



**FOREST SERVICE MANUAL  
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**FSM 2200 - RANGELAND MANAGEMENT**

**CHAPTER - ZERO CODE**

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**Approved:**

Associate Deputy Chief

**Date Approved:**

**Posting Instructions:** Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was 2200-2005-1.

<b>New Document</b>	2200_zero_code	50 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	2200_zero_code (Amendment 2200-2005-1, 07/19/2005)	31 Pages
	2200_zero_code (Amendment 2200-2003-1, 01/24/2003)	11 Pages

**Digest:**

2200 - Changes the title from “Range Management” to “Rangeland Management.”

2201 - Revises the Authority section to expand the list of Federal laws, regulations, and Executive Orders pertaining to the administration of National Forest System (NFS) rangeland resources and provides a brief explanation of each.

2201 - Removes all laws, regulations, and Executive Orders pertaining to noxious weeds and invasive species and relocates them under the proper file designation of FSM 2900 in the current Forest Service filing system.

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**Digest--Continued:**

2201 - Explains that management of noxious weeds and invasive species is not a rangeland vegetation or livestock management responsibility any more than it is for every other resource program in the Forest Service. However, treatment of invasive species nearly always falls within the assigned duties of rangeland management specialists, even when they are not rangeland vegetation species. For this reason, discussion of the laws, regulations, and orders concerning noxious weeds and invasive species is also included in FSM 2250 Rangelands Cooperation.

2201.5 - Inserts a new Section titled “*Ownership of Federal Grazing Lands*” to provide a comprehensive background on Constitutional law, applicable court cases, and Federal land ownership and management authority.

The section will serve as a useful reference for agency employees to consult, and also to provide to members of the general public involved or interested in States’ rights movements and/or advocating for privatization of the Federal lands.

2202 - Consolidates objectives for national forests and national grasslands into one section.

2203 - Consolidates policies for national forests and national grasslands into one section.

2204 - Consolidates responsibilities and delegations of authority into one section.

2205 - Establishes code, caption, and consolidates all definitions previously included in the different chapters of the Rangeland Management Manual (FSM 2200) and the Grazing Permit Administration Handbook (FSH 2209.13) into one location.

2206 - Adds additional references for more information about rangeland management.

2207 - Establishes code, caption, and sets forth direction on “National Forms” and provides a list of all the national standard forms for use in rangeland management and grazing permit administration in one central location.

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### 2201 - AUTHORITY

Authority to manage National Forest System (NFS) rangeland resources is derived from laws enacted by Congress that authorize the Secretary of Agriculture (the Secretary) to administer NFS lands and resources. This authority allows for the issuance of necessary regulations. Many of these authorities have subsequently been delegated from the Secretary to the Chief of the Forest Service. Specific laws, regulations, and Executive Orders are listed and described in sections 2201.1 through 2201.3.

Section 2201.5 discusses background, history, and court cases regarding Federal Ownership of Grazing Lands in response to recent State's rights and privatization movements.

#### 2201.1 - Laws

The principal statutes governing management of rangeland resources on NFS lands include, but are not limited to, the following statutes. Except where specifically stated, these statutes apply to all NFS lands and resources.

1. The Homestead Act of 1862. Opens millions of acres of public land, mostly in the West, to any U.S. citizen willing to settle on and farm 160 acres for at least 5 years to receive title. The Homestead Act of 1891 and The Enlarged Homestead Act of 1909 doubles the allowed acreage for citizens from 160 to 320. The Stock-Raising Homestead Act of 1916 increases the allowed size to 640 acres for ranching purposes and likewise retains the citizenship requirement.
2. Organic Administration Act of 1897 (16 U.S.C. §§473 et seq.). Provided the main statutory basis for the management of forest reserves in the United States, and authorized the establishment of regulations governing the occupancy and use of forest reserves. In addition, the Act provides for the establishment of regulations to focus on conserving their timber and water resources for future generations.
3. Transfer Act of 1905 (16 U.S.C. §§472,554 et seq.). Transfer Act of 1905 (16 U.S.C. §§472,554 et seq.). Transfers the forest reserves of the United States from the Department of the Interior, General Land Office, to the Department of Agriculture, Bureau of Forestry. The Act establishes a "service" in the Bureau of Forestry to be designated and known as "The Forest Service." This act was significant because it caused the National Forest Reserves to shift roles from a recreational role to a more economic role using science-based management.
4. Twenty-Five Percent Fund Act of 1908 (16 U.S.C. §§500 et seq.). Provides that 25% of all monies received from each national forest shall be paid by the Secretary of the Treasury, at the end of the fiscal year, to the county or counties in which the national forest is located to be expended for the benefit of the public schools and the public roads of the county.

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5. The Weeks Law of 1911 (16 U.S.C. §§480 *et seq.*). Gives authority for the Federal government to purchase private lands deemed necessary to protect rivers' and watersheds' headwaters in the eastern United States. The law allowed for land acquired through purchases to be preserved as national forest territory.
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).
7. Title III of the Bankhead-Jones Farm Tenant Act (BJFTA) of 1937 (7 U.S.C. §§1010 *et seq.*). Authorizes the Secretary to develop a program of land conservation and land utilization in order to correct maladjustments in land use. Applies only to land utilization projects and other acquired lands that would later become the national grasslands.
8. Granger-Thye Act of 1950 (16 U.S.C. §§580 *et seq.*). Authorizes the Secretary to issue permits for grazing on NFS lands for a period of time not to exceed 10 years provided that such permits do not limit or restrict any right, title, or interest of the United States in NFS lands or resources. Authorizes the Secretary to use a portion of grazing fees for range improvement projects on NFS lands.

Section 11 of the act authorizes the use of funds for rangeland improvement projects on lands outside the NFS under certain circumstances. (FSM 2204, ex. 01).

9. Multiple Use-Sustained Yield Act (MUSY) of 1960 (16 U.S.C. §§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.
10. Wilderness Act of 1964 (16 U.S.C. §§1131 *et seq.*). Authorizes the Secretary to administer certain congressionally designated NFS lands as wilderness. Section 4(d)(4)(2) of the act authorizes the continuation of grazing subject to reasonable regulations if the activity was established prior to the area's designation.

The Colorado Wilderness Act of 1980 (Pub. L. 96-560, section 108, Congressional Grazing Guidelines) provides additional clarification on grazing in wilderness areas pertaining specifically to the issues of stocking levels, number and type of improvements, use of motorized equipment, and emergency situations (FSM 2244 and FSM 2320).

11. The National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. §§470 *et seq.*). Authorizes the Secretary of the Interior to expand and maintain a National Register of Historic Places. Establishes the Advisory Council on Historic Preservation to advise the

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President and Congress on matters relating to historic preservation and to promulgate regulations. Requires agency heads to assume responsibility for the preservation of historic properties owned or controlled by the agency and to develop a preservation program for the identification, evaluation, and nomination of historic properties to the National Register. Requires agency heads to evaluate the effects of an undertaking on property that is included or eligible for inclusion in the National Register and to afford the Advisory Council a reasonable opportunity to comment on the undertaking. Defines undertaking to include permitting activities or Federal financial assistance under the jurisdiction of an agency.

12. National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. §§4321 *et seq.*). Establishes the Council on Environmental Quality (CEQ). Requires the Federal government to: utilize a systematic, interdisciplinary approach in planning and decision-making impacting the human environment; develop procedures in consultation with CEQ to ensure environmental values are given appropriate consideration in decision-making, and to provide a detailed statement on the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment.

13. Wild and Free-Roaming Horses and Burros Act (WFRHBA) of 1971 (16 U.S.C. §§1331 *et seq.*). Authorizes the Secretary of the Interior and the Secretary of Agriculture to, among other things: protect and manage wild free-roaming horses and burros on lands they administer to achieve and maintain a thriving natural ecological balance; maintain a current inventory of wild free-roaming horses and burros to determine whether an overpopulation exists and, if so, whether excess animals should be removed; establish a joint advisory board to provide advice on wild horse and burro management and protection issues; and assess civil or criminal penalties.

14. Federal Water Pollution Control Act of 1948, with Clean Water Act (CWA) Amendments of 1972 (33 U.S.C. §§1251 *et seq.*). Provides for the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters. Section 402 charges the States with primary responsibility for the control of point source pollution through the establishment of effluent limits and the issuance of permits under the National Pollutant Discharge Elimination System (NPDES). Section 319 charges the States with primary responsibility for the identification and control of nonpoint source pollution through the implementation of best management practices. Section 404 requires the U.S. Army Corps of Engineers to issue permits authorizing the placement of dredge or fill material into waters of the United States including wetlands unless certain exceptions apply.

15. The Endangered Species Act (ESA) of 1973 (16 U.S.C. §§1531 *et seq.*). Provides for the conservation of threatened and endangered species of plants and animals. Section 7 requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of the species' critical habitat. This provision also requires Federal agencies to consult with the U.S. Fish and Wildlife

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Service (USFWS) (for freshwater fish and all other species) or the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) (for anadromous species) whenever an agency action is likely to affect a threatened or endangered species or its critical habitat. Section 9 prohibits the *take* of a threatened or endangered species, and section 10 pertains to exceptions.

16. Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as amended by the National Forest Management Act (NFMA) of 1976 (16 U.S.C. §§1600 *et seq.*). Authorizes the Secretary to develop land management plans (LMPs) for units of the NFS using a systematic, interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences. Resource plans, permits, contracts, and other instruments authorizing the use and occupancy of NFS lands must be consistent with the LMPs.

Section 11 defines “National Forest System” as including all National Forest lands reserved, withdrawn, and acquired, and the National Grasslands and land utilization projects.

17. Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. §§1700 *et seq.*). Title IV authorizes the Secretary of the Interior and Secretary of Agriculture to:

- a. Develop a formula for grazing fees equitable to both the United States and to the holders of grazing permits;
- b. Establish the Range Betterment Fund (RBF);
- c. Issue grazing permits for a term of 10 years (or less where it is in the best interest of sound land management to do so);
- d. Cancel, suspend, or modify a grazing permit for violations of grazing regulations or for violations of permit terms and conditions;
- e. Grant the holder of an expiring permit first priority for a new permit subject to the satisfaction of certain conditions;
- f. Develop allotment management plans; and
- g. Provide a permit holder with reasonable compensation for the adjusted value of permanent improvements constructed by him/her if the grazing land is devoted to another public purpose, including disposal.

Title IV applies only to national forests in the sixteen contiguous Western States. The sixteen contiguous Western States are listed in chapter 2205, Definitions.

18. Payment in Lieu of Taxes Act (PILT) of 1976. (31 U.S.C. §§6901-67 *et seq.*). PILT payments are Federal payments to local governments that help offset losses in property

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taxes due to non-taxable Federal lands within their boundaries. PILT payments help local governments carry out such vital services as firefighting and police protection, construction of public schools and roads, and search-and-rescue operations.

The PILT payments are in addition to other Federal revenues (such as oil and gas leasing, livestock grazing, recreation receipts, and timber harvesting) the Federal government transfers to States through the Twenty-Five Percent Fund.

The PILT payments are made to States/counties based upon national grassland and Bureau of Land Management (BLM) land acres in the county. The Secure Rural Schools and Community Self-Determination Act (SRSA) of 2000 (16 U.S.C. §§500 *et seq.*) is PILT's complement that provides payments to counties for national forest acres.

19. Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. §§1901 *et seq.*). Authorizes the Secretary of the Interior and the Secretary of Agriculture to:

- a. Inventory and identify current public rangeland conditions and trends on a continuous basis;
- b. Manage, maintain, and improve the rangeland condition so that they become as productive as feasible; and
- c. Temporarily establish a formula for the calculation of grazing fees, which subsequently became the basis for the present fee system under Executive Order 12548.

PRIA applies only to national forests in the sixteen contiguous Western States.

Section 8 directs the Secretaries to develop allotment management plans (AMPs) in careful and considered consultation, cooperation, and coordination with affected permittees, landowners, and States having land within the area covered. This section allows Memorandum of Understandings (MOUs) with State Departments of Agriculture for involvement in development and implementation of AMPs.

20. Archaeological Resource Protection Act (ARPA) of 1979. (16 U.S.C. §§470 *et seq.*). The purpose is to secure the protection of archaeological resources and sites which are on public lands and Tribal lands. Permits are required for any person to excavate or remove archaeological resources. Provides for penalties and fines, and mandates confidentiality of resource locations.

21. Agricultural Credit Act of 1987, as amended by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (7 U.S.C. §§5101 *et seq.*). Section 282 of the 1994 Act provides for formal mediation of grazing permit cancellation and suspension actions, on NFS lands in States that have a United States Department of Agriculture certified mediation program, as a part of the existing administrative appeals

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process. Most States may have either a certified mediation program or a Section 8 MOU (under PRIA), but seldom both.

22. Rescissions Act of 1995 (Pub. L. 104-19) (7 U.S.C. §§5101 *et seq.*). Section 504(a) requires the Secretary to identify each allotment for which National Environmental Policy Act (NEPA) analysis is needed, include these allotments in a schedule which establishes a date for the completion of this analysis, and adhere to these established schedules. Sections 504(b) and (c) further provide that if a grazing permit expires or is waived and the permit authorizes grazing in one or more listed allotments for which the scheduled NEPA analysis has yet to be completed, the Forest Service must issue a new term grazing permit with the same terms and conditions, including the length of term, as the one which expired or was waived, unless there are other reasons which justify not issuing a new permit.

The National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291) amended the section of the United States Code where Section 402 of the Federal Land Policy Management Act of 1976 is codified (43 U.S.C. §1752). Direction is now provided in 43 U.S.C. §1752 relative to the priority and timing for completion of environmental analyses and the continuation of terms under a new permit.

23. Secure Rural Schools and Community Self-Determination Act (SRSA) of 2000 (16 U.S.C. §§500 *et seq.*). Secure Rural Schools Act payments are Federal payments to local governments that help offset losses in property taxes due to non-taxable Federal lands within their boundaries. Payments are an amount equal to the annual average of 25 percent of all receipts for the applicable fiscal year and each of the preceding 6 fiscal years from each national forest and are paid by the Secretary of the Treasury, at the end of such year, to the county or counties in which such national forest is situated to be expended for the benefit of the public schools and public roads.

The SRSA payments are made to States/counties based upon national forest acres in the county. The PILT is SRSA's complement that provides payments to counties for national grassland acres.

24. Administrative Procedure Act (APA) of 1946 (5 U.S.C. §§500 *et seq.*), as amended in 2004. Sets up a process for the United States Federal court to directly review agency decisions. Governs the process by which Federal agencies develop and issue regulations. It includes requirements for publishing notices of proposed and final rulemaking in the Federal Register, and provides opportunities for the public to comment on notices of proposed rulemaking.

25. Independent Offices Appropriation Act of 1952, as amended (31 U.S.C. 9701). This Act provides authority for agency heads to charge fees for services or benefits provided by the agency that are fair and based on fair market value and cost to the Government. Office of Management and Budget (OMB) Circular No. A-25 further defines this

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authority and requires agencies to establish user fees based on sound business management principles.

## 2201.2 - Regulations

The authority to manage rangeland resources and administer livestock grazing activities on NFS lands and other lands under Forest Service control is delegated from the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment at 7 CFR §2.20. This authority has been delegated in turn from the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service at 7 CFR §2.60. Regulations related to the management of rangeland resources on NFS lands are:

1. Title 36, Code of Federal Regulations, Part 213. These rules govern the administration of activities on national grasslands and land utilization projects.
2. Title 36, Code of Federal Regulations, Part 214. These rules govern the appeal by permit holders of certain decisions generally limited to modification, suspension or cancellation actions on NFS lands concerning their grazing permits.
3. Title 36, Code of Federal Regulations, Part 218, Subparts A and B. These rules govern the objections process for certain project-level pre-decisional review concerning grazing on NFS lands.
4. Title 36, Code of Federal Regulations, Part 219. These rules implement the Forest and Rangeland Renewable Resources Planning Act of 1978 (RPA) and the National Forest Management Act of 1976 (NFMA) requirements for developing land management plans for units of the NFS.
5. Title 36, Code of Federal Regulations, Part 222, Subpart A. This subpart implements Title IV, sections 401, 402, and 403 of the Federal Land Policy and Management Act of 1976 (FLPMA) with regard to grazing and livestock use on NFS lands and other lands under Forest Service control.
6. Title 36, Code of Federal Regulations, Part 222, Subpart B. This subpart implements Title IV, sections 401, 402, and 403 of the Federal Land Policy and Management Act of 1976 (FLPMA) with regard to mediation of term grazing permit disputes.
7. Title 36, Code of Federal Regulations, Part 222, Subpart C. This subpart implements section 6 of the Public Rangelands Improvement Act of 1978 (PRIA) with regard to general procedures (222.50) establishing the formulas used to calculate fees charged for grazing on national forests in the sixteen contiguous Western States (222.51), on national grasslands (222.52), non-competitive fees in the Eastern forests (222.53), and competitive bidding in the Eastern forests (222.54).
8. Title 36, Code of Federal Regulations, Part 222, Subpart D. This subpart implements section 404 of the Wild and Free-Roaming Horses and Burros Act of 1971 (WFRHBA) with regard to the management of wild free-roaming horses and burros on NFS lands and other lands under Forest Service control.

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9. Title 36, Code of Federal Regulations, Section 261.7, Subpart A. These rules establish prohibitions related to livestock use on NFS lands which generally involve law enforcement actions and may be subject to a fine and/or imprisonment.
10. Title 36, Code of Federal Regulations, Part 262, Subpart B. These rules govern the impoundment and disposal of unauthorized livestock on NFS lands.
11. Title 36, Code of Federal Regulations, Part 293.7. These rules govern the administration of livestock grazing and other uses and activities in congressionally designated wilderness areas.
12. Title 36, Code of Federal Regulations, Part 800. These rules, promulgated by the Advisory Council on Historic Preservation, establish the procedure by which Federal agencies (including the Forest Service) consider the effects of their undertakings on historic properties and provide the Council with a reasonable opportunity to comment with regard to such undertakings.
13. Title 40, Code of Federal Regulations, Part 1500. These rules, promulgated by the Council on Environmental Quality, establish the procedure by which Federal agencies (including the Forest Service) conduct and document environmental analyses and public participation in accordance with the NEPA.
14. Title 50, Code of Federal Regulations, Part 402. These rules, promulgated by the United States Fish and Wildlife Service (USFWS) and the National Oceanic Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS), establish the procedure by which Federal agencies (including the Forest Service) cooperate and consult with USFWS and NMFS to protect and conserve listed species in accordance with the Endangered Species Act.

### **2201.3 - Departmental Regulations**

1. Secretary's Order of February 1, 1905. The Secretary directed the Chief of the Forest Service, in implementing the Transfer Act of 1905, that the administration of the Forest Reserves must clearly bear in mind that all land is to be devoted to its most productive use for the permanent good of the whole people and not for the temporary benefit of individuals or companies; that the permanence of the resources of the reserves was indispensable to continued prosperity, largely of the agricultural, lumbering, mining, and livestock interests; and that the Chief was to see to it that the wood, water, and forage of the reserves was conserved and wisely used. The directive further states:

*In the management of each reserve, local questions will be decided upon local grounds, and where conflicting interests must be reconciled, the question will always be decided from the standpoint of the greatest good of the greatest number in the long run.*

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2. Secretary's Administrative Order of December 24, 1953. The Secretary transferred the land utilization projects (now national grasslands) from the Soil Conservation Service (now the Natural Resources Conservation Service) to the Forest Service, effective January 2, 1954.

3. Secretary's Administrative Order of 1960. A Secretary of Agriculture Administrative Order on June 20, 1960 designated 3,804,000 acres of the former land utilization project lands to be officially called National Grasslands, effective July 1, 1960. The Order stated that the 19 established National Grasslands were to be part of the National Forest System for administration under the Bankhead-Jones Farm Tenant Act.

4. Secretary's Administrative Order of 1963. The Secretary reaffirmed the Bankhead-Jones Farm Tenant Act philosophy that the national grasslands were to be managed:

*Under sound and progressive principles of land conservation and multiple use, and to promote development of grassland agriculture and sustained-yield management of the forage, fish and wildlife, timber, water, and recreational resources in the areas of which they are a part, and*

*So as to maintain and improve soil and vegetative cover, and to demonstrate sound and practical principles of land use for the areas in which they are located, the Chief of the Forest Service shall, to the extent such action is feasible, provide that policies for management of the federally-owned lands exert a favorable influence for securing sound land conservation practices on associated private lands.*

5. Policy on Range. (U.S. Department of Agriculture (USDA) Environmental Compliance Policy on Range, 9500-5, April 21, 1988). Establishes USDA policy to:

- a. Protect and enhance rangeland ecosystems;
- b. Contribute to the social and economic well-being of people and communities that depend on rangelands for their livelihoods;
- c. Improve the productivity of soil, water, plant, livestock, and wildlife resources of the nation's rangelands;
- d. Support national and international cooperation designed to improve rangeland condition and productivity;
- e. Provide research and technology to enhance rangeland conservation and productivity;
- f. Promote and facilitate cooperation and coordination among public agencies, private organizations, and individuals;

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- g. Provide technical, managerial, and education assistance programs to rangeland owners and other users to encourage conservation practices;
  - h. Provide periodic inventories of the nation's rangeland resources;
  - i. Manage the rangeland resources of the NFS in an economically and ecologically sound manner for multiple use and for the development and demonstration of effective rangeland management; and
  - j. Recognize and emphasize the current and future full income potentials of the nation's rangeland resources created by varied and changing public values, expectations, and demands.
6. Secretary's Memo of June 12, 2020 to the Chief of the Forest Service. Establishes vision, priorities, and direction on:
- a. Increasing the productivity of National Forests and Grasslands
  - b. Valuing our Nation's grazing heritage and the National Grasslands
  - c. Increasing access to our National Forests
  - d. Expediting environmental reviews to support active management

#### **2201.4 - Executive Orders (EOs)**

1. Executive Order 10046 (March 24, 1949). Permanently withdrew all public domain lands within land utilization project boundaries (many in the West are now national grasslands) from all forms of appropriation under the public land laws, except the mining and mineral leasing laws, and reserved them for use, administration, and disposition by the Department of Agriculture in accordance with provisions of Title III of the Bankhead-Jones Farm Tenant Act.
2. Executive Order 11246 (September 24, 1965). Requires contractors and similar entities doing business on behalf of the Forest Service to comply with Title VI of the 1964 Civil Rights Act and applicable USDA regulations.
3. Executive Order 12548 (February 14, 1986). Indefinitely extends the formula established in the Public Rangelands Improvement Act (PRIA) to calculate grazing fees on national forest lands in the eleven contiguous Western States. The grazing fee formula from 1978 through 1985, established in PRIA, specified that the fee equaled the \$1.23 base value multiplied by the sum of the forage value index, the beef cattle prices index, and the prices paid index, all divided by 100. The formula was later applied to national forest lands in all 16 Western States, and added a base value of \$1.33 for national grasslands in the nine Great Plains States.

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The EO also provided that the change in the grazing fee shall be limited to not more than plus or minus 25 percent from the previous year's fee, and that the minimum grazing fee shall not be less than \$1.35 per animal unit month (in the BLM) and per head month (in the Forest Service).

### **2201.5 - Ownership of Federal Grazing Lands**

While seemingly settled over the years, ownership status of Federal livestock grazing allotments is becoming an issue again in the early part of the 21<sup>st</sup> century, particularly on the National Grasslands.

This section is intended to be a source of factual information for reference by Forest Service personnel. This section can be a source of information for others so that employees can avoid the need to debate the issue or to end up in potentially volatile situations of conflict over the issue. However please note that this section does not convey legal advice for responding to assertions or questions regarding private property rights related to Federal public lands. Legal questions should always be discussed with your Office of the General Counsel before any public or private responses are provided.

1. This directive may be shared with other employees as an educational tool.
2. This directive may be copied and mailed to permittees as a source of factual information for them to base their opinions and decisions upon.
3. This directive may be copied and mailed to other external parties or interest groups, as requested.
4. This directive location in this Forest Service Manual can be shared with external parties with electronic access to the Forest Service directives system.

### **2201.51 - Federal Authority**

The Supreme Court of the United States has identified three clauses in the U.S. Constitution that are related to authorization of land ownership and management by the Federal government.

Property Clause - Article IV, Section 3, Clause 2 gives Congress authority over Federal property.

The Federal government's authority over public lands is set forth in the Property Clause of the United States Constitution, granting Congress the power to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The Supreme Court has made clear that the Property Clause grants Congress an "absolute right" to decide upon the disposition of Federal land and "[n]o State legislation can interfere with this right or embarrass its exercise." (see *Gibson v. Chouteau*, 80 U.S. 92, 99, 20 L. Ed. 534 [1871]). The power to make decisions regarding disposition includes the power to forego disposition and to retain property in Federal ownership because, "it lies in the discretion of the Congress, acting

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in the public interest, to determine of how much of [its] property it shall dispose." (see *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 336, 56 S. Ct. 466, 478, 80 L. Ed. 688 [1936]).

See *Kleppe v. New Mexico*, 426 U.S. 529, 542-43 (1976): "while Congress can acquire exclusive or partial jurisdiction over lands within a State by the State's consent or cession, the presence or absence of such jurisdiction has nothing to do with Congress' powers under the Property Clause. Absent consent or cession, a State undoubtedly retains jurisdiction over Federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause. And when Congress so acts, the Federal legislation necessarily overrides conflicting state laws under the Supremacy Clause. U.S.Const., Art. VI, cl. 2. See *Hunt v. United States*, 278 U.S. at 278 U. S. 100; *McKelvey v. United States*, 260 U. S. 353, 260 U. S. 359 (1922)."

Supremacy Clause - Article VI, Clause 2 of the Constitution, the Supremacy Clause, invalidates state laws that interfere with, or are contrary to, Federal law.

State legislation cannot displace Congress' discretion to decide how much of the public domain to retain and how much is to be available for disposal. The Supreme Court has ruled that "inclusion within a State of lands of the United States does not take from Congress the power to control their occupancy and use ... and to prescribe the conditions upon which others may obtain rights in them." (see *Utah Power & Light Co. v. United States*, 243 U.S. 389 [1917]).

Equal Footing Doctrine - The equal footing doctrine is a limitation on the terms by which Congress can admit a State, and provides, broadly, that every new state is entitled to exercise all the powers of government which belong to the original states of the Union. The doctrine is based on language within Article IV, Section 3, Clause 1 of the Constitution and language found in State-enabling acts. Its constitutional stature was recognized in the Supreme Court's decision in *Pollard's Lessee v. Hagan*, 44 U.S. 212 (1845), which involved competing claims to title to submerged lands, one originating with the state and the other from the Federal government. The Supreme Court held that since the original states held title to submerged lands as an attribute of sovereignty, and new states were admitted on par with the original states, Alabama received title to the submerged lands in question and the Federal government had no interest to grant to Mr. Pollard..

The Supreme Court has noted that the equal footing doctrine "applies to political rights and sovereignty, not the economic characteristics of the states." (see *South San Joaquin Irrigation Dist. v. Neumiller*, 2 Cal. 2d 485, 489, 42 P.2d 64, 66 [1935] and *Bjerke v. Arens*, 203 Minn. 501, 503, 281 N.W. 865, 866 [1938]). In the area of property ownership, the doctrine "negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State," *United States v. Texas*, 339 U.S. 707, 717 (1950), which depending on the circumstances can result in an enhancement or a relinquishment of certain aspects of sovereignty upon admission.

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The equal footing doctrine does not require an equal distribution of land to each state, as the 1996 case of *United States v. Gardner*, 107 F.3d 1314, 1318-19 (9th Cir. 1997), makes clear (. Nor does the doctrine serve to abrogate prior federally-derived tribal treaty rights upon admission, as older court decisions had suggested; rather, “because treaty rights are reconcilable with state sovereignty over natural resources,” there is no reason to find statehood itself sufficient “to extinguish Indian treaty rights to hunt, fish and gather on land within state boundaries.” *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U. S. 172, 205 (1999), quoted in *Herrera v. Wyoming*, 587 U.S. \_\_\_, at 9 (slip opinion) (2019).

### **2201.52 - Federal Land Management Policy**

Federal land ownership began when the original 13 states ceded their "western" lands (between the Appalachian Mountains and the Mississippi River) to the central government, between 1781 and 1802. Substantial land acquisition in North America via treaties and purchases began with the Louisiana Purchase in 1803, continued to accelerate with the Oregon Compromise with England in 1846, the treaty acquisition of lands after the Mexican War of 1848, and culminated with the purchase of Alaska in 1867. The initial Federal policy generally was to facilitate the transfer of ownership of Federal lands to private and state ownership. Starting in the mid-1800s, Congress enacted many laws granting lands and authorizing or directing sales or transfers, such as the homestead laws and railroad land grants, ultimately disposing of 1.275 billion acres. However, from the earliest times but especially after the later 1800s land conservation movement took hold, Congress also provided for reserving lands for Federal purposes, and over time has reserved or withdrawn areas for such entities as national parks, national forests, and wildlife refuges.

More than a century ago, the Supreme Court upheld the just-emerging system of National Forests, concluding that the Federal government could retain public lands for broad national benefits, and that it could do so indefinitely. *Light v. United States*, 220 U.S. 523, 536-37 (1911).

Issues such as whether some or all of the Federal lands should be retained or divested, how to dispose of lands, or whether to acquire additional Federal lands, are policy questions for Congress.

#### Disposal

The initial policy of the Federal government generally was to transfer ownership of many of the Federal lands to private and state hands - to pay Revolutionary War soldiers, to finance the new government, and later to encourage the development of infrastructure and the settlement of the territories. Congress enacted numerous laws to grant, sell, or otherwise transfer Federal lands into private ownership, including the Homestead Act of 1862 and the General Mining Law of 1872. Grants to railroads in the 1870s gave them incentives to create much of the nation's transportation system. The Federal government also granted 328 million acres to the states.

In the West, the Federal government tried to convey more public land to the states, but many states refused to accept those lands. In 1932, President Hoover convened a committee to

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investigate turning over the public domain to the states. Although Congress drafted the necessary legislation, those bills died for lack of Western support. States were reluctant to acquire the public domain because they feared they would lose Federal reclamation funds, mineral revenue, and highway funds, while facing increasing administrative costs.

### Withdrawals

Federal land management policy has always been about more than disposal. As early as 1785, Congress reserved Federal interests in minerals found on Federal land. Withdrawals for Indian reservations have occurred since at least 1789. Early withdrawals were primarily to retain lands for future disposals or for Indian trading posts, for military and mineral reservations, or for other public purposes. Withdrawals for what would become National Parks began in 1832, and Yellowstone National Park was established in 1872. In 1891, the President received authority to withdraw federally owned forest lands from disposal, and Presidents Harrison and Cleveland promptly set aside 17.5 million acres of new Forest Reserves (which became national forests). The Supreme Court has repeatedly affirmed these policies.

### Retention

The shift toward explicit Federal policy to retain these lands continued with two laws enacted in 1964. One created the Public Land Law Review Commission (PLLRC) to review existing public land laws and regulations, and to examine the policies and practices of the Federal agencies which administered the Federal lands. The future of the public lands, including the issue of retention or disposal, was debated in three Congresses following the release of the PLLRC report. Finally, enactment of the FLPMA in 1976 formally ended the previous disposal policy, expressly declaring that the national policy generally was to retain the remaining lands in Federal ownership.

FLPMA unified 3,000 separate and often conflicting public land laws into a coherent package. It amended many previous management authorities and public land and resource laws and repealed most land disposal laws. Section 702 repealed the many statutes and sections authorizing homesteading, although the effective date of the repeal was delayed for 10 years in Alaska. Section 703 similarly repealed (and delayed the effective date in Alaska) most other statutes authorizing land sales or transfers. FLPMA did authorize the sale of some specific tracts of public lands "at a price not less than their fair market value" under conditions specified in the Act.

FLPMA expressly requires that "the public lands be retained in Federal ownership, unless ... it is determined that disposal of a particular parcel will serve the national interest."

### **2201.53 - Livestock Grazing**

It is well established in the Federal courts that a property right in Federal lands cannot be appropriated by grazing livestock on them.

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Federal law prohibits grazing cattle without a permit on lands within the National Forest System. The Secretary of Agriculture is authorized "to issue permits for the grazing of livestock" on such lands, and longstanding Federal regulations prohibit such grazing without a permit.

In *Light v. United States*, A Colorado resident who had been enjoined from grazing cattle on National Forest System lands argued that Congress could not withdraw public lands from settlement without state consent. The Supreme Court disagreed, ruling that the United States' policy of allowing grazing on unreserved, unoccupied public lands "did not... deprive the United States of the power of recalling any implied license under which the land had been used for private purposes." "As an owner and sovereign, the United States can prohibit absolutely or fix terms on which its property can be used." As the owner of the public lands, the United States holds the public lands "in trust for the people of the whole country," not solely for the benefit of adjacent landowners (see *Light v. United States* *Light v. United States*, 220 U.S. 523, 31 S. Ct. 485 [1911]).

In 1905, the United States inaugurated a permit system for grazing use of forest reserves under the Organic Administration Act.

In the Taylor Grazing Act (in relation to BLM lands) and the Granger-Thye Act (in relation to NFS lands), Congress replaced the implied-license scheme with express permitting requirements, under which the issuance of a grazing permit similarly does not confer property rights.

### **2201.54 - Governing Laws Regarding Land Acquisition and Ownership**

The means by which the Federal government came to own its lands can affect which laws govern the management of those lands. The public domain lands, primarily those obtained from a foreign sovereign, typically are governed by different laws than are lands acquired from states or individuals. Congress has provided the Forest Service with numerous authorities for acquiring and disposing of Federal lands.

#### Lands Acquired through Treaty

In the Eastern United States, the thirteen colonies obtained title from Great Britain following the Revolutionary War, conveying the frontier to the Federal government. In the West, the Federal government obtained land title via treaties with foreign powers, most notably the Louisiana Purchase, the Oregon Compromise, and the Treaty of Guadalupe Hidalgo. The Federal government, after obtaining this land with Federal blood and treasure, created Federal territories and authorized formation of the Western states. The Federal decisions to retain land in Federal ownership, many predating establishment of Western states, are clearly within the Federal government's Constitutional authority.

#### Lands Acquired Through Purchase

Federal property rights in lands acquired through purchase or other non-treaty means are defined by the deeds through which the Federal government acquires those lands. Absent specific

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reservations of property rights in the deed, the Federal government acquires unrestricted fee title to the land, extinguishing all previously existing non-Federal property rights in the land.

**2201.55 - Ownership Claims by Others**

Regarding claims of ownership involving Federal lands, the established rule is that land ownership decisions are construed favorably to the Government, unless there is clear language in law directing otherwise, and that if there are doubts they are resolved for the Government, not against it.

The following is a discussion of commonly referenced claims of ownership or rights against Federal grazing allotments and the bases for denying those claims.

Grazing Permit Possessory Rights

The Supreme Court has held that issuance of a grazing permit does not create compensable property right under the Fifth Amendment (see *United States v. Fuller*, 409 U.S. 488 (1973)).

The Forest Service is authorized to issue grazing permits under the Granger-Thye Act. In compliance with provisions of that Act, language within the Federal regulations state that "Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources." Because a grazing permit confers no property right, there is no compensable injury (takings) under the Fifth Amendment for government actions which affect grazing on permitted land.

Improvement Ownership

Although Bureau of Land Management policy provides for shared ownership of livestock grazing related improvements, such as ponds, fences and other physical structure, the Forest Service generally retains full ownership of livestock grazing related improvements that are constructed on National Forest System lands.

Per 43 USC 1752(g), whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under that subsection without two years' prior notification.

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CHAPTER - ZERO CODE**Mining Act Easements

The courts of appeals that have addressed the issue of Mining Act easements unanimously agree that the Mining Act only granted an express right of way for ditches or canals constructed pursuant to state law to convey water to its place of use. Thus, the Mining Act preserved state-law rights to use water located on unreserved public lands and provided a right of way to divert the waters in order to access and use that water elsewhere.

The Ninth Circuit Court of Appeals has ruled that the Mining Act did not confer an appurtenant right to graze on Federal lands. The Mining Act did not create an unwritten easement allowing the water rights owner to graze cattle on Federal lands within a half-mile radius of a water source, ditch, or canal (see *Hunter v. United States*, 388 F.2d 148 [9th Cir.1967] and *United States v. Estate of Wayne Hage*; *Wayne N. Hage No. 13-16974* [9th Cir. 2016]).

National Grasslands (Bankhead-Jones Farm Tenant Act Lands)

Any private rights acquired by patents under the Stock-Raising Homestead Act or other laws were extinguished when the United States re-acquired the property, absent an express reservation by the party that transferred the land to the United States in the deed.

The majority of the lands in the National Grasslands were originally patented out of Federal ownership under various authorities, including laws such as the Homestead Act, the Enlarged Homestead Act, and the Stock-Raising Homestead Act. Subsequently, the lands were re-acquired by the United States, under the authorization provided by the National Industrial Recovery Act of 1933 and Emergency Relief Appropriations Act of 1935 and became Federal property again. The purchased lands were called Land Utilization (L-U) projects and were first administered by the U.S. Resettlement Administration, later called the Farm Security Administration. The Bankhead-Jones Farm Tenant Act of 1937 gave custody of the L-U lands to the Secretary of Agriculture and authorized more extensive conservation efforts. In 1938, the Soil Conservation Service (SCS) was given the task of managing the L-U lands. By Secretary of Agriculture Administrative Order dated December 24, 1953 (effective January 2, 1954), management of the remaining 5.5 million acres of L-U lands was transferred from the SCS to the Forest Service.

By 1958, about 1.5 million acres had been incorporated into adjacent national forests. Discussion over the future of these lands continued. On June 20, 1960 the Secretary of Agriculture issued an administrative order which resulted in some 3,804,000 acres being designated as national grasslands. The Administrative Order affirmed that the Forest Service was now responsible for the permanent retention and management of the grasslands. The resulting regulation was published in the Federal Register on June 24, 1960 (see 25 FR 5845). The 1960 order and resulting regulation stated that the national grasslands were to be administered as part of the National Forest System under the Bankhead-Jones Farm Tenant Act and that the Forest Service was to manage these lands for outdoor recreation, range, timber, watershed, and wildlife and fish.

Congress provided further direction to the Secretary of Agriculture to manage the National Grasslands as part of the National Forest System in the 1974 Forest and Rangeland Renewable

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Resources Planning Act (RPA). The RPA says that National Grasslands are part of the “National Forest System” (see 16 USC §1609(a)). Many of the early and current governing regulations, Forest Service policies, as well as recent Congressional legislation, have consistently used the term “National Forest System lands” to clarify that it intends to include National Grasslands.

Pioneer/Possessory/ Occupancy Rights

The Supreme Court has held that a pioneer/possessory right or title is good against all the world, except the United States as the actual legal title owner.

Essentially, pioneer rights are equivalent to "possessory" or "occupancy" rights that typically have the sanction of State or Territorial legislation, or; local laws, customs and decisions of the courts; or “aboriginal” title or “possessory” or “occupancy” rights dating from a time prior to U.S. acquisition through “treaty” (i.e. Guadalupe-Hidalgo, 1848, or the Oregon-Northwest Treaty with Great Britain, 1846). This same possessory or occupancy right of "actual settlers” gives the settler a "color of title” which has been referred to as the "preference" right. The preference is the preferred right to acquire the government's "legal title” when the land occupied or in the possession and use of the pioneer is eventually opened to settlement.

Water Rights Appurtenant Use

The Federal Circuit and the Ninth Circuit are in full agreement that water rights do not include an attendant right to graze.

**2201.56 – References for Sections 2201.5 through 2201.55**

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USDA Forest Service. Letter to Elizabeth Erickson-Noe regarding legal authorities that govern administration of National Grasslands by the U.S. Forest Service. Comanche Ranger District, 2016.

**2202 - OBJECTIVES**

Objectives of the rangeland management program for National Forests and National Grasslands (NFS lands) resources are to:

1. Manage rangeland vegetation to protect basic soil and water resources, provide for ecological diversity, improve or maintain environmental quality, and meet public needs for interrelated resource uses.
2. Integrate management of rangeland ecosystems to achieve multiple use and sustained yield management of renewable resources in an environmentally sound and cost effective manner to meet public needs.
3. Provide for livestock forage, wildlife food and habitat, soil productivity, water quality, and other resource values dependent on rangeland ecosystems.

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4. Contribute to the economic and social well-being of people by providing opportunities for economic diversity and by promoting stability for communities that depend on rangeland resources for their livelihood.
5. Emphasize implementation of the 2007 Forest Service Open Space Conservation Strategy, which focuses on cooperating across boundaries to sustain working and natural landscapes. The presence of working ranches and farms prevents losses to subdivisions and urban sprawl, and maintains the open spaces that are needed for vistas, recreation opportunities, and to retain habitat and migration corridors for native species.
6. Provide expertise on rangeland ecology, botany, management of grazing and browsing animals, and habitat for wildlife species.
7. Promote the development of grassland agriculture and sustained yield management of the soil, water, forage, fish and wildlife, recreation, and timber resources on national grasslands.
8. Administer the national grasslands under principles of land conservation and utilization to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public land's safety and welfare (Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010 *et seq.*).
9. Adopt sound management practices on NFS lands that may be easily applied to intermingled and adjacent non-Federal lands.

## **2203 - POLICY**

Policies of the rangeland management program for NFS lands and resources are to:

1. Manage rangeland vegetation in coordination with other agency resource values and uses.
2. Use appropriate methods, such as grazing and browsing use by livestock or wild ungulates, prescribed fire, and mechanical or chemical treatments, for managing rangeland vegetation.
3. Identify, inventory, and monitor rangeland resource values and uses, including riparian, upland, and other critical areas, to meet or move toward desired conditions and LMP objectives.
4. Implement and monitor measures to restore, maintain, and enhance resilient and productive plant communities, water quality, and soil stability.

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5. Maintain or improve the habitat of threatened, endangered, or sensitive species of plants and animals.
6. Make forage available to qualified livestock operators.
7. Issue term permits, generally for 10-year periods, with appropriate terms and conditions to allow use of rangeland vegetation and promote stability of livestock enterprises consistent with LMPs.
8. Coordinate, cooperate, and consult with grazing permittees, grazing associations and districts, and other affected parties, in establishing rangeland vegetation objectives and developing allotment management plans.
9. Emphasize permittee responsibility and accountability for meeting terms and conditions of permits, grazing agreements, allotment management plans, and annual operating instructions (or other similar documents).
10. Manage wild free-roaming horse and burro populations in a thriving ecological balance within desired population levels for all established territories.
11. Consider socio-economic effects in making decisions implementing rangeland management activities.
12. Integrate rangeland management and resolve conflicts through coordinated resource management or other appropriate methods by promoting voluntary cooperation among agencies, groups, and individuals responsible for the management of rangeland resources on other lands not subject to the jurisdiction of the Forest Service.
13. Encourage user groups to assist in administering rangeland resources on NFS lands, where such groups clearly demonstrate the experience and ability to participate in resource management in the public interest.
14. Demonstrate management flexibility and innovation in the design and implementation of rangeland management activities on NFS lands that will promote improvement in resource management on intermingled and adjacent private and state lands.
15. Optimize rangeland management specialist expertise within the Forest Service by recruiting and retaining strong candidates from land grant universities and other colleges, encouraging transfers from other agencies and organizations, involving permittees and others in training and monitoring efforts, and through attendance and involvement with professional societies, industry groups, and other organizations.

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## **2204 - RESPONSIBILITY**

The Chief delegates the authority and responsibility for the overall administration of the Rangeland Management Program on National Forest System (NFS) lands, in conformance with applicable Federal law, regulation, and policy, to the Deputy Chief, NFS. This delegated authority is reserved to the Deputy Chief, NFS, except for the delegations to the regional foresters (RF), forest/grassland supervisors (F/GS), or district rangers (DR) expressly set forth in exhibit 01.

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**2204 - Exhibit 01**

**Delegation of Authority**

Key

Y - Yes (May be Delegated to)

N - No (May Not be Delegated to)

<u>Authority</u>	<u>May be Delegated to</u>		
	RF	F/GS	DR
1. Establishing national policy for inventory, analysis, monitoring, and management of rangeland vegetation.	N	-	-
2. Establishing national policy for allotment management planning and for administering livestock use.	N	-	-
3. Establishing national policy for implementing the grazing fee system.	N	-	-
4. Establishing national policy for managing wild free-roaming horses and burros.	N	-	-
5. Establishing national policy for betterment of rangeland condition.	N	-	-
6. Establishing national standards for expenditures of money from the Range Betterment Fund or other improvement funds.	N	-	-
7. Approving cooperative rangeland improvement projects on lands outside the NFS under the authority of Section 11 of the Granger-Thye Act and use of the Wyden authority.	N	-	-
8. Annually collecting indices to compute grazing values and grazing fees, including those for excess and unauthorized use.	N	-	-
9. Establishing national procedures for the administration of grazing permit violations.	N	-	-
10. Coordinating and cooperating with national livestock and environmental organizations, government agencies, and professional societies to promote sound rangeland management.	Y	N	-
11. Prescribing specific grazing permit provisions and requirements for region-wide use.	Y	N	-

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**2204 - Exhibit 01--Continued**

<u>Authority</u>	<u>May be Delegated to</u>		
	RF	F/GS	DR
12. Establishing region-wide policy for evaluation and monitoring, rangeland analysis, and expenditure of Range Betterment Funds.	Y	N	-
13. Establishing policy and standards for land use practices on national grasslands and land utilization projects.	Y	N	-
14. Establishing the policy for installment payments of grazing fees.	Y	Y	N
15. Establishing base property ownership requirements within the limits of national and regional policy to qualify for a term permit.	Y	Y	N
16. Establishing upper and lower limits, and approving special limits within regional policy.	Y	Y	N
17. Approving agreements with the Bureau of Land Management under the 1966 memorandum of understanding (FSM 1531.12b).	Y	Y	N
18. Approving agreements and memoranda of understanding with Bureau of Land Management, Natural Resources Conservation Service, and Cooperative State Research, Education, and Extension Service prepared under the November 1980 agreement.	Y	Y	N
19. Approving plans and entering into agreements with appropriate state and local agencies for control of stray and unbranded livestock, noxious weeds, and forage-destroying insects.	Y	Y	N
20. Entering into local agreements with other Federal agencies concerning implementation of rangeland management practices on public or private lands.	Y	Y	N
21. Closing areas to livestock grazing or opening previously closed areas and establishing or terminating livestock driveways.	Y	Y	N
22. Administering the Wild and Free-Roaming Horses and Burros Act including, but not limited to, de-populating herds and adjusting or abolishing territory boundaries.	Y	Y	N

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**2204 - Exhibit 01--Continued**

<u>Authority</u>	<u>May be Delegated to</u>		
	RF	F/GS	DR
23. Establishing a schedule for the environmental analysis of allotments to satisfy requirements of the Rescissions Act of 1995, NEPA, and other applicable laws.	Y	Y	N
24. Establishing grazing association audit schedules.	Y	Y	N
25. Determining the adjusted value of permanent range improvements; negotiating and settling cases involving compensation for permittee interests.	Y	Y	N
26. Issuing permits, grazing authorizations, or agreements to Indian tribes on the basis of rights reserved or granted by treaty.	Y	Y	N
27. Approving applications for and issuing, modifying, suspending, and cancelling <b><u>non-standard</u></b> grazing agreements.	Y	Y	N
28. Approving applications for and issuing, modifying, suspending, and cancelling <b><u>standard</u></b> grazing agreements found in FSH 2209.13, chapter 20.	Y	Y	Y
29. Negotiating and authorizing exchanges of grazing uses with Federal and state agencies.	Y	Y	Y
30. Issuing bills of sale to purchasers of impounded livestock.	Y	Y	Y
31. Establishing range allotments or modifying allotment boundaries.	Y	Y	Y
32. Approving allotment management plans, annual operating instructions (or similar documents), and wild free-roaming horse and burro territory management plans.	Y	Y	Y
33. Including provisions and requirements in grazing permits as necessary to obtain proper management of livestock and rangeland resources.	Y	Y	Y
34. Approving non-use of term permits in accordance with agency policy.	Y	Y	Y
35. Executing waivers of term grazing permits and confirming escrow waivers of term grazing permits.	Y	Y	Y

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**2204 - Exhibit 01—Continued**

<u>Authority</u>	<u>May be Delegated to</u>		
	RF	F/GS	DR
36. Recognizing and withdrawing recognition of local livestock associations and approving special rules. Permits are issued to individual members, but not to the livestock association itself.	Y	Y	Y
37. Determining annual allowable administrative costs and conservation practice requirements/projects on national grasslands.	Y	Y	Y
38. Determining and approving fee credits on national grasslands and the Eastern forests.	Y	Y	Y
39. Issuing bills for collection for grazing fees.	Y	Y	Y
40. Approving refund or credit of unused fees.	Y	Y	Y
41. Approving free (no charge) for some uses under a livestock use permit.	Y	Y	Y
42. Approving permit modifications for construction of rangeland improvements, ensure completion to specification, and enter improvement data in allotment databases and files, and on the permittee's "Range Improvement Inventory & Maintenance Responsibility" record in the grazing permit.	Y	Y	Y

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Actual Use. A report of the actual livestock grazing use. Actual use may be expressed in terms of animal unit months or animal months. A record of actual use contains dates and numbers of livestock gathered or moved, notes about partial removals and death losses, and it may also include information about grazing problems involving water or livestock distribution, salting records, or forage conditions (see Smith et al. 2012).

Active Allotment. An active allotment is one where there is a current term grazing permit in effect or a transition between term grazing permits is occurring.

Adaptive Management. A system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or re-evaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain (see 36 CFR 220.3).

Adjusted grazing value. On national grasslands and Eastern national forests, the unadjusted grazing value less land use practices (on national grasslands) or fee credits (on Eastern national forests). The adjusted grazing value is the amount due shown on the bill for collection, essentially becoming the grazing fee for that year.

Administered to Standard. During the fiscal year, an agency employee qualified in grazing permit administration successfully administers grazing allotments to standard by implementing direction found in LMPs, allotment management plans, annual operating instructions (or similar documents), grazing permits or grazing agreements, and other relevant documents which may include, but are not limited to, biological opinions and evaluations developed pursuant to ESA. Where direction calls for implementing a particular grazing strategy or a certain type/level of monitoring, the grazing allotment would be deemed administered to standard, if the rangeland management specialist has been present on the allotment/pasture(s) to document satisfactory compliance with the above documents and requirements. And if conditions are not satisfactory, steps are taken to correct the situation before the next grazing season. (Note: the allotments administered to standard are reported through RIMS, a conversion to acres will be made from the database). Attainment of desired conditions should not be confused with administering to standard. Administering an allotment to standard may lead to the attainment of desired conditions (in the short or long term) or may merely reflect that additional modifications in the grazing strategy are necessary.

Adoption Fee. A fee that partially recovers Forest Service costs incurred in removal of wild horses and burros from territories, processing adoption applications, providing medical examinations and vaccinations, and feeding and handling the animals during the adoption procedure.

Age of Majority. The age when a person acquires all the rights and responsibilities of being an adult. In most States, the age is 18.

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**Allotment.** An area of land determined to contain NFS lands suitable for livestock grazing, and where there has been a decision (even if a historical decision) to authorize livestock use and occupancy at present, in the past, or in the future. An allotment can be comprised of both NFS and non-NFS lands. Livestock grazing use on an allotment is authorized under some type of grazing permit, commonly a term grazing permit.

**Allotment Management Plan (AMP).** A document that implements a decision through specifying the program of action designed to reach a given set of objectives for an allotment or combination of allotments. It is prepared in consultation with the permittee(s) involved and:

1. Prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained yield, social and economic, and other needs and objectives as determined for the lands involved.
2. Describes the location, ownership, and general specifications for the rangeland improvements in place, or to be installed and maintained, on the land to meet the livestock grazing and other objectives of land management.
3. Contains such other provisions relating to livestock grazing and vegetation management objectives as may be prescribed by the authorized officer, consistent with applicable law.

**Animal -Month (AM).** A month's tenure upon range by one animal. Must specify kind and class of animal. Not synonymous with animal-unit month.

**Animal Unit (AU).** Considered to be one mature cow of about 1,000 pounds, either dry or with calf up to 6 months of age, or their equivalent, consuming about 26 pounds of forage per day on an oven-dry basis. Five sheep or goats are the general equivalent of one cow.

**Animal Unit Month (AUM).** The amount of oven-dry forage required by one animal unit for one month based on a forage allowance of 26 pounds per day. Not synonymous with *animal-month*. The term "AUM" is commonly used in three ways: a) stocking rate, as in "X acres per AUM", b) forage allocations, as in "X AUMs in Allotment A", or c) utilization, as in "X AUMs taken from Pasture B."

**Annual Operating Instructions (AOIs).** Detailed Forest Service approved instructions for livestock grazing administration to be implemented on a given year on a given allotment. This annual implementation document (or similar document) is based on and is consistent with terms and conditions in the term grazing permit, AMP, other applicable documents, and current resource conditions based on monitoring.

**Apparent Trend.** An interpretation of trend based on observation and professional judgment at a single point in time. An assessment, using professional judgment, based on a one-time observation. It includes consideration of such factors as plant vigor, abundance of seedlings and young plants, accumulation or lack of plant residues on the soil surface, and soil surface

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characteristics (i.e. crusting, gravel pavement, pedestalled plants, and sheet or rill erosion) (see Interagency Technical Reference 1734-4).

Assessment. An analysis and interpretation of the ecological, economic, and/or social characteristics of an area using scientific principles to describe existing conditions and their trends in relation to outcomes defined as being sustainable. Assessments provide the foundation of independent information upon which to build conservation strategies and management decisions, and against which alternative approaches can be evaluated and modified (see FSM 1940.5).

Authorized Officer. A Forest Service line officer with the authority to take certain actions related to rangeland management on NFS lands and other lands under Forest Service control.

Authorized Use. Use specified on the annual bill(s) for collection and verified by permittee's payment of fees.

Base Property. Land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by the permittee to qualify for a term grazing permit. At a minimum, base property must have a source of livestock water and contain facilities for handling livestock.

Base Year. The year in which a fee system is established, or the year established as base of a data series.

Benchmark. A permanent reference point, in range inventory and effectiveness (trend) monitoring, it is used as a point where changes in vegetation, in response to applied management through time, are measured (Adapted from "A Glossary of Terms Used in Range Management." Fourth Edition, edited by the Glossary Update Task Group, Society for Range Management, Thomas E. Bedell, Chairman. 1998. Third Printing 2005).

Best Management Practices for Water Quality. State and national approved methods, measures, or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. Some States have issued BMPs for grazing, some have not, and some are voluntary. Some have been developed by the grazing industry for voluntary application. BMPs can be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters (see 36 CFR 219.19).

Cancellation. Action taken to revoke or terminate a grazing permit, in whole or in part.

Capability. The ecological capacity or inherent potential of an area characterized by the interrelationship of its physical elements, its climatic regime, and natural disturbances Rangeland capability seldom varies by alternative during the allotment management planning process.

Carrying Capacity. The average number of livestock and/or wildlife that may be sustained on a management unit compatible with management objectives for the unit. In addition to site

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characteristics, it is a function of management goals and management intensity (Synonymous with grazing capacity).

Closed Allotment. A closed allotment (sometimes called “abolished”) is a designation for an area of land formerly holding active allotment status, but where there has been a formal decision (either a NEPA-based decision or an inappropriate administrative decision) to close the allotment lands to permitted livestock grazing. Once closed, the allotment can only be authorized for livestock use and occupancy upon completion of a new NEPA analysis and decision. Closed allotments, although no longer officially available for livestock use, do require retention of all pertinent records in the hard copy and corporate database files for historical purposes.

Collaboration. People working together to share knowledge and resources to describe and achieve desired conditions for NFS lands and for associated social, ecological, and economic systems in a plan area. Collaboration applies throughout land management, encompasses a wide range of external and internal relationships, and entails formal and informal processes. (see FSM 1940.5)

Conservation Practices. The protection, planning, land treatment, and improvement measures necessary for proper use of NFS lands managed under the provisions of the Bankhead-Jones Farm Tenant Act and required of the holder of a grazing agreement or grazing permit on national grasslands or land utilization projects.

Combined Allotment. When an existing allotment is combined into another allotment, it is shown in the corporate databases as ‘combined.’ This designation indicates that it no longer exists as a stand-alone allotment while retaining the allotment records for historical purposes. The acres of the combined allotment have been added to the acres of the active allotment it was combined with.

Compliance Inspection. On-the-ground evaluation of the current status of permittee management in meeting the terms and conditions of the grazing permit, including any specific instructions from the AMP and AOI. Compliance includes items such as maintenance of assigned improvements, completing pasture moves based on allowable use, assuring that rotation systems are followed, and timely removal from the allotment.

Critical area. An area which must be treated with special consideration because of inherent site factors, size, location condition, values, or significant potential conflicts among uses.

NOTE: A critical area is not a key area because it is not representative of the grazing use on a pasture or allotment.

Deferment. The delay of grazing to achieve a specific management objective. A strategy aimed at providing time for plant reproduction, establishment of new plants, restoration of plant vigor, a return to environmental conditions appropriate for grazing, or the accumulation of forage for later use.

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Deferred Grazing. The deferment of grazing in a non-systematic rotation with other land units.

Deferred-Rotation. Any grazing system which provides for a systematic rotation of deferment among pastures.

Desired Condition – Rangelands. The social, economic, and ecological attributes toward which management of the land and resources of the plan area are directed. Desired conditions are aspirations, not commitments or NEPA final decisions used to approve projects and activities. Desired conditions are generally achievable only over long time periods that are as identified in the LMP or site-specific decision document (FSM 1905, 36 CFR 219.7). Some examples of desired condition include ecological status of the vegetation, species composition, diversity of habitats, age classes of species, erosion, streambank and channel stability, riparian habitats, stream habitat, and riparian vegetation.

Documentation. All information related to inspections, decisions, phone calls, conversations, meetings, monitoring data collected, precipitation data, etc. associated with the management of the allotment. Documentation may be completed electronically (as through the use of tablets), may be in handwritten field notes, or may include a post-season summary letter to the permittee.

Ecological Site. An ecological site is a conceptual division of the landscape, defined as a distinctive kind of land based on recurring soil, landform, geological, and climate characteristics that differs from other kinds of land in its ability to produce distinctive kinds and amounts of vegetation and in its ability to respond similarly to management actions and natural disturbances. (see USDA NRCS 2013).

Ecological Site Description (ESD). The documentation of the characteristics of an ecological site. The documentation includes the data used to define the distinctive properties and characteristics of the ecological site; the biotic and abiotic characteristics that differentiate the site (i.e., climate, physiographic, soil characteristics, plant communities); and the ecological dynamics of the site that describes how changes in disturbance processes and management can affect the site. An ESD also provides interpretations about the land uses and ecosystem services that a particular ecological site can support and management alternatives for achieving land management. (see USDA NRCS 2013)

Ecological Status. The degree of similarity between the existing vegetation (all components and their characteristics) and existing soil conditions compared to the potential natural community and the desired soil condition on a site (see FSH 2090.11).

Ecological Type. A category of lands with a distinctive (i.e., able to be mapped) combination of landscape elements. The elements making up an ecological type are climate, geology, geomorphology, soils, and potential natural vegetation. Ecological types differ from each other in their ability to produce vegetation and respond to management and natural disturbances (see Terrestrial Ecological Unit Inventory Technical Guide: Landscape and Land Unit Scales, USDA Forest Service, Gen Tech Report WO-68, 2005).

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Ecological Units. Map units designed to identify land and water areas at different levels of resolution based on similar capabilities and potentials for response to management and natural disturbance. These capabilities and potentials derive from multiple elements: climate, geomorphology, geology, soils and potential natural vegetation. Ecological units should, by design, be rather stable. They may, however, be refined or updated as better information becomes available (see Terrestrial Ecological Unit Inventory Technical Guide: Landscape and Land Unit Scales, USDA Forest Service, Gen Tech Report WO-68, 2005).

Economic Value (EV). The annual value (grazing value) of the public rangeland to the grazing permittees.

Effectiveness Monitoring. This long-term monitoring answers the question: Are the management actions making the expected progress toward achieving desired resource management objectives?

Eleven Western States. The States of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming used to calculate the forage value index (36 CFR 222.51 (b)(1)).

Escrow Waiver of Term Grazing Permit Privileges. A form (FS-2200-13) executed by a permittee and verified by a lender that waives all privileges (except the privilege of continuing to graze livestock) to the United States in recognition of a mortgage agreement for land, livestock, or both, by and between the permittee and the lender. Until the escrow waiver is released by the lender, the permittee cannot waive the grazing privilege, and in any foreclosure action, the lender will be recognized as the preferred applicant. The authorized officer confirms and accepts the escrow waiver form for filing.

Excess Animals: Wild Free-Roaming Horses and Burros. Wild and free-roaming horses or burros that authorized personnel have removed or must remove, pursuant to law, to preserve and maintain ecological balance in coordination with other resources and activities.

Excess Livestock. Any livestock owned by the holder of a grazing permit, but grazing on NFS lands in greater numbers, or at times or places other than permitted in the grazing permit or authorized on the annual bill for collection.

Fair Market Value (FMV). This definition applies only to grazing fees; the monetary amount that is reasonably expected for use of rangeland. Expressed as an amount per month, it is usually established by competitive conditions. For NFS grazing, FMV is the difference between the total costs associated with livestock grazing of privately-leased grazing lands, and the total non-fee costs of livestock grazing NFS land.

Fee Credit. The value of range improvements required by an authorized officer on Eastern national forests or as conservation practices on national grasslands and land utilization projects, which are credited against the annual grazing value in the determination of a grazing fee. Not to be confused with refund or credit of annual grazing fee paid.

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Forage Reserve Allotment. A forage reserve allotment is a formal designation for an allotment where there has been a decision made to manage the area for periodic authorization of livestock use and occupancy but where the available grazing capacity is not annually obligated under a term grazing permit. Forage is normally to be made available in response to needs or opportunities related to other allotments or term grazing permit situations such as drought or other acts of nature, displacement due to wildfire or prescribed fire, opportunities to enhance rangeland resources through short-term rest, or litigation or consultation needs.

Frequency (of use as a management tool). The number of times forage plants are defoliated during the grazing period. (see Reed, Floyd, Roy Roath, and Dave Bradford. 1999. The Grazing Response Index: A Simple and Effective Method to Evaluate Grazing Impacts. Rangelands 21(4): 3-6.)

Frequency (as a measurement for trend). The ratio between the number of sample units that contain a species and the total number of sample units.

Grant Process. The procedure designed to identify an applicant(s) to receive a term grazing permit when grazing capacity becomes available and there is no preferred applicant.

Grazing Agreement. A type of term grazing permit that authorizes eligible grazing associations and grazing districts organized under State law to graze livestock on NFS lands. It includes provisions for the associations to issue grazing permits to association members and administer the permits in conformance with applicable law, regulation, LMP and AMP direction, the terms and conditions of the grazing agreement, and the association's rules of management and bylaws.

Grazing Association. An organization of NFS grazing users to which a grazing agreement has been issued. Grazing associations are organized under State statutes for the purpose of cooperative management of permitted livestock and to administer the livestock grazing use distributed to its members through association-issued permits. Grazing associations may also be referred to as grazing districts. See definition of *Livestock Association* for comparison.

Grazing Association Member. A member of a grazing association or grazing district that is recognized by the Forest Service, who has received an association-issued permit authorizing livestock grazing on lands subject to a grazing agreement issued by the Forest Service.

Grazing Capability. A qualitative expression of the inherent ability of an ecosystem to support grazing use by various kinds and classes of livestock while maintaining sustainability of the resource and providing for multiple uses and ecosystem services. Grazing capability of a land area is dependent upon the interrelationship of the soils, topography, vegetation, forage production, and animal behavior.

Grazing Fee. The annual charge per head month for grazing use of NFS lands. The grazing fees are set by formula and determined annually (36 CFR 222 Subpart C).

Grazing Intensity. The degree of herbage removed through grazing and trampling by livestock. Grazing intensity may be described in terms of herbage removed during the grazing and/or

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growing period or as a utilization level at the end of the growing period. It is important to clearly define how intensity is being viewed and described. Removal of leaf material, when the plant is actively growing can affect root growth which in turn affects future leaf growth. Sufficient leaf area is essential to support plant functions through photosynthesis. Heavy to severe intensity or utilization can affect current plant development and growth as well as growth during subsequent growing seasons (see Reed, Floyd, Roy Roath, and Dave Bradford. 1999. The Grazing Response Index: A Simple and Effective Method to Evaluate Grazing Impacts. Rangelands 21(4): 3-6).

Grazing Occurrence. The period of time during which a given area is grazed. How often a pasture is exposed to grazing or rested from grazing provides for different responses within the plant community due to differing opportunities for plant recovery (see Reed, Floyd, Roy Roath, and Dave Bradford. 1999. The Grazing Response Index: A Simple and Effective Method to Evaluate Grazing Impacts. Rangelands 21[4]: 3-6).

Grazing Period. The length of time grazing livestock or wildlife occupy a specific land area. The length of time a pasture is exposed to grazing affects many variables such as potential for regrowth of plant material, soil impacts and animal behavior. The grazing period influences the intensity of grazing and the frequency of grazing. It can also influence items tied to animal behavior such as trailing, and trampling such as between loafing and watering areas.

Grazing Permit. A standard form or other approved document, signed by a line officer, authorizing livestock to use NFS lands or other lands under Forest Service control for the purposes of livestock production.

1. Term Permit. A permit issued for up to 10 years with priority for issuance of a new term permit at the end of the term. Types include:
  - a. Term Grazing Permit (FSH 2209.13, ch. 10). Authorizes livestock grazing on NFS lands on a charge basis for commercial livestock production.
  - b. Term Grazing Permit with On-and-Off Provisions (FSH 2209.13, ch. 10). Permits with specific provisions on rangeland only part of which is NFS lands or other lands under Forest Service control. This permit is used to authorize grazing on NFS lands when the logical grazing unit also includes intermingled private and/or other lands predominantly owned or controlled by the permittee and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.
  - c. Term Private Land Grazing Permit (FSH 2209.13, ch.10). Permits issued to persons who own or control private rangeland parcels within NFS grazing allotments predominantly surrounded by NFS lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.
  - d. Grazing Agreement (FSH 2209.13, ch. 20). Permits issued to eligible grazing associations and grazing districts organized under state law to graze livestock on NFS lands and includes provision for the association to issue grazing permits to association members and administer the permits in conformance with applicable law, regulation,

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LMP and AMP direction, the terms and conditions of the grazing agreement, and the association's rules of management and bylaws.

2. Temporary Grazing Permit (FSH 2209.13, ch. 30).—A permit issued on NFS lands for a period not to exceed 1 year, with no priority for reissuance. Temporary grazing permits are issued in limited circumstances such as utilizing favorable forage conditions, filling behind approved non-use, or grazing on vacant allotments.

3. Livestock Use Permit (FSH 2209.13, ch. 30). A permit issued for a period not to exceed 1 year and with no priority for reissuance and that authorizes grazing use for purposes other than livestock production on NFS lands. Livestock use permits are issued for trailing livestock across NFS lands, for use of leased sires by permittees, to allow research studies, or for vegetation treatments to meet specific rangeland vegetation objectives.

Grazing Value. The annual value for grazing livestock on NFS system lands, as determined annually by the indices set forth in the grazing fee formulas.

1. On national forests in the 16 contiguous Western States, the grazing value is the same as the grazing fee and the total is determined by multiplying the grazing fee by the number of head months grazing authorized. The grazing value is the entire amount shown on the bill for collection and is sent to the U.S. Treasury.

2. On national grasslands in the 17 Western States (Texas is included), the grazing value may be reduced by approved costs necessary to complete conservation practices (range improvements) and also for approved administrative costs performed by grazing associations (see Land Use Practices). The amount of the grazing value remaining is the grazing fee remitted to the Treasury.

3. On the Eastern national forests with a non-competitive Fair Market Value grazing fee, the annual grazing value is reduced by use of a three-year Hay Price Index, and may be reduced further for approved fee credits for range improvement construction. The remainder of the grazing value becomes the grazing fee remitted to the Treasury.

4. On the Eastern national forests with a Competitive Bid grazing fee, the Hay Price Index formula is applied to reduce the competitive bid amount for that year, and the remainder of the grazing value sent to the U.S. Treasury is the annual grazing fee.

Head Month. One month's occupancy of the rangeland by one mature animal. For grazing fee purposes, it is a month's occupancy of rangeland by one weaned or adult cow (with or without calf at side), bull, steer, heifer, horse, bison, burro, mule, ewe (with or without lamb(s) at side), ram, or goat (see definition of Mature Animal). Head months are to be used only for grazing fee calculation, charging, and collection purposes.

Herd Unit. An area of land within a wild horse and burro territory that is designated as a territorial habitat of one or more stallions/jacks, and their mares/jennies, and progeny, all ranging

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as one band of animals. A herd unit identifies land area boundaries used by the herd under varying conditions necessary for survival and reproduction.

Implementation Inspection. On-the-ground evaluation of permittee management in meeting or moving toward rangeland vegetation objectives and meeting allowable use standards/guidelines.

Implementation Monitoring. Short-term monitoring to collect information used to determine if management actions are implemented as designed and if those management actions achieved the annual effect expected.

Items which may be documented through implementation monitoring include but are not limited to: actual use (livestock numbers and days), condition of rangeland improvements, forage utilization levels, and wildlife observations.

Indicator. A measure or measurement of an aspect of a sustainability criterion. Indicator has also been defined as a quantitative or qualitative variable that can be measured or described to show trends in a corresponding ecological attribute when observed periodically. Indicators are quantifiable performance measures of outcomes or objectives for attaining criteria designed to assess progress toward desired conditions (see FSM 1905).

Inventory. A process of collecting data by surveying an area and documenting contents, conditions, or values of natural resources, for specific purposes such as planning, evaluation, or management. An inventory activity may include an information needs assessment; planning and scheduling; data collection, classification, mapping, data entry, storage and maintenance; product development; evaluation; and reporting phases (see FSM 1940.5). The level of inventory should be commensurate with identified issues being addressed, and the resources available.

Key Area. A relatively small portion of a range selected because of its location, use or grazing value as a monitoring point for grazing use. It is assumed that key areas, if properly selected, will reflect the overall acceptability of current grazing management over the range.

Key Species. (1) Forage species whose use serves as an indicator to the degree of use of associated species. (2) The species which must, because of their importance, be considered in the management program.

Land Management Plan (LMP). A document that provides management direction for an administrative unit of the NFS. The forest or grassland land management plan establishes plan components that provide guidance for the development of project-level NEPA decisions and subsequent AMPs and AOIs for that administrative unit. A land management plan does not authorize any project or activities. (Refer to 36 CFR 219 for Forest Service planning regulations).

Land Use Practices. Practices imposed upon permittees as conditions of their grazing permits or grazing agreements on national grasslands. The costs of these practices are deducted from the annual grazing value to determine the annual grazing fee. Land use practices include:

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1. Conservation Practices. The protection, planning, and land treatment and rangeland improvement measures (structural and nonstructural) the Forest Service requires in carrying out the provisions of a grazing permit or grazing agreement. Some examples include fences, water developments, and prescribed fire.
2. Administrative Activities. Allowable administrative and program management activities carried out by a grazing association or grazing district functioning under a grazing agreement which would otherwise be an expense incurred by the Forest Service. Some examples include permit issuance, billings, and oversight of approved rangeland improvement projects.

Landscape Assessment. Interdisciplinary inventory, analysis, and assessment of ecological units for use in revision or amendment of LMPs or for use in project-level planning. Landscape assessments are not decisions subject to NEPA.

Livestock. Domesticated animals raised in an agricultural setting to produce commodities such as meat, leather, and wool. Also defined as foraging animals of any kind kept or raised for use or pleasure.

Livestock Association. A group of individual term permit holders informally operating together under certain rules established by them for sharing resources to better manage the rangeland resources on NFS lands or other lands under Forest Service control. Livestock associations may be formed when two or more permittees elect to informally combine some part of their management operations under written rules in order to gain efficiencies of scale, such as purchasing salt or hiring a range rider.

Unlike grazing associations (see definition), livestock associations are seldom formally established under state laws. The Forest Service may include the association's rules in the direct term permits issued to individual association members.

Lower Limit. An established minimum number of livestock that can be permitted to graze on NFS lands or lands under Forest Service control under a term grazing permit. Lower limit restrictions are not applied to term permits with on-and-off provisions or to term private land permits.

Maintenance of Rangeland Improvements. The timely repair of rangeland facilities to a condition adequate to ensure proper functioning of the facility which will perpetuate its life and protect or improve the rangeland resource. Satisfactory maintenance of improvements is a mandatory term and condition of the permit for grazing on NFS lands.

Mature Animal. For purposes of determining the appropriate fee for grazing livestock on NFS lands or lands under Forest Service control, animals are deemed mature if they are weaned and at least 6 months old upon placement on NFS lands. FSH 2209.13, chapter 80, further defines mature animals when year-round permits are issued.

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Member. Any person who belongs to a grazing association or grazing district and who has been issued a grazing permit by the association or district.

Modify. To revise the terms and conditions of an issued permit.

Monitoring. The collection and analysis of repeated observations or measurements over time to detect changes in conditions and values and evaluate progress toward meeting a resource or management objective. A monitoring activity may include an information needs assessment; planning and scheduling; data collection, classification, mapping, data entry, storage and maintenance; product development; evaluation; and reporting phases (see FSM 1940.5).

Nine Great Plains States. The States of Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming in which the indices are collected to determine the annual grazing value on the 17 national grasslands in those States (FSH 2209.13, ch. 80).

Non-use. The absence of some or all of the permitted livestock for the current grazing season on a specific allotment. A request by the term grazing permittee to run less than 90% of the permitted livestock numbers during a grazing fee year (non-use for personal convenience). The Forest Service can also require a reduction in permitted livestock in a year, usually because of extended drought or to recover from drought or other acts of nature (non-use for resource protection).

Objective. A concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Like desired conditions, objectives are aspirations and not commitments or final decisions approving projects and activities, and should consider reasonably foreseeable budgets (FSM 1905, 36 CFR 219.7).

Occupancy and Use of NFS Lands. Occupancy is gaining or having physical possession of, or license in, real property in the absence of legal right or title. Use is the privilege to enjoy the benefits of real property, but the holder of the privilege does not hold title to the property.

Open Range. Rangeland in States where cattle may roam freely regardless of land ownership and where there are "open range" laws. Those wanting to keep animals off their property must erect a fence to keep animals out. The fence out requirement also applies to public roads and lands.

Land in open range that is designated as part of a "herd district" reverses liabilities, requiring the owner of animals to fence them in or otherwise keep them on the person's own property.

Other Lands under Forest Service Control. Private, state, or other agency lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.

Permitted Livestock. Livestock authorized by a written Forest Service permit. This may include:

1. Livestock currently being grazed under a permit, or

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2. Livestock grazed under a permit which occupied NFS lands during the preceding permitted season of use, including their offspring retained for herd replacement.

Permittee (permit holder). Any legal entity (individual, partnership, corporation, organization, Indian tribe, etc.) meeting eligibility and qualification requirements that has been issued a written authorization for use and occupancy of an area of NFS lands, and/or lands controlled by the Forest Service, for the purpose of grazing livestock.

Permitted Use. The number of animals, class of livestock, period of use, and place of use specified in part 1 of the grazing permit. See also *Authorized Use*.

Project-Level NEPA Analysis and Decision. An analysis of management alternatives and actions, often resulting in a formal agency decision to guide management of allotment livestock grazing and associated resources. The end product of the NEPA-based decision, where the decision is to authorize livestock grazing, is the AMP (and AOI), and issuance of appropriate permits authorizing livestock use.

Protocol. Repeatable instructions for inventory, monitoring, and assessment activities for such tasks as assessing information needs, and collecting, mapping, classifying, analyzing and evaluating, and applying information (see FSM 1940.5).

Range Betterment Fund. Fifty percent or \$10,000,000 per year, whichever is greater, of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (43 U.S.C. 315 *et seq.*), and the Act of August 28, 1937 (43 U.S.C. 1181d), and on lands in national forests in the sixteen contiguous Western States. The funds are credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half is used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated are in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range projects.

Rangeland. Land where the native vegetation is predominantly grasses, grass-like plants, forbs, or shrubs. Rangeland includes natural grasslands, savanna, shrublands, most deserts, tundra, alpine communities, coastal marshes, wet meadows, riparian areas, woodlands, and forested areas producing herbaceous or woody understory on which grazing by wild or domestic herbivores may occur. Rangeland also includes land revegetated, naturally or artificially, to provide a plant cover, which is managed like native rangeland vegetation (Society for Range Management).

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**Rangeland Analysis.** The systematic collection and evaluation of rangelands, their elements, and their relationships – vegetation, soils, topography, hydrology, precipitation patterns, climatic conditions, wildlife and fish habitats, and other values and uses.

**Rangeland Improvement.** Any activity or program on or relating to rangelands that is designed to improve or increase rangeland condition and forage production, improve vegetative composition, control patterns of ungulate use, provide water, stabilize soil and watershed conditions, and provide habitat for livestock and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results or conditions. Rangeland improvements may include the following:

1. **Nonstructural.** Practices and treatments undertaken to treat rangeland not involving construction of improvements. Examples include but are not limited to such practices and treatments as prescribed burns, seeding, fertilizing, mowing, furrowing, or similar practices relating to the vegetation or soil.
2. **Structural.** Improvements requiring construction or installation to improve the rangeland, facilitate management, control distribution and movement of livestock or wildlife, or all of the above. These improvements fall into the following two categories:
  - a. **Permanent.** Rangeland improvements installed or constructed which are a longer-lasting part of the landscape like dams, ponds, pipelines, wells, certain tanks, fences, and trails.
  - b. **Temporary.** Short-lived or portable improvements that can be easily removed, like troughs or tanks, pumps, electric fences, and other structures.

**Rangeland Resources.** The natural resources of rangeland ecosystems that include healthy watershed and plant communities that provide habitat for wildlife and forage for grazing and browsing ungulates.

**Rangeland Resource Inventory.** The systematic acquisition of inventory data that characterizes the vegetation, soil, and other components of rangeland ecosystems.

**Rangeland Restoration.** The process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Rangeland restoration is an intentional activity that initiates or accelerates the recovery of an ecosystem with respect to its health, integrity, and sustainability.

**Reference Site.** A site permanently established and sampled to provide a standard baseline that can be used to study natural ecosystems and to evaluate and extrapolate the effects of management activities.

**Resilience.** The capacity of a system to absorb disturbance and reorganize while undergoing change but still retaining essentially the same function, structure, identity, and feedbacks. Resilience is a critical concept in incorporating disturbance regimes into desired conditions (see

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FSH 1909.12; USDA Forest Service 2006, USDA National Resources Conservation Service 2013).

Rest. To leave an area of grazing land un-grazed or unharvested for a specific time, such as a year, a growing season, or a specified period required within a particular management practice.

Rest-Rotation. A grazing management scheme in which rest periods for individual pastures, paddocks or grazing units, generally for the full growing season, are incorporated in a grazing rotation.

Riparian. Related to, living or located in conjunction with water bodies, water courses, seeps, and springs. A transition between the aquatic ecosystem and the adjacent terrestrial ecosystem, identified by soil characteristics or distinctive vegetation communities that require free or unbound water (FSM 2526.05). Riparian ecosystems often occupy distinctive landforms, such as flood plains or alluvial benches.

Rules of Management. A set of policies, procedures, and practices, including eligibility requirements, developed by a grazing association or grazing district and approved by the authorized officer, which govern the grazing use both on NFS lands covered by a grazing agreement and private, State, or other agency lands under the jurisdiction of a grazing association.

Seasonal Utilization. The amount of utilization that has occurred before the end of the growing season (see Interagency Technical Reference 1734-3, page 1).

Sixteen Contiguous Western States. The States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming within which the grazing authorities of FLPMA and PRIA apply to NFS lands only.

Special Limit. An approved number of livestock greater than the established upper limit, approved for grazing permits with term status. See Upper Limit.

Stubble. The basal portion of herbaceous plants remaining after the top portion has been harvested by mowing or by grazing animals.

Stubble height. The height of forage plants remaining after grazing has occurred; average stubble height includes both grazed and un-grazed plants.

Suitability. The appropriateness of specific lands within a plan area to be identified as suitable for various multiple uses or activities based on the desired conditions applicable to those lands. The plan will also identify lands within the plan area as not suitable for uses that are not compatible with desired conditions for those lands. The suitability of lands need not be identified for every use or activity. Suitability identifications may be made after consideration of historic uses and of issues that have arisen in the planning process (see 36 CFR 219.7). Rangeland suitability may vary by alternative in the analysis of the allotment or group of allotments.

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Suspension. Temporary withholding of a term grazing permit privilege, in whole or in part.

Sustainability. “Ecological sustainability” refers to the capability of ecosystems to maintain ecological integrity; “economic sustainability” refers to the capability of society to produce and consume or otherwise benefit from goods and services including contributions to jobs and market and nonmarket benefits; and “social sustainability” refers to the capability of society to support the network of relationships, traditions, culture, and activities that connect people to the land and to one another, and support vibrant communities (see 36 CFR 219.19).

Term Period. The duration for which term grazing permits are issued. Term grazing permits are normally issued for up to 10 years, the maximum duration allowable by law.

Terrestrial Ecosystem Survey/Terrestrial Ecosystem Unit Inventory (TES/TEUI). The systematic examination, description, classification, mapping and interpretation of terrestrial ecosystems. A terrestrial ecosystem is an integrated representation of soil, climate and vegetation as modified by geology, geomorphology, landform and disturbance processes. (Terrestrial Ecological Unit Inventory Technical Guide: Landscape and Land Unit Scales, USDA Forest Service, Gen Tech Report WO-68, 2005.)

Territory Plan. An operational plan for managing one or more herd units of wild free-roaming horses and burros. The plan describes desired population level, detailed management practices, interagency coordination, scheduling, and monitoring requirements for managing each herd unit, within the direction established in the LMP.

Timing. The time that grazing occurs in relation to the phenological stage of plant development. Grazing during the early growth period, reproductive period, or dormant period may provide differing responses within the plant depending upon the stage of development.

Transitory Range. Lands which temporarily produce forage as a result of fire, logging, or other events.

Transportation Costs, Wild Horses, and Burros. All costs incurred in moving animals beyond the Forest Service/Bureau of Land Management facility where they are prepared for adoption. See FSM 6531 for collection procedures.

Transportation Livestock. Livestock used as pack and saddle stock for travel on NFS lands.

Trend. The direction of change in an attribute as observed over time.

Unadjusted grazing value. On national grasslands and Eastern national forests, the grazing value multiplied-by the total number of head months grazing applied for equals the grazing fee paid to the U.S. Treasury that grazing year.

Unauthorized Livestock. Any cattle, sheep, goat, hog, bison, or equine not defined as a wild free-roaming horse or burro, or any other livestock or exotic ungulate which is not authorized by Forest Service permit (or bill for collection). Noncommercial pack and saddle stock used by

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recreationists, travelers, other forest and grassland visitors for occasional trips, and livestock trailed over an established driveway, when there is no overnight stop on NFS land, do not fall under this definition.

Unauthorized Use Rate. The annual fee charged for excess or unauthorized livestock use.

Upper Limit. An established maximum number of livestock that can be permitted to graze on NFS lands or other lands under Forest Service control under a term grazing permit, other than those permitted under term private land grazing permit.

Utilization. The proportion or degree of the current year's forage production that is consumed or destroyed by animals (including insects). The term may refer either to a single plant species, a group of species, or to the vegetation community as a whole (see Interagency Technical Reference (ITR) 1734-3, page 133).

Vacant Allotment. A vacant allotment has no term grazing permit currently issued for the allotment. Depending on the project-level NEPA decision, a vacant allotment may be made available for short-term use and occupancy by livestock under a temporary permit or annual authorization, a livestock use permit, or a modification to a term grazing permit on other allotments. If there is no project-level NEPA decision or it does not provide for authorized livestock use, the involved lands may still be made available for short-term use in emergency situations such as drought or fire displacement by decision of the authorized officer.

Validation of a Permit. The issuance of the bill for collection, payment of fees, and placement of 100 percent of permitted livestock on the permitted area for at least a majority of the permitted grazing season the first grazing season after the permit is issued. Validation must have occurred before a grazing privilege can be waived or personal convenience non-use can be approved.

Waiver of Term Grazing Permit. A form (FS-2200-12) completed by the holder of a term grazing permit which surrenders all privileges, provided under the permit, back to the United States. If the holder of the term permit has sold base property and/or permitted livestock to another individual or entity, the waiver can be executed in favor of the purchaser to apply for the permit.

Wild Free-Roaming Horses and Burros. All unbranded and unclaimed horses and burros and their progeny using NFS lands on or after December 15, 1971. This also includes all excess horses and burros removed from NFS lands by the Forest Service, but which have not lost status as wild and free roaming (FSM 2264).

This does not include any horse or burro introduced onto NFS lands on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership. Such feral animals are unauthorized livestock. Animals that stray from other lands onto NFS lands are not considered wild free-roaming horses and burros and are not under Forest Service protection, unless they stray from a Bureau of Land Management wild free-roaming horse or burro herd area.

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Wild Horse and Burro Territory. NFS land identified by the Chief as the territorial habitat of wild free-roaming horses and/or burros when the Wild Horses and Burros Protection Act was passed.

## 2206 - REFERENCES

1. "A Glossary of Terms Used in Range Management." Fourth Edition, edited by the Glossary Update Task Group, Society for Range Management, Thomas E. Bedell, Chairman. 1998. Third Printing 2005
2. A User Guide to Assessing Proper Functioning Condition and the Supporting Science for Lotic Areas, Technical Reference 1737-15, 1998, Department of the Interior, Bureau of Land Management, National Applied Resources Science Center, Denver, CO. A joint Bureau of Land Management, Natural Resource Conservation Service, and Forest Service publication.
3. A User Guide to Assessing Proper Functioning Condition and the Supporting Science for Lentic Areas, Technical Reference 1737-16, 1999, Department of the Interior, Bureau of Land Management, National Applied Resources Science Center, Denver, CO. A joint Bureau of Land Management, Natural Resource Conservation Service and Forest Service publication.
4. Facilities for Handling, Sheltering, and Trailing Livestock, 8724-2809, September 1987. Society for Range Management, 1839 York Street, Denver, CO 80206. From the Vegetative Rehabilitation Workshop. Prepared by the Missoula Technology and Development Center, USDA, Forest Service.
5. Facilities for Watering Livestock and Wildlife, MTDC 89-1, January 1989. Society for Range Management, 445 Union Street, Suite 230, Lakewood, CO 80228. The Vegetative Rehabilitation Workshop. Prepared by Missoula Technology and Development Center, USDA, Forest Service.
6. Fences, 8824-2803, July 1988. Society for Range Management, 445 Union Street, Suite 230, Lakewood, CO 80228. From the Vegetative Rehabilitation Workshop. Prepared by the Missoula Technology and Development Center, USDA, Forest Service.
7. Grazing Management for Riparian-Wetland Areas, Technical Reference 1737-14, 1997, Department of the Interior, Bureau of Land Management, National Applied Science Center, Denver, CO. A joint Bureau of Land Management, Natural Resource Conservation Service, and Forest Service publication.
8. Herbaceous Stubble Height as a Warning of Impending Cattle Grazing Damage to Riparian Areas, Hall, Frederick C.: Bryant, Larry. 1995. Gen. Tech. Rep. PNW-GTR-362. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 9p.

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9. Monitoring the Vegetation Resources in Riparian Areas, Winward, Alma H. 2000. Gen. Tech. Rep. RMRS-GTR-47. Ogden, UT: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station.
10. National Range and Pasture Handbook, Natural Resources Conservation Service's Grazing Lands Technology Institute, Fort Worth, Texas, Larry D. Butler, James B. Cropper, Rhett H. Johnson, Arnold J. Norman, and Patrick L. Shaver, September 1997.
11. Revegetation Equipment, 8042-2501, February 1980. Contact the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402. Stock No. 001-001-00518-5.
12. Riparian Wetland Soils, Technical Reference 1737-19, September 2003. Department of the Interior, Bureau of Land Management, National Science and Technology Center, Denver, CO. A joint Bureau of Land Management, Natural Resource Conservation Service and Forest Service publication.
13. Sampling Vegetation Attributes, Interagency Technical Reference, 1996. Cooperative Extension Service, U.S. Department of Agriculture, Forest Service and Natural Resources Conservation Service, and U.S. Department of the Interior, Bureau of Land Management BLM/RS/ST-96/002+1730.
14. Utilization Studies and Residual Measurements, Interagency Technical Reference. 1996. Cooperative Extension Service, U.S. Department of Agriculture, Forest Service and Natural Resources Conservation Service, and U.S. Department of the Interior, Bureau of Land Management. BLM/RS/ST-96/004+1730.

## **2207 - NATIONAL FORMS**

### **2207.1 - Standard Forms for Rangeland Management and Grazing Permit Administration**

The following standard forms are available for field use nationally. These forms are available electronically on the Forest Service Intranet.

FS-2200-01	Refund, Credit, or Transfer Application
FS-2200-02	Application for Temporary Grazing or Livestock Use Permit
FS-2200-05	Temporary Grazing or Livestock Use Permit
FS-2200-05a	Special Terms and Conditions
FS-2200-10	Term Grazing Permit
FS-2200-10a	Special Terms and Conditions: Responsibilities for Maintenance of Structural and Nonstructural Improvements
FS-2200-10b	Special Terms and Conditions: Management Practices
FS-2200-10e	Special Terms and Conditions: On-and-Off Provision

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FS-2200-11	Term Private Land Grazing Permit
FS-2200-11a	Special Terms and Conditions
FS-2200-12	Waiver of Term Grazing Permit
FS-2200-13	Escrow Waiver of Term Grazing Permit Privileges
FS-2200-16	Application for Term Grazing Permit
FS-2200-17	Application for Term Private Land Grazing Permit
FS-2200-25	Ownership Statement by Corporation, Partnership, or Other Legal Entity
FS-2200-26	Non-Use Agreement for Resource Protection
FS-2200-28	Notice of Intent to Impound Unauthorized Livestock (owner unknown)
FS-2200-29	Notice of Intent to Impound Unauthorized Livestock (owner known)
FS-2200-30	Notice of Sale of Impounded Livestock
FS-2200-31	Bill of Sale of Impounded Livestock
FS-2200-113	Permit Modification for Cooperative Rangeland Improvement Work

## **2208 - REGIONAL FORMS**

### **2208.1 - Regional Forms for Rangeland Management and Grazing Permit Administration [Reserved]**

## **2209 - RANGELAND MANAGEMENT HANDBOOKS**

### **2209.1 - Internal Service-Wide Handbooks**

The following handbooks provide direction for implementing agency service-wide policies and procedures.

#### **2209.13 - Grazing Permit Administration Handbook**

This Handbook provides instructions for the issuance and administration of grazing permits.

#### **2209.14 - Rangeland Ecosystems Analysis, Inventory, and Monitoring Handbook**

This Handbook provides instructions for conducting inventories, analysis, and monitoring of rangeland vegetation ecosystems.

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## **2209.15 - Rangeland Management Annual Reports Handbook**

This Handbook provides instructions for processing Rangeland Management Annual Reports

FS-2200-A	Range Allotment Management Status Report
FS-2200-B	Range Improvement Accomplishment Report
FS-2200-E	Wild and Free-Roaming Horses and Burros on Public Lands (Biennial)
FS-2200-J	Annual Grazing Statistical Report

## **2209.16 - Allotment Management Handbook**

This Handbook provides instructions for the management of grazing allotments.

## **2209.2 - Internal Regional Handbooks**

The following handbooks provide direction for supplementing and implementing agency policies and procedures at the regional level.

## **2209.21 - Rangeland Analysis and Management Handbook [Reserved]**

## **2209.22 - Structural Rangeland Improvement Handbook [Reserved]**

## **2209.23 - Nonstructural Rangeland Improvement Handbook [Reserved]**