The preceding and following paragraphs outline the actions needed for branded and unbranded livestock and do not need the intervening narratives. ISDA suggests removing these statements entirely. If the USFS deems this information necessary for clarification, ISDA urges that the USFS avoids placing blame on any involved party, directly or indirectly.

2209.16 Chapter 10

10- Allotment Status

There is inconsistency in the language in this section, specifically referring to forage reserve allotments outlined in 10.13-10.15, 10.2 and 10.52. Throughout these sections there are references to project level environmental analysis as a way to determine the need to vacate the allotment, whereas the reactivation environmental analysis is not indicated to be project level. This inconsistency leads back to the different approaches by Ranger Districts to reopening the allotment and the associated time frames based on project level or NEPA level analysis. ISDA suggests reviewing sections 10.13-10.15, 10.2, and 10.53 to assure consistency in the meaning and desired actions for each scenario. It is unclear if the desired actions are project level or NEPA level.

15.2 - Water Permits and Water Rights for Surface Water Use

IDWR would like to demonstrate the inconsistency in this section with Idaho Code. The directives currently states:

“The right to use water for permitted livestock grazing comes under the jurisdiction of the State where the allotment lies. States manage the use of waters within their borders. FSM 2540 addresses “Water Uses and Development.” Refer to FSM 2541 for specific details on NFS water rights. When questions arise, contact your local water rights specialist (normally the hydrologist) and/or the regional water rights and uses specialists.”

And:

“The requirements for applications, permitting, drilling, and filing for use of groundwater are not the same as those for surface water in many States. As with surface water, States manage the use of waters within their borders. FSM 2540 addresses “Water Uses and Development.” Refer to FSM 2541 for specific details on NFS water rights. When questions arise, contact your local water rights specialist (normally the hydrologist), and/or the regional water rights and uses specialist. You may also want to contact the Washington Office groundwater technical team for assistance.”

IDWR would like to emphasize that FSM 2541 does not address ownership of water rights as it relates to grazing livestock on USFS lands except Section 2541.22b – “Application for Appropriative Water Rights”, which states:

“File all applications to appropriate water in the name of the United States.”

This guidance is in conflict with Idaho Code. Idaho Code 42-502 states:

502. FEDERAL AGENCIES — STOCKWATER RIGHTS.

No agency of the federal government shall acquire a stockwater right unless the agency owns livestock and puts the water to beneficial use. For purposes of this chapter, "stockwater rights" means water rights for the beneficial use for livestock.

ISDA recommends that clarification of the position as this language can be viewed as conflicting.

ISDA and our collaborators appreciate the opportunity to comment on the Updated Rangeland Management Directives. If you have any questions, please feel free to contact me at 208-332-8561 or thadd.strom@isda.idaho.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thadd Strom', with a long horizontal flourish extending to the right.

Thadd Strom
Range Program Manager
Idaho State Department of Agriculture