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

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

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

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

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

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		evaluate features on the ground including fences or management techniques such as salting or range riders. Finally, this section does not expressly acknowledge that validation of permitted numbers may need to be phased in depending on the recover of the area that requires protection.
FSH 2209.13 Chapter 20		
No Similar Language	23.1, ¶7 "The Forest Service may modify the grazing agreement 30 days after written notice to the grazing association to bring the grazing agreement into conformance with changes in law, regulation, policy, or LMP direction; to reflect changes in range improvement status; or to reflect changes in the grazing capacity of the lands identified in the grazing agreement."	Handbooks and manuals are statements of policy. Those policies should reflect laws and regulations. Unless the handbooks and manuals reflect changes in laws or regulations, those policies cannot be used as justification for unilateral revocation of grazing agreements. **Only** changes in law or regulations should be used to change agreements with associations.
No Similar Language	23.1, ¶9 "Failure of the grazing association to promptly inspect and enforce the terms and conditions of the grazing agreement or grazing association-issued grazing permit terms and conditions, and where necessary address any alleged violations, may lead to action by the Forest Service to suspend or cancel the grazing agreement."	This language appears to demote grazing associations to agents of the Forest Service and eliminates the purpose of the grazing association and ruins the benefit of utilizing grazing associations to benefit forest lands. The grazing associations are not merely an extension of the USFS. Grazing associations administer the permits, resolve issues, and manage the private and public lands with the permittees. The Handbook, therefore, should recognize that the associations have some discretion to work with permittees in administering the association lands.
No Similar Language	Section 23, Exhibit 1, ¶20 "Authorize Forest Service entry on Association controlled lands to determine whether the livestock	Carte blanche authority to access grazing association lands – including private property – is unreasonable and there is no rational basis for this term. Access should be requested and granted as necessary.

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

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

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

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