



FOREST SERVICE HANDBOOK SOUTHWESTERN REGION (REGION 3) ALBUQUERQUE, NM

FSH 2209.13 – GRAZING PERMIT ADMINISTRATION HANDBOOK

CHAPTER 10 - PERMITS WITH TERM STATUS

Supplement No.: 2209.13-2015-1

Effective Date: February 23, 2015

Duration: This supplement is effective until superseded or removed.

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Date Approved: 2/23/2015

Posting Instructions: Supplements are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this supplement. Retain this transmittal as the first page(s) of this document. The last supplement to this title was 2209.13-2014-1 to FSH 2209.13, chapter 40.

New Document(s):	2209.13_10	53 Pages
Superseded Document(s) by Issuance Number and Effective Date:	2209.13_30, 2209.13-2013-1, 12/23/2013	48 Pages

Digest:

15.13b – Adds direction to include a special provision for any motorized access needs other than on designated National Forest System roads and motorized trails as provided in the 2008 Region 3 Travel Management Rule Guidelines.

19.2 – Adds direction concerning considerations for re-stocking and management of grazing allotments after wildfires and other disturbances. Moves “References” from this section to Section 19.4.

19.3 – Establishes section to provide direction on suggested applications and coordination for restocking analysis and evaluation

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19.4 – Establishes section for “References,” moved from Section 19.2 to this new section.

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12 – Eligibility and Qualification Requirements for Permits with Term Status.

12.21 Base Property.

The minimum base property requirement, regardless of the type of livestock operation, shall be ownership of a ranch headquarters and land upon which it is located. A ranch headquarters is defined as a livestock operating base located within, adjacent to, or otherwise reasonably accessible to the area being grazed thereby providing a logical, efficient base for handling livestock. Designated base property must have adequate and suitable facilities such as water, corrals, and fences to properly handle the livestock operation. Where it has been necessary in the past to do so, water hauling facilities are acceptable for the required water supply.

Property designated as base must actually be used in concert with the allotment and, except for the National Grasslands, will not be accepted as waived land for a private land or on-off permit (FSM 2231.22c through 2231.22d).

If the National Forest base property requirement is subsequently modified, the District Ranger will, with permittee involvement, determine the specific base property of each permittee. Acceptability of property for this purpose must be determined on an individual basis by the District Ranger in compliance with the Forest requirement or as allowable under the exceptions shown below. If base property ownership is below the National Forest minimum as may be allowable under the exceptions provided in the following paragraphs, the approved exception should be discussed with and documented in a letter to the permittee.

Changes in base property can be made only with approval of the District Ranger after it has been shown the new offering is equal to or better than the previous holding. Permittees with holdings that are below minimum requirement may not change base properties without fully meeting the established National Forest minimum requirement.

1. In cases where the present ownership is less than the minimum established for the National Forest, present permittees or their successors will not be required to acquire additional property to meet the minimum requirement unless the permit is waived on the basis of the sale of permitted livestock only.

2. Any permittee who does not meet the minimum requirement because all or part of the base property has been sold or lost will be given 1 year to meet the minimum requirement. Notice of this will be given to the permittee in writing. If, after a year's notification, the permittee does not comply, the permit may be canceled.

3. A permittee who does not meet the minimum base requirement will be allowed no increase in term status permit numbers through grant. A permittee does qualify for an increase in term status permit numbers where increased grazing capacity results from cooperative range improvement work completed under permit modification and/or improved management practices under an improved allotment management plan (AMP).

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The description of the base property will be shown and made a part of each permit with term status. The following wording is suggested:

The base property for this permit is identified as follows:

(Include here the legal description of the designated base property)

. . . changes in base property must be applied for and approved in advance in writing by the Forest Supervisor.

Forest Supervisors shall maintain a current Forest supplement designating base property requirements for that national forest.

12.3 – Limitations on Livestock Numbers.

12.31 – Upper Limits.

Upper limits for term grazing permits have already been established and must be documented by the Forest Supervisor in a Forest supplement. Follow the guidelines in the parent text of FSH 2209.13, chapter 10, when dealing with upper limits. Upper limits should be expressed as mature animals.

12.32 – Special Limits.

Justification for approval of special limits, in conformance with the direction in the parent text of FSH 2209.13, chapter 10, should be documented by the Forest Supervisor. The approval letter to the permittee should state the justification for the special limit and is sufficient for documentation. The approval letter justifying and approving the special limit should be permanently filed in the 2230 grazing permit file. Forest Supervisors shall maintain a current Forest supplement documenting grazing permits approved as special limits.

14 – Applications for Grazing Permits with Term Status.

14.1 – Notice to Applicants.

The authorized officer shall notify the holder of a term permit of the need to make application for a new term permit well in advance of the permit expiration date. Such notice should provide the permit holder with sufficient time to prepare and submit application forms, and identify and submit any necessary and/or required documentation with the application. A written notice of the pending permit expiration, and the need to make application for new term permit, should be sent to the permit holder a minimum of 4 months in advance of the permit expiration date. In any case, a new permit should be issued prior to the expiration of the existing permit.

14.2 – Applications for Grazing permits

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14.2a – Applications for Annual Authorizations for Grazing.

District Rangers will annually notify all holders of permits with term status of the time and place for filing annual applications for grazing in conjunction with the preparation of annual operating instructions. Annual applications are required only when the authorized livestock, period of use or grazing allotment is different than that listed on Part 1 of the term status permit. If an annual application is required the permittee should fill out the application with the assistance of the Forest Officer. If it is necessary for the Forest Officer to fill out the annual application for the permittee, every effort must be made to insure the permittee fully understands the application. After an application is submitted the District Ranger shall approve/disapprove the application. When the annual application is filled out, the Forest Officer will insure the permittee receives a copy of the approved application. Annual grazing under a permit with term status is authorized by the issuance of a bill for collection and acknowledged by the permittee's payment of grazing fees.

A person signing an annual application for grazing for a permittee must have written authority from the permittee to sign as the permittee's authorized representative. A notarized statement as shown below will suffice in most instances to signify the granting of authority by the permittee to another party to sign annual applications for grazing for the permittee. If the Forest Officer deems it advisable, a power of attorney may be required for this purpose.

(date)

I (we) do hereby, until further written notice,
authorize _____ (Name and Title)
to sign papers relative to, or acting on behalf of
_____ (Name) in connection with the
grazing permit which I (we) hold on the
_____ National Forest.

This does not include transactions associated with the waiver
or issuance of the term grazing permit.

Name of Permittee (printed)
Signature of Permittee

Name of Witness (printed)
Signature of Witness
(both signatures notarized)

Where private land permits are issued for a term of years, an annual application for grazing is required each year. Approval may be shown as part of the bill for collection of grazing fees in

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cases where issuance is in connection with a paid term grazing permit. Otherwise, approval will be by letter.

The description of lands under the ownership and/or control of the permittee being waived as the basis of the private land permit may be documented by the following statement on the annual application for grazing:

Ownership and/or control of the private lands serving as the basis of this private land permit are identical to that shown on the permittee's term private land permit application of _____ (date) _____.

Changes in the land owned and/or controlled, serving as the basis of the private land permit, will be documented on a new application for private land permit (FS-2200-017) and will require the issuance of a new updated private land permit.

14.2b – Application and Approval of Grazing Involving Designated Driveways And Other Crossing of National Forest System Lands.

When grazing permit holders are granted crossing privileges to and from National Forest System ranges, the crossing period(s) will be included in the annual permitted season of use. The total permitted season of use, including the crossing period, will be shown on both the annual application for grazing and the bill for collection.

Example: ABC Sheep Company grazes 2,000 sheep on the Cabron Allotment. The permitted season on the allotment is 6/1-10/31, as shown on the term grazing permit. Total use is normally as follows:

2,000 Sheep - Gravy Driveway	5/1- 5/31
Cabron Allotment	6/1-10/31
Gravy Driveway	11/1-11/30

The annual application for grazing and bill for collection should indicate:

2,000 sheep - 5/1-11/30 Cabron Allotment (This includes up to 60 days on Gravy Driveway.)

Infractions along driveways by users whose crossing use is included as a part of their permitted grazing season will be considered a violation of the term grazing permit.

Driveways traverse more than one National Forest in most instances. All livestock driveway use will be evaluated and authorized through the NEPA analysis and decision making process. Forest Officers of the assigned National Forest will include driveway use as part of the term grazing permit and issue annual operating instructions for use of driveways as part of the total livestock use on an annual basis. At a minimum annual operating instructions and schedules will

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show crossing time per driveway for each National Forest and should include camp areas to be used, areas to be avoided, and any other special instruction necessary for proper management and use of the driveway.

15 – Issuance of Term Grazing Permits With Term Status.

All supporting documents related to issuance of term grazing permits (i.e. deed for base property, brand certificates) must be consistent in terms of ownership by the same entity.

15.1 – Issuance of Term Grazing Permits.

15.1a – Tenure

Under no circumstances may a permit be issued for more than 10 years; for example, the expiration date for a 10 year term permit issued on January 1, 2000 would be December 31, 2009.

December 31 should be used as the expiration date for all term grazing permits regardless of the permitted season of use or the date during the year the permit was issued (i.e., January 1, June 1, or December 1). This means that the duration of permits issued on a date later than January 1 will be somewhat less than for a full 10 years. All expired seasonal permits should be reissued as soon as possible after January 1, but no later than prior to the start of the permitted grazing season. Permits with a yearlong season of use should be reissued as soon as possible (within a week to 10 days) after January 1.

Term permits can be reissued at any time as needed to update terms and conditions resulting from an updated NEPA analyses and decision. In such situations term permits should be issued for another 10 years.

15.1b – Validation.

A permit is validated by a permittee with issuance of a Bill for Collection, payment of fees and actual turning on at least 90 percent of the permitted livestock the first grazing season after the permit is issued. Until validation occurs, the permittee may neither waive a permit nor apply for personal convenience nonuse. Failure to comply with the validation requirement may result in permit cancellation. New term grazing permits anticipated through the waiver and permit issuance process should not be issued to purchasers who cannot prove ownership of sufficient livestock to validate the permit. The only exception to this requirement is the presence of a current written agreement (MOU) for nonuse for resource protection or development (see next section 15.1c, and section 17.2 of this supplement).

A permittee is only required to validate a term grazing permit once. When a new term permit is issued to the same permittee replacing an expired permit, validation is not required.

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15.1c – Deferral of Permit Validation Due to Required Nonuse for Resource Protection.

The authorized officer may suspend or postpone the validation requirement, based upon a determination that the designated allotment(s) are not available for grazing by all or some portion of the permitted livestock due to resource concerns. The authorized officer shall make this determination in an agreement with the permittee (documented in an MOU) and shall describe the resource concerns that form the basis for the postponement (see section 17.2). Once the resource management concerns are resolved to the satisfaction of the authorized officer, the allotment(s) validation requirement is reinstated.

15.11 - Range Allotment Description.

Written descriptions of allotments are not required for permits with term status provided the allotment has a fenced or distinct natural boundary. All permits with term status shall be accompanied by an accurate map, on the best available base, at either a 1-inch or 2-inch scale.

Temporary permits and private land permits must be accompanied either by written description, a map, or both. Any change in the map is a change in the permit; therefore a letter of transmittal should be sent to the permittee documenting the changes in the map and indicating the permit is being modified with the indicated map changes.

Temporary or private land permits issued to holders of permits with term status on the same allotment may simply refer to the map that is a part of the term status permit.

The following information must be shown clearly and distinctly on grazing permit maps. The statement shown in Exhibit 01 shall be affixed to each map.

1. Allotment boundary.
2. Areas closed to or excluded from grazing.
3. Alienated land.
4. Range improvements numbered and indexed for maintenance responsibility.
5. Wildlife improvements properly identified.
6. Forest Service administrative site fences, study plot fences, recreation site fences, and so forth will be shown on the map and identified by name. These types of improvements need not be numbered or associated with the improvement tabulation sheet unless they are assigned to the permittee for maintenance.
7. Title, date, and legend.

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which case two line entries - one for 96 cattle cow-calf, and one for 4 cattle – bulls – can be indicated on the face of the permit (Part 1, Section 2).

15.12a – Changes in Number Because of Age Class.

Any annually authorized changes in livestock numbers due to a change in age class of authorized livestock should be documented in the annual operating instructions (AOI), the annual application for grazing, and the bill for collection (see also section 16.16 for related guidance).

15.12c – Permittee Working Saddle and Pack Animal Use.

It is preferable to prescribe the terms under which permittees may graze saddle and pack stock (management animals) needed in managing permitted livestock within the term grazing permit. A stipulation in Part 3 of the term grazing permit should indicate these animals are authorized within the context of the total number of livestock permitted within the term grazing permit and are solely to assist with management of the permitted livestock. Annually authorized use of such livestock must be for the same period as permitted livestock and included on the annual bill for collection. Use of saddle and pack stock is dependent on forage being available for this type of use.

Management animals used periodically, but not pastured on NFS lands are exempt from the authorization requirements under this section. If a permittee owns or controls private rangelands that can be used by the management livestock, NFS grazing use for working saddle and pack animals may be denied.

15.13 – Grazing Permit Terms and Conditions.

Terms and conditions in form FS-2200-10 shall not be altered in any way by the permittee. If the permittee has altered any of these standard terms and conditions, the authorized officer shall not sign the permit and the permittee shall be prohibited from placing livestock on the designated allotment(s).

15.13b – Special Terms and Conditions.

Except for private land permits and grazing agreements, form R3-FS-2200-4, Grazing Permit-Part 3, lists the standard special terms and conditions to be included with all grazing permits with term status in Region 3. Include this form as part of all permits with term status. At the discretion of the authorized officer, national level forms FS-2200-10a, b, or c may also be utilized as needed within Part 3 of the term grazing permit.

All provisions of the term grazing permit, including the allotment management plan, will be reviewed with the applicant prior to signing the permit.

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Identifying numbers for permits will be established by using the Forest/Ranger District ID number as a prefix, followed by a control number designated by the Forest Supervisor. Each page of the permit must carry this number.

Allotment description maps which are a part of the term permit should not be considered static for the term, but are to be revised or reissued after any major change in the allotment status or improvements. A small supply of the basic maps for each allotment should be kept on hand. Any change in the map is a change in the permit; therefore, a letter of transmittal including the acknowledgement shown in the parent text should accompany the change. Changing the map in the permit file without notifying the permittee places no obligation on the permittee. Each time a term permit is issued or modified a new map will be prepared or a revalidation of the current map with a new date.

When permittee range improvement maintenance responsibility changes, modify the term grazing permit with a letter transmitting a revised maintenance responsibility list and map to the permittee indicating the term grazing permit has been modified indicating the change in range improvement maintenance responsibility.

Term permits can be reissued at any time as needed to update terms and conditions included within the scope of an adaptive management NEPA analysis and decision based on monitoring or otherwise determined to be needed. In such situations term permits can be issued for another 10 year term regardless of the number of years remaining on the existing term permit.

The Allotment Management Plan is also considered to be a special term and condition of Part 3 of the term grazing permit. The Allotment Management Plan should be incorporated into the term grazing permit by reference using the following statement in Part 3 of the permit:

The Allotment Management Plan for the _____ Allotment, approved by the District Ranger on _____ (date) is hereby made a part of this term grazing permit.

Include a provision for any motorized access needs other than on designated National Forest System roads and motorized trails as provided in the 2008 Region 3 Travel Management Rule Guidelines (located on the regional Travel Management Rule webpage: http://fsweb.r3.fs.fed.us/rec/documents/TravelManagementDocs/Final%20Revision%204_R3_TMR%20Guidelines_06_30_08.doc). If the 2008 regional guidelines are superseded by subsequent issuances, refer to the most recent issuance of regional or national guidelines for including this special provision.

15.3 - Issuance of Term Private Land Grazing Permits.

In addition to direction in the parent text, deny applications where:

1. The NFS lands and the waived State or private lands do not form a logical grazing area best managed as a single unit.

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2. The authorization of livestock grazing interferes with the administration of NFS lands and resources.

3. The authorized officer has suspended or canceled a term permit held by the applicant within the last 5 years for violation of permit terms and conditions.

15.31 - General Guidelines.

A term private land grazing permit may be issued to a qualified applicant who owns or controls nonfederal land located within a Forest Service allotment. To receive this permit, the applicant must waive to the Forest Service the right to administer livestock grazing activities on the affected nonfederal land for the full term of the permit. In return, the applicant is authorized to graze livestock on NFS lands within the allotment in which the waived land is located. Permit issuance must be based on, and shall not exceed, the estimated grazing capacity of the waived lands, as determined by the authorized officer.

Term private land grazing permits may be issued to owners or lessees of private or State land within national forest or national grassland grazing allotments. Where leases are concerned, a lessee shall be required to provide annually, written proof of grazing authorization from the landowner. Where the lessee fails to provide the necessary written proof of authorization from the landowner, the term private land grazing permit shall be canceled.

The authorized officer cannot require a landowner or lessee to waive the grazing use of private land to the United States. If an applicant chooses to apply for a term grazing permit with on and off provisions (section 15.4) rather than a term private land grazing permit, the authorized officer must determine if issuing the on and off permit is in the best interest of the United States. If the authorized officer determines that issuing a term grazing permit with on and off provisions is not in the best interest of the United States, and the applicant declines to apply for a term private land grazing permit, then no permit shall be issued for the grazing capacity of the private land.

Waived private lands cannot be claimed as base property for a term grazing permit.

15.32 - Qualification Requirements.

Holders of term private land grazing permits are not required to own base property, permitted livestock, or the waived land; the holder must have the right to use the waived land for grazing. The holder shall provide the Forest Service with appropriate documentation such as contracts or lease agreements to substantiate the claimed right-of-use.

15.33 - Grazing Capacity of Private Lands.

Permit numbers authorized shall be based on and shall not exceed the estimated grazing capacity of the waived private lands as determined by the authorized officer. Term private land grazing

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permits are issued when the permittee owns or controls State or private land which contains 2/3 or less of the carrying capacity of the combined Federal and non-Federal land.

The land owner always retains the option of fencing the private lands. Waiving privately owned lands to the United States is strictly discretionary with the owner.

For the National Forest grazing operations, designated base property will not be accepted as basis for private land term grazing permits.

The purpose of the National Grasslands is somewhat different. Therefore, with the goal of demonstrating grassland agriculture, base property may be accepted as basis of issuance of a private land term grazing permit.

See exhibit 01 for a comparison of term private land grazing permit and term grazing permit with on-and off provisions.

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15.33 - Exhibit 01

**Comparison of
 Term Private Land Grazing Permit and
 Term Grazing Permit With On and Off Provisions**

Term Private Land Grazing Permit (FS-2200-11)	Term Grazing Permit with On–and Off Provision (FS-2200-10, 10e)
Permittee owns or controls State or private land which contains 2/3 or less of the carrying capacity of the combined Federal and non-Federal land.	Permittee owns or controls off-portion of State or private land that contains more than 2/3 of the carrying capacity of the combined on-Federal and off-non-Federal land.
Authority to administer State or private lands for livestock grazing purposes is waived to the Forest Service for the term of the permit.	Authority to administer livestock grazing activities on the off-portion of non-Federal lands is not waived to the Forest Service but the Forest Service specifies season of use, numbers, and grazing area of combined on-portion and off-portion lands.
Waived lands will not be grazed outside the designated season.	Off-portion lands will not be grazed outside the designated season.
Forest Service estimates private land carrying capacity.	Forest Service concurs with permittee’s estimate of off-portion lands carrying capacity.
Forest Service administers livestock grazing activities on waived State or private lands in conjunction with NFS lands as logical grazing area and single unit.	Permittee administers livestock grazing activities on the off-portion lands and Forest Service administers livestock grazing activities on the on-portion lands as logical grazing area and single unit.

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15.33 - Exhibit 01--Continued

Term Private Land Grazing Permit (FS-2200-11)	Term Grazing Permit with On –and Off Provision (FS-2200-10, 10e)
Term of permit is 10 years and shall be subject to proof of lease renewal where lease term is less than 10 years.	Term of permit is 10 years and shall be subject to proof of lease renewal where lease term is less than 10 years.
Improvement maintenance is required in proportion to amount of permitted use occurring on NFS land within the allotment. Improvements on waived State or private lands to be maintained to standard by permittee.	Improvement maintenance is required in proportion to amount of permitted use occurring on NFS land within the allotment. Forest Service does not control management of improvements on the off-portion land but may cancel permit if NFS lands or resources are adversely affected by permittee failure to develop or maintain improvements on the off-portion lands.
Applicant must own or control waived State or private lands.	Applicant must own or control the off-portion lands.
Applicant need not own waived State or private lands.	Applicant need not own the off-portion land.
Applicant need not own livestock to be grazed under permit.	Applicant need not own livestock authorized for the off-portion lands but must own livestock for the on-portion lands.
Permitted animals are run in conjunction with other livestock authorized on the allotment.	Off-portion land livestock are run in conjunction with the on-portion land livestock and any other livestock permitted on the allotment.
Waived lands cannot be claimed as base property for a term grazing permit.	Off-portion lands cannot be claimed as base property for a term grazing permit.
No base property required.	Base property required for the on-portion lands.

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15.4 - Issuance of Term Grazing Permits With On-and-Off Provisions.

15.41 - General Guidelines.

The objective of term permits with provisions for grazing on and off NFS land is to promote the efficient grazing use of lands under different ownerships, while at the same time achieving desired conditions on NFS lands.

An on and off permit may be issued to a qualified applicant when a logical grazing area contains both NFS lands and State or private lands owned or controlled by the applicant. Permits with on and off provisions are issued when the NFS lands comprise a relatively small percentage (usually less than 1/3) of the estimated grazing capacity of the designated grazing area. Issue a private land permit rather than an on and off permit where it is practical and possible. See section 15.33, exhibit 01 for a comparison of term private land permits and term on and off permits.

The numbers for the on-portion of on and off permits are the same as any other term permit with respect to the numbers shown for NFS lands. Issue the permit on Form FS-2200-10, Term Grazing Permit. Show only the on-portion numbers in Part 1 of the permit. Show the total on and off numbers on Form FS-2200-10e, Grazing Permit, Part 3.

For example, if the authorized officer decides to issue an on and off permit for 100 head of cattle in an area where 30 percent of the grazing capacity is on NFS land and 70 percent of the grazing capacity is on land owned or controlled by the permittee, 30 head would be shown in Part 1 of the permit and 100 head would be shown in Part 3 of the permit.

As with term private land grazing permits, the Forest Service has no obligation to issue term grazing permits with on –and off provisions for the convenience of the applicant. Issuance is justified only if it is in the best interest of the United States, taking into account, among other things, the management of NFS lands and resources within the allotment. In addition, to guidance in the parent text deny applications where:

1. The NFS lands and the affected State or private lands do not form a logical grazing area best managed as a single unit.
2. The authorization of livestock grazing interferes with the administration of NFS lands and resources.
3. The authorized officer has suspended or canceled a term grazing permit held by the applicant within the last 5 years for violation of term grazing permit terms and conditions.
4. The affected nonfederal land does not comprise at least 2/3 of the estimated carrying capacity of the logical grazing area that would be managed as a single unit.

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An application for a term grazing permit with on and off provision must be reviewed carefully to determine if the land offered can and should be managed as a logical grazing unit with the adjacent NFS land. The total number of livestock approved must not exceed what the area can support.

For National Forest grazing operations, designated base property will not be accepted as a basis for on and off term grazing permits.

The purposes of National Grasslands is somewhat different. Therefore, with the goal of demonstrating grassland agriculture, base property may be accepted as basis for issuance of an on and off term grazing permit.

15.42 - Qualification Requirements.

The permittee must meet base property and livestock ownership requirements for the on-portion numbers (section 12.21). The permittee must either own the off-portion land or have the right to use it for livestock grazing. The permittee must provide the Forest Service with contracts, leases, or other appropriate documents to substantiate the claimed ownership or use right.

15.44 - Grazing Capacity of Off-Portion Lands.

The grazing capacity of the off-portion lands is determined by the permittee subject to concurrence by the authorized officer. The permit should not be issued if the permittee and authorized officer cannot reach agreement regarding the grazing capacity.

16 - Changes In Grazing Permits.

The following supplements advice in the parent text:

Changes in term grazing permit terms and conditions may be made by modification, suspension, or cancellation. Such changes are most commonly made to:

1. Achieve resource management objectives.
2. Comply with requirements of or changes to applicable laws, regulations, national forest or national grassland LMPs, NEPA-based decisions, AMPs, agency policies and procedures, and other legally binding documents.
3. Adapt to changed rangeland resource conditions.
4. Enhance permittee compliance with permit terms and conditions.

If the proposed changes are within the scope and range of effects considered in a current NEPA analysis and decision for the authorization of grazing, additional or new NEPA analysis is not

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required. If there are any question relating to consistency of the NEPA decision, Chapter 10, Section 18 of FSH 1919.15 provides guidance for review of the original NEPA analysis, documentation, and decision. R-3 form R3-2200-27 (Review Of Existing Grazing Allotment, Project –Level NEPA-Based Decisions), has been provided as a tool for completing Section 18 reviews of existing NEPA analyses and decisions for grazing allotments. If a proposed modification or issuance of a new or revised term grazing permit is outside these parameters, then an updated NEPA analysis and decision may be needed in accordance with FSH 2209.13, Chapter 90, and the current R-3 supplement to this FSH directive.

16.1 - Modification of Grazing Permit.

Permit holders shall receive written notification of any decisions resulting in the modification of term grazing permits. The permit holder may appeal any modification under regulations at 36 CFR Part 214.

16.11 - Modification After Issuance.

The authorized officer modifies term grazing permits through written notification. The modification notice shall refer to the permit being modified and explain the rationale for the modification. The permittee may voluntarily accept the modification or appeal the modification under 36 CFR Part 214.

Grazing permits may be modified to provide for cooperative range development programs. Describe the development work, specifications, permittee and Forest Service responsibility as provided in R-3 form R3-FS-2200-10 (Modification of Term Grazing Permit for Development of Range Improvements-Grazing Permit Part 3). Permittee's failure to satisfactorily complete the development as specified in the modification constitute a violation of the terms and conditions of the grazing permit unless the Forest Service failed to complete the Government's portion of the development(s) which would allow for full completion and/or use of the improvement(s). See FSH 2241.31, current R-3 supplement to this section.

16.12 - Modifications That Result in Increased Numbers or Period of Use.

The authorized officer, exercising professional judgment and utilizing the best information available may make written modifications to term grazing permits. Any increases in term permitted numbers must be within the scope of a current NEPA analysis and decision for the authorization of grazing.

The number of livestock or season of use authorized by a grazing permit may be increased to:

1. Take advantage of additional grazing capacity resulting from the permittee's direct involvement in improvement work or more intensive management. The amount of the increase shall reflect the permittee's contribution in the improvement work or intensive management.

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2. Restore reductions made for rangeland resource management or protection purposes when the objectives for which the reductions were made have been accomplished and documented. Allocation of this increased capacity shall be among those permittees (or their successors in interest) in proportion to the amount of the reduction sustained within the previous 10 years.

16.12a - Increases Due To Improved Management Practices.

Increases in permits with term status resulting from improved management practices should initially be issued for periods of less than 10 years. This portion of the permit should be issued as a separate line entry on the permit for that period of time the increased level of grazing is under evaluation. This would normally be for a 3-5 year period. Once the increased level of permitted use has been fully substantiated, combine with the main portion of the permit and issue the combined higher level of permitted numbers for the normal 10-year period.

Any increases in term permitted numbers must be within the scope of a current NEPA analysis and decision for the authorization of grazing.

16.13 - Modification which Results in Reductions of Numbers or Period of Use.

The authorized officer, exercising professional judgment and utilizing the best information available may make written modifications to term grazing permits. Decisions to reduce must be supported and within the scope of the NEPA analysis and decision authorizing grazing. Decisions to modify a term grazing permit are subject to administrative appeal, by the permittee under the provisions of 36 CFR Part 214.

If the proposed modification is within the scope of the existing NEPA analysis and decision for the authorization of grazing, then changes to the grazing permit within the parameters of the existing NEPA analysis and decision can be made without further analysis (Section 16).

Before implementing any modification, the authorized officer should thoroughly discuss the need for such action with the permittee and document this discussion in a letter to the permittee. The permittee should be provided with an opportunity to inspect the rangeland resource conditions on the affected allotment(s) with the authorized officer. Reports, studies, and other pertinent information on which the permit modification decision is to be based shall be made available for review by the permittee. The authorized officer should ensure that the permittee is aware of and informed about the permit modification before it is implemented. In those instances where the permittee recognizes and agrees that a modification in permit numbers or seasons of use is necessary, the authorized officer should document the agreement in writing, obtain the permittee's signature, and implement the modification as quickly as practicable. Agreements of this nature should be documented as indicated in Exhibit 1 or a similar documented agreement.

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16.13 Exhibit 1

MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATE FOREST SERVICE AND _____, who is the holder of a term grazing permit for _____, on the _____ allotment on the _____ National Forest.

It is mutually understood by the parties hereto that the _____ grazing allotment is in need of resource improvement. It is further agreed that this can be accomplished by reducing the amount of use permitted and improving the level of grazing management.

THEREFORE, _____ agrees to a ____ percent reduction in the term grazing permit which will become effective on _____. It is further understood that any increased grazing capacity resulting from the reduction will be recognized as belonging to the _____ grazing allotment.

Revised term permit numbers agreed to are as follows:

<u>Number</u>	<u>Kind</u>	<u>Class</u>	<u>From</u>	<u>To</u>	<u>Allotment</u>
---------------	-------------	--------------	-------------	-----------	------------------

It is understood and agreed that this Memorandum of Agreement will be attached to and made a part of the grazing permit issued to _____ for the _____ grazing allotment.

District Ranger

Permittee

Date

Date

16.14 - Permittee Requested Modifications.

Based on written requests by permittees, the authorized officer may modify the term grazing permit to convert the kind or class of livestock, grazing management, or season of use. Modifications of this nature may be approved and implemented if they are consistent and within the bounds of a current NEPA analysis and decision for the authorization of grazing.

Permittee requested modifications to convert the kind or class of livestock, must be approved by the authorized officer. The AMP must be updated to reflect any changes in kind or class of livestock and subsequent grazing management. Additional range improvements necessitated by such changes which are solely for the benefit of the permittee, should be funded and constructed

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by the permittee. Appropriate NEPA analysis authorizing new range improvements must be completed prior to initiating any construction of new range improvements needed to implement the modification in the grazing activity.

16.16 – Annual Changes In Grazing For Trial Periods.

A temporary change in number, kind, class of livestock, grazing management, or season of use from that shown on the term permit may be approved by the Authorized Officer if determined to be consistent with the Forest Land Management Plan and if the changes are determined to benefit management of the rangeland resource. Annual changes of this nature should be authorized through the annual operating instructions, annual application for grazing, and subsequent annual Bill for Collection for trial periods normally not to exceed 1-2 consecutive years. This period of time should be sufficient to determine if the changes should be made on a permanent basis and to make estimates of grazing capacity and appropriate permanent changes in the grazing authorization and permit. Within the 1-2 year trial period or shortly thereafter, a NEPA analysis and decision authorizing grazing and incorporating the changes in number, kind, class of livestock, grazing management, or season of use must be completed. Upon completion of the NEPA analysis and decision the term grazing permit should then be modified or reissued to reflect the changes consistent with the NEPA analysis and decision authorizing the revised grazing activity on a permanent basis.

Use the following conversion factors as guides in estimating trial stocking rates when converting from one age class to another. It is impracticable to include all the variables which might affect such conversions. More precise estimates of stocking rates can only be achieved after all aspects of grazing management, and potential impacts to forage resources and other activities have been evaluated through a stock and monitor approach to determining proper stocking rates and grazing management practices.

**CATTLE AGE CLASS CONVERSION FACTORS
(cow/calf to yearlings)**

<u>Class and Weight</u>	<u>Conversion Factor</u>	<u>No. of Animals to be Permitted</u>
Calves (weaned) (up to 9 mos.)		
Light to 250	.4	2.5
Medium 250-450	.5	2.0
Heavy 450-650	.65	1.54
Yearling (9 to 18 mos.)		
Light 300-450	.55	1.82
Medium 450-650	.70	1.43

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Heavy 650-800

.75

1.33

Weights can be determined from shipping tickets, weighing a cross section of the herd to obtain an average, or through estimates made by an experienced Forest Officer. Only one weight factor (average) will be used for a herd in any given year. The average weight and conversion factor will be indicated on the annual application for grazing and the Bill for Collection during the trial period. Other conversions should be handled on a case-by-case basis. Some examples are as follows:

1. Major changes in the size of mature animals (750 pound to 1200 pound mother cows) being grazed.
2. Conversion from sheep to cattle or cattle to sheep.
3. Changes in permitted season of use must be considered independently from a conversion in age class of permitted livestock. All factors connected with grazing by permitted livestock should be considered in arriving at a trial stocking rate for possible conversions.

Conversions should not be left solely to the discretion of the permittee. Certain rangelands are best suited to yearling cattle or sheep rather than cow/calf operations. A trial conversion commits the District Ranger to study impacts of the trial changes and conduct sufficient monitoring and/or resource assessments to make more precise estimates of grazing capacity based on established management objectives. Based on monitoring and additional assessments through a stock and monitor approach a NEPA analysis and decision authorizing grazing with the proposed changes must be completed within the 1 - 2 year trial period or shortly thereafter.

16.2 – Suspension or Cancellation of Grazing Permits.

Grazing permits may be suspended or canceled, in whole or in part, for various reasons which are set forth at 36 CFR 222.4 and as described in the parent text. Suspensions are the temporary withholding of some or all of a permit holder's grazing privileges. Cancellations are the permanent invalidation of some or all of a permit holder's grazing privileges. Suspensions and cancellations can apply either to permitted livestock numbers or seasons of use.

When a total suspension action has been taken, notify the permittee in writing each year to remind them that maintenance of range improvements for which they are assigned must still be completed.

A variety of circumstances beyond the control of grazing permittees and due to natural events or actions of third parties (such as gates left open, trees falling on fences, cut fences, and vandalized water developments) often occur. These events can influence the ability of permittees to fully comply with the terms and condition of their term grazing permits and annual operating

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instructions. Reasonable enforcement discretion must be utilized in determining to what extent these types of events actually constitute violations of term grazing permits that are appropriate for potential enforcement actions. In extreme situations these types of circumstances may seriously limit the feasibility of achieving proper management of the grazing activity and will need to be factored appropriately into decisions to authorize grazing either through issuance of the term grazing permit, or in the shorter term, through the annual operating instructions.

Infrequent, minor, or first time offenses can often be easily remedied informally by a telephone call or personal contact with the permittee. Such violations would not ordinarily justify issuance of a notice of non-compliance (NONC) letter (section 16.2a), and subsequent permit suspension or cancellation action. Conversely, severe offenses or the cumulative effect of frequent and repeat minor offenses should be considered by the authorized officer in determining appropriate enforcement action. In all situations, however, prior to issuance of a NONC the authorized officer should attempt to resolve the matter informally by contacting the permittee to discuss the situation, the corrective action needed with a reasonable time for correction, and the consequences associated with failure to correct the deficiency. This discussion with the permittee should be documented and placed in the permittee's official 2230 permit file.

The authorized officer must determine the appropriate action based on relevant factors. The following factors should be considered when making these determinations along with any other relevant factors :

1. The severity and extent of the violation.
2. The degree of negative resource effects.
3. Failure by the permittee to take corrective action.
4. Past noncompliance of the permittee.
5. Whether the action is willful or not willful.
6. Whether the violation is repeated.
7. The number of concurrent violations.

For some violations suspension of grazing permit privileges may be an appropriate tool to improve future compliance with permit terms and conditions. However, it is not necessary for a term grazing permit to be suspended before it can be canceled. A permit can be cancelled for severe or willful violations. Under no circumstances should a temporary grazing or livestock use permit be issued to restore reduced grazing resulting from suspension or cancellations.

16.2a – Notices of Non-Compliance.

Where noncompliance with the terms and conditions of a term grazing permit has occurred that may warrant suspension or cancellation of grazing privileges, the authorized officer must first issue a notice of non-compliance (NONC) letter to the permittee before initiating proceedings except where the permittee's conduct is determined to be willful or where immediate action is necessary to protect public health, interest, or safety. The NONC letter replaces the "show

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cause” letter required in the parent text in section 16.2 based on the Chief’s letter dated October 30, 2001, implementing grazing permit suspension and cancellation procedures following the Ninth Circuit court decision in Anchustegui v. USDA.

The following is guidance regarding the proper use and application of Notices of Non-Compliance (NONC) for violations of the terms and conditions of term grazing permits. The issuance of an NONC should be reserved for significant, serious, or repeat violations in which the District Ranger is considering the initiation of action to suspend or cancel term grazing permit privileges, in whole, or in part. NONC’s should not be sent in those situations involving minor or first-time offenses which would not ordinarily warrant suspension or cancellation action but rather can, and should be, resolved informally with the permittee. The issuance of an NONC should be preceded by communications and efforts to resolve the issue(s) informally, which then should be documented in written correspondence to the permittee and placed in appropriate 2230 file.

16.2b – Contents of a Notice of Non-Compliance (NONC) Letter.

A notice of noncompliance letter must include the following:

1. A specific description of the permit violation(s) with reference to the specific permit provision in violation;
2. The corrective action that must be taken by the permittee to remedy the violation and demonstrate or achieve compliance with the grazing permit.
3. The timeframe within which the permittee must take the corrective measure in order to remedy the violation.
4. A warning that administrative actions in the form of permit suspension and/or cancellation may be initiated against their term grazing privilege for failure to take the specified corrective action to remedy the violation within the prescribed timeframe.

Because this is a notice rather than a decision regarding the administration of a term grazing permit, it is not appealable and appeal rights language must not be included in the NONC. However, the NONC should include an invitation to meet with the authorized officer and discuss the NONC. In the event the permittee and the authorized officer cannot work out their differences and the permittee refuses to take the corrective action to remedy the violation outlined in the NONC, the authorized officer should suspend or cancel the permit. Suspension or cancellation is subject to appeal and/or mediation (section 16.2h & 16.2i). In the event the permittee properly remedies the violation as indicated in the NONC, the District Ranger should notify the permittee in writing that the violation has been remedied and place a copy of the letter in the appropriate 2230 permit file.

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A NONC letter shall be sent CERTIFIED MAIL – RETURN RECEIPT REQUESTED.

See Exhibit 01 for an example of a NONC letter where immediate opportunity to remedy exists.

In some situations, such as those where exceeding designated forage utilization guidelines occurs, current excessive use cannot be remedied at this point since the use has already occurred. See Exhibit 02 for an example of a NONC letter where immediate opportunity to remedy does not exist.

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16.2b – Exhibit 01
Example Notice of Non-Compliance
(Immediate Opportunity to Remedy Exists)

May 21, 2014

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Mr. Fred Jones
P. O. Box ABC
Someplace, NM 67891

NOTICE OF NON-COMPLIANCE

Dear Mr. Jones:

Term Grazing Permit No. 12345, issued to Fred Jones on January 3, 2013, authorizes the grazing of 160 cow-calf pairs on the Separation Flats Allotment for a June 6 through October 30 designated season of use.

This allotment was inspected on May 20, 2014, and the following issues which were discussed with you by telephone on May 21, 2014, do not comply with the terms and conditions of your term grazing permit:

1. Twenty three of your cattle were observed grazing in the Sweetwater Unit on that day, 18 days prior to your permitted entry date. This is a violation of Part 2, Section 8(d) of your term grazing permit.
2. The water gap section of fence (#023876), where the cattle came onto the allotment, has not been repaired to standard in accordance with your assigned maintenance responsibilities allowing these cattle onto the Separation Flats Allotment prematurely. This is a violation of Part 2, Section 8(i) of your term grazing permit.

You must complete the following corrective actions within the time and periods prescribed below in order to remedy these violations of your term grazing permit:

1. All livestock must be removed from the Sweetwater Unit by May 27, 2014, and controlled to prevent re-entry onto the Separation Flats Allotment prior to the designated entry date of June 6, 2014.
2. The subject water gap fence must be repaired and maintained to standard sufficient to keep livestock from entering the Separation Flats Allotment no later than May 27, 2014.

16.2b – Exhibit 01— Continued

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Failure to correct these violations within the prescribed time frames may result in the initiation of permit suspension or cancellation procedures in whole or in part.

I am willing to discuss any issues or concerns related to this notice of non-compliance and to reach a common understanding and agreement where possible, prior to issuance of a written decision, should one be necessary. I can be contacted at (XXX-XXX-XXXX).

Sincerely,

Carl Smith
District Ranger

cc: Forest Supervisor

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16.2b – Exhibit 02
Example Notice of Non-Compliance
(Immediate Opportunity to Remedy Does Not Exist)

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Mr. Fred Jones
P. O. Box ABC
Someplace, NM 67891

November 3, 2014

NOTICE OF NON-COMPLIANCE

Dear Mr. Jones:

Term Grazing Permit No. 12345, issued to Fred Jones on January 3, 2013, authorizes the grazing of 160 cow-calf pairs on the Separation Flats Allotment for a June 6 through October 30 designated season of use.

On several occasions over the past two years District range management personnel and myself, have discussed the importance of reasonable compliance with designated forage utilization guidelines established for the Separation Flats Allotment. Reasonable compliance with these guidelines has been an issue since your acquisition of this term grazing permit for both the 2013 and 2014 grazing seasons.

The allotment management plan and the current year's AOI identify forage utilization guidelines for the Aspen Mountain and Conifer Pastures of the Separation Flats Allotment to be conservative to moderate levels (30% - 50%). These conservative to moderate forage utilization guidelines have been identified in the allotment management plan as important to meeting established resource management objectives for upland grassland areas within the Aspen Mountain and Conifer Pastures.

Post season implementation monitoring of forage utilization conducted within both of these pastures revealed utilization levels of upwards to 80% in 4 out of 5 key areas within the Aspen Mountain Pasture and similar utilization levels in all 4 of the key areas within the Conifer Pasture.

Utilization levels of this magnitude, greatly in excess of the guidelines established for these pastures, are unacceptable and constitute a violation of your Term Grazing Permit. Repeated use of these areas greatly in excess of utilization guidelines indicated in the allotment management plan and 2014 AOI constitute a violation of your term grazing permit. Specifically, Part 2 – General Terms and Conditions, Section 8, Range and Livestock Management and, Special Terms and Condition, Part 3 of the term grazing permit which includes the allotment management plan for the Separation Flats Allotment where the need for maintaining conservative to moderate

16.2b – Exhibit 02—Continued

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utilization levels is clearly documented and tied closely to the achievement of key resource management objectives for the Aspen Mountain and Conifer pastures.

At this point, current excessive use of these areas cannot be remedied since the use has already occurred. This Notice of Non-compliance is to inform you that if within the next two years of the date of this notice, similar use levels greatly in excess of established forage utilization guidelines occur, administrative measures in the form of permit suspension or cancellation action will be taken against your permit.

District personnel will be in contact with you within the next few days to schedule a meeting to discuss these matters in more detail. In the meantime should you have any questions concerning this notice and/or related matters, please do not hesitate to contact me.

Sincerely,

Carl Smith
District Ranger

cc: Forest Supervisor

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16.2c – Time to Demonstrate or Achieve Compliance.

The time to demonstrate or achieve compliance must be reasonable and must be determined by the authorized officer on a case-by-case basis. In many instances, what is deemed reasonable may depend upon the nature of the noncompliance, the location of the noncompliance, and, even perhaps, the time of year when the noncompliance was detected.

16.2d - Permittee Actions to Demonstrate or Achieve Compliance.

In situations where the noncompliance is ongoing, the corrective action is straightforward – the noncompliance must cease within the prescribed timeframe. For example, if a permittee is currently grazing more livestock than authorized by the permit, the notice letter would direct the permittee to remove the excess livestock.

Where, however, permit noncompliance has ceased, for example monitoring at the end of the grazing season following the removal of livestock indicates forage utilization guidelines have been exceeded; the corrective action is more complicated. In this case, the Notice should describe with particularity the permit provision that was violated and explain that compliance with that provision will be required during the upcoming grazing season(s) or else suspension or cancellation proceedings will be initiated (See Section 16.2b, Exhibit 02).

16.2e - Forest Service Verification and Documentation of Compliance.

As soon as reasonably practicable after the time period specified in the Notice of Noncompliance (NONC) has expired, the authorized officer must inspect or otherwise determine whether the permittee has taken the appropriate corrective action necessary to demonstrate or achieve compliance or whether the permittee has failed in this regard. This determination shall be documented in a certified letter sent to the permittee.

In those instances where the permittee has failed to take the required corrective action within the prescribed timeframe, the letter will state that administrative action such as suspension or cancellation of a portion or the entire permit is being initiated. The letter should describe the type and extent of the permit action being taken and should notify the permittee of his/her right to seek mediation in those states where mediation is available (section 16.2i) and administrative appeal of the decision (section 16.2h).

16.2f - Willfulness and Public Health, Interest, and Safety Exceptions.

A NONC is not required in cases involving willful conduct by the permittee which might include, for example, intentional concealment or misrepresentation of pertinent information like ownership of base property or livestock. Nor is a NONC required where the violation has an

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immediate and adverse effect on public health, interest, or safety and prompt action is necessary to avert the threat.

In those instances when a determination is made to institute permit suspension or cancellation proceedings without first sending a NONC, the authorized officer must document the rationale for this decision in the letter instituting the proceedings. Consult with the regional range management specialist or with an attorney in the Office of the General Counsel before making a determination that issuance of a NONC letter is not legally required or necessary. Though not required under these circumstances, nothing precludes the issuance of a NONC letter. This may be a reasonable course of action particularly in those instances where determinations of willfulness or threats to public health, interest, or safety are not clear-cut.

16.2g - Repeated Incidents of Noncompliance.

The purpose of the NONC is to provide a permittee with notice of problems associated with permitted livestock grazing activities and a reasonable opportunity to correct the problems before the permit is suspended or canceled.

Rather than issuing multiple NONC for repeated violations of the same permit term and condition, the authorized officer should issue one NONC and then initiate suspension or cancellation proceedings if the same violation arises again, within a relatively short time (e.g., within 2-3 years).

If the permittee violates a different term and condition than the one referenced in the first NONC letter, the authorized officer should issue another NONC letter to address the new violation.

16.2h – Decision to Suspend or Cancel a Portion or All of a Term Grazing Permit.

See exhibit 01 for an example of a letter to suspend or cancel a portion or all of a term grazing permit, should suspension or cancellation action be necessary.

A suspension or cancellation letter shall be sent CERTIFIED MAIL – RETURN RECEIPT REQUESTED.

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16.2h – Exhibit 01

Example Suspension or Cancellation Letter

Reply to: 2230
Date: June 2, 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Fred Jones
P.O. Box ABC
Someplace, NM 67891

Dear Mr. Jones:

Term Grazing Permit No. 12345, issued to Fred Jones on January 3, 2013, authorizes the grazing of 160 cow-calf pairs on the Separation Flats Allotment for a June 6 through October 30 designated season of use.

On May 21, 2014, I notified you by certified mail regarding management situations that did not comply with the terms and conditions of your term grazing permit. Specifically I informed you that in order to come into compliance with the terms and conditions of your term grazing permit you must:

1. Remove all livestock from the Sweetwater Unit by May 27, 2014,
2. Repair and maintain to standard the water gap fence sufficient to keep livestock from entering the Separation Flats Allotment no later than May 27, 2014.

In that letter, I also informed you that failure to correct these violations within the prescribed timeframes may result in the initiation of permit suspension or cancellation procedures.

On May 31, 2014, Range Specialist Chuck Drew inspected the Separation Flats Allotment and found 35 pair of your cattle still in the Sweetwater Unit, and the water gap fence still not repaired.

You have not corrected the permit violations as requested, and you have not provided me with justification for your continued non-compliance. Therefore, it is my decision to suspend 25 percent of your term grazing privilege for the 2014 and 2015 grazing seasons on the Separation Flats Allotment. **[Optional statement, if applicable:** I am willing to discuss with you whether

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this suspension will be totally in numbers of livestock authorized, deferred entry, or a combination of reduced numbers and reduced season of use].

This decision is subject to administrative appeal pursuant to 36 CFR Part 214. Your appeal must be received by the Appeal Deciding Officer within 45 days from the date of the decision at the following address:

[Appeal Deciding Officer's Name]
[Mailing Address]

In accordance with 36 CFR 214.8, your appeal must include:

1. Your name, mailing address, daytime telephone number, and email address, if any;
2. A brief description of the decision being appealed, including the name and title of the Responsible Official and the date of the decision;
3. The title or type and, if applicable, identification number for the written authorization and the date of application for or issuance of the written authorization, if applicable;
4. A statement of how you are adversely affected by the decision being appealed;
5. A statement of the relevant facts underlying the decision being appealed;
6. A discussion of issues raised by the decision being appealed, including identification of any laws, regulations, or policies that were allegedly violated in reaching the decision being appealed;
7. A statement as to whether and how you have attempted to resolve the issues under appeal with the Responsible Official and the date and outcome of those efforts;
8. Any statement of the relief sought;
9. Any documents and other information upon which you rely; and
10. Your signature and the date.

The following specific requirements also must be included in your appeal, where applicable:

1. A request for oral presentation.
2. A request for stay.
3. **[include the following language in any letter issued to a grazing permit holder notifying them of a decision to suspend or cancel the permit as authorized by 36 CFR 222.4(a)(2)(i), (ii), (iv), and (v) and (a)(3) through (6)]** Additionally, if you file a notice of appeal, you may simultaneously request mediation pursuant to 36 CFR Part 222 Subpart B. If mediation is desired you must request mediation as part of filing your appeal.

As the Responsible Official for this decision, I am willing to meet with you to discuss any issues related to the decision. Please contact my office at **[address and/or telephone number]** if you would like to arrange a meeting.

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If no further violations of the terms and conditions of your term grazing permit occur, the 25 percent suspension shall be restored with the 2016 grazing season. However, if additional violations occur, the 25 percent suspension shall be reviewed for cancellation, and additional administrative procedures may be considered.

Sincerely,

Carl Smith
District Ranger

cc: Forest Supervisor

16.2i – Mediation.

Disputes regarding “grazing on National Forest System lands” are eligible for mediation under state mediation programs certified by the Secretary of Agriculture.

In order to participate in the mediation program, the dispute must have originated in a State where a mediation program exists. The Secretary of Agriculture must certify the mediation program. Under the Secretary’s regulations at 36 CFR Part 222 Subpart B, mediation is available only for decisions which result in the suspension or cancellation of term grazing permits, in whole or in part as authorized by 36 CFR 222.4 (a)(2)(i), (ii), (iv), and (v), and (a)(3) through (6).

Eligible permit holders must request mediation in the notice of appeal filed with the reviewing officer. When mediation is requested, it should be completed within 45 days of their request. An additional 15 days may be added to the process if it appears to the authorized officer there is a potential to resolve the dispute by proceeding with the mediation process. Implementation of the agency decision is stayed pending the completion of the mediation.

For detailed information regarding the mediation procedure, see 36 CFR Part 222 Subpart B (Federal Register / Vol. 78, No. 108 / Wednesday, June 5, 2013 / Rules and Regulations, p. 33723-33724).

When a total suspension action has been taken, notify the permittee each year in writing that the improvement maintenance they are responsible for must still be accomplished.

16.23 – For Violation of Terms And Conditions of Grazing Permits.

Grazing permittees who graze livestock in excess of that permitted or annually authorized, allow livestock to graze before or after the permitted season, or fail to pay grazing fees on time have

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violated the terms and conditions of the grazing permit. The grazing permit may be suspended or canceled in whole or in part for these types of violations.

The grazing permit (Part 2 - General Terms and Conditions, Section 3 - Payment of Fees) requires payment of grazing fees prior to placing livestock on national forest system lands. If grazing fees are not paid and livestock are on national forest system lands during the permitted season of use refer to FSH 6509.11k, Chapter 30 for general guidance.

If grazing fees are not paid in a timely manner, the grazing permittee should be sent a second bill for collection. Coincident with the second bill for collection, a personal communication should be made with the permittee explaining that non-payment of grazing fees constitutes a serious violation of the terms and conditions of the grazing permit (Part 2-General Terms and Conditions, Section 3 - Payment of Fees). This personal communication should be followed by a letter to the permittee documenting the personal communication along with a written warning that non payment of fees is a violation of the grazing permit and that the grazing fees must be immediately paid.

If grazing fees are not paid subsequent to the second bill of collection, a third bill for collection should be sent accompanied by a Notice of Non-Compliance (NONC) formally notifying the permittee that non payment of grazing fees is a violation of permit terms and conditions (grazing permit Part 2 - General Terms and Conditions, Section 3 - Payment of Fees) and providing one last opportunity for payment of fees. The NONC (see section 16.2b) should explicitly state that non payment of grazing fees within the designated time-frame in the NONC letter will result in cancellation of the term grazing permit.

17 – Nonuse of Grazing Permits with Term Status.

17.1 – Personal Convenience of Permittee.

When total nonuse has been approved and taken, the permittee should be notified each year in writing to remind them that range improvements assigned to them in their permit as maintenance responsibility must still be maintained each year in a timely manner. The lack of proper maintenance of assigned range improvements is a violation of the terms and conditions of the term grazing permit [term grazing permit Part 2 – General Terms and Conditions, section 8(i)].

17.2 – For Resource Protection or Development.

Nonuse directly related to the condition of and/or use of the forage resource is classified as nonuse for resource protection or development. A variety of issues contributing to changing status of the forage resource, resource management needs, and/or needs of the permittee, can contribute to the use of, and need for, nonuse for resource protection or development.

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Two obvious examples of resource issues that can drive the need for nonuse for resource protection or development are persistent drought limiting normal forage production and, catastrophic wildfire with subsequent loss of forage and permanent and/or temporary damage or loss of structural improvements needed for proper management and use of the forage resource. These are just two obvious examples, others could be given.

As indicated in the parent text, Forest Officers "...may enter into agreements with term permittees to authorize nonuse for protection and development of the resource." Within the Southwestern Region grazing administration memorandums of understanding (MOU's) are used for this purpose. Nonuse of this nature for periods of 2-3 years, where needed and justified for resource protection purposes may be annually authorized in the annual application for grazing and the annual operating instructions (AOI). MOU's documenting this type of nonuse are essential if the need for nonuse persists for more than 2-3 years in order to properly protect both the interest of the agency, the interest of the grazing permittee, and most importantly, to remain in compliance with the terms and conditions of the grazing permit (term grazing permit, Part 2 – General Terms and Conditions, section 9).

MOU's documenting nonuse for resource protection or development provide the only exception to the requirements of Permit Validation (the issuance of the Bill for Collection; payment of fees and actual placing of 90 percent of the permitted livestock on the permitted area the first grazing season after the permit is issued) when existing grazing permittees elect to dispose of their national forest ranching operation through the ranch sale (base property and/or livestock) with waiver process in conformance with agency policy and procedures.

This is critical to permittees when they desire to dispose of their national forest ranching operation based solely on the sale and purchase of base ranch property and/or in the event it is not economically feasible for a purchaser to acquire the full complement (minimum of 90%) of livestock in order to establish the ability to meet the requirements of Permit Validation (see grazing permit Part 2 – General Terms and Conditions, Section 1) prior to a new permit being issued to the purchaser.

In situations where permitted livestock numbers are documented on the face of the term grazing permit from an adaptive management perspective (i.e., a clearly defined range of permitted livestock numbers and/or AUM's) and the level of reduced grazing needed for resource protection is clearly within the bounds of the designated range of permitted grazing, nonuse agreements (MOU's) may not be necessary since the term grazing permit anticipates fluctuating livestock numbers on a year-to-year basis. In these situations the need for written agreements for nonuse are negated as long as the annual levels of authorized grazing remain within the bounds of livestock numbers listed within Part 1 of the term grazing permit. In the event, however, that grazing needs to be reduced below the lower level of livestock numbers permitted in Part 1 of the term grazing permit, then a written agreement for nonuse needs to be prepared fully documenting the need to for nonuse consistent with the direction in this section.

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Nonuse for resource protection and development should be documented in grazing administration MOU's between the Forest Service and the permittee. The MOU should be a concise document that includes the following:

1. Name of the Permittee and numbers and season of use on the face of the permit.
2. A brief explanation of why the nonuse is needed and what the tenure of the nonuse agreement is.
3. What the work is that needs to be accomplished prior to allowing partial or full stocking of the allotment (i.e., maintenance or reconstruction of range improvements needed prior to stocking) and/or accomplishment of resource objectives or conditions to be determined by further assessments of resource conditions and/or monitoring.

All work identified in the agreement (MOU) should previously be identified in the allotment management plan. If not, additional NEPA analysis will be required.

The following exhibits 1 – 4 provide four hypothetical examples of MOU's depicting a variety of circumstances for which nonuse agreements for resources protection and development would be needed when the nonuse is anticipated to extend for more than 2-3 years in duration.

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17.2 – Exhibit 01

Example Memorandum of Understanding for Resource Protection or Development Nonuse

Memorandum of Understanding
Between

The District Ranger of the Big Mountain Ranger District of the Deep River National Forest
AND

John and Mary Doe holders of term grazing permit number 030406 issued on January 7, 2009, for 500 cow/calf pairs for a yearlong season of use on the Big Desert Allotment.

It is mutually understood by the parties hereto that Permittees John and Mary Doe voluntarily, and in cooperation with the Forest Service, reduced stocking on the Big Desert Allotment in May of 2010 from 480 to 200 head of adult cattle due to extreme and unusual drought related conditions on the Big Desert Allotment. Due to more favorable conditions in late 2012 and 2013, forage production has now returned to normal, however, due to previous culling and sale of livestock the Permittees are presently able to stock the Allotment at a level of only 250 head of adult cattle.

While there is presently adequate forage production on the Big Desert Allotment for the full complement of permitted livestock (500 head of adult cattle, yearlong) it is the intention of the Forest Service to fully cooperate with John and Mary Doe to allow the Permittee to progressively stock the Allotment back to full permitted numbers over a period of years at a rate jointly determined by the Forest Service and the Permittee.

The current term grazing permit expires on December 31, 2018. The Forest Service agrees that nonuse for purposes of resource protection or development can continue, at a minimum, for the duration of the current term grazing permit as the Permittee progressively restocks the Allotment back to full permitted numbers.

This MOU is herewith included in Part 3 (Special Terms and Conditions) of permit number 030406 issued to John and Mary Doe on January 7, 2009.

If upon the expiration of this permit, it is determined that additional nonuse is needed and/or desirable, an updated MOU will be developed with the Permittee based on existing conditions, progress made to restock the Allotment, and /or Permittee needs prevailing at that time.

This MOU remains in effect for the duration of time indicated unless mutually terminated by agreement between the Permittee and the Forest Service and is binding on any and all successors to the Permittee's interest.

District Ranger: _____ Permittee: _____

Date: _____ Date: _____

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17.2 – Exhibit 02

Example Memorandum of Understanding for Resource Protection or Development Nonuse

Memorandum of Understanding
Between

The District Ranger of the Sage River Ranger District of the Black Range National Forest
AND

John and Mary Doe holders of term grazing permit number 030406 issued on January 7, 2009, for 500 cow/calf pairs for a 6/1 – 10/31 season of use on the Blue Mountain Allotment.

It is mutually understood by the parties hereto that permit holders John and Mary Doe voluntarily, and in cooperation with the Forest Service, reduced stocking on the Blue Mountain Allotment in May of 2011 from 480 to 200 head of adult cattle due to extreme and unusual drought related conditions on the Blue Mountain Allotment. Due to more favorable conditions in late 2012 and 2013, forage production has now returned to normal.

Jackson Creek runs through the Grassy Ridge Pasture of the Allotment for a distance of 5 miles. Both the Permittee and the District Ranger agree that the riparian and aquatic habitat associated with Jackson Creek is in less than desirable condition.

While forage production has improved dramatically on the Allotment since the reduced stocking in 2011, both the Permittee and District Ranger agree that complete deferment of the Grassy Ridge Pasture would be desirable to allow for maximum recovery and improvement of Jackson Creek. Production and utilization studies completed on the Allotment in 2007 – 2008 estimated that the Grassy Ridge Pasture contains approximately 30% of the estimated grazing capacity of the Blue Mountain Allotment.

Therefore, the Permittee and the District Ranger agree that beginning June 1, 2014, the Allotment will be stocked at a maximum level of 350 head of adult cattle and that 150 head of adult cattle will be placed in nonuse status for resource protection or development for a 4 year period ending on October 31, 2017. Should the Permittee elect to run fewer than 350 head of adult cattle, those additional cattle below the 350 maximum will also be considered in nonuse for resource protection or development purposes.

The Forest has scheduled the Blue Mountain Allotment for NEPA analysis during 2018. During the 4th year of the nonuse period (2017) the Forest Service, in cooperation with the Permittee, will conduct an evaluation of the riparian and aquatic conditions of Jackson Creek. The results of that evaluation will be incorporated into the NEPA analysis for the future authorization and management of livestock grazing on the Blue Mountain Allotment. Adaptive management provisions will be incorporated into the proposal which will account for variations needed for both livestock and resource management needs.

This MOU is herewith included in Part 3 (Special Terms and Conditions) of permit number 030406 issued to John and Mary Doe on January 7, 2009, and is binding on any successors to the Permittee's interest.

District Ranger: _____ Permittee: _____

Date: _____ Date: _____

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17.2 – Exhibit 03

Example Memorandum of Understanding for Resource Protection or Development Nonuse

Memorandum of Understanding
Between

The District Ranger of the Cedar Valley Ranger District of the Pine Mountain National Forest
AND

John and Mary Doe holders of term grazing permit number 030406 issued on January 7, 2010, for 500 cow/calf pairs for a 5/1 – 11/31 season of use on the Juniper Ridge Allotment.

It is mutually understood by the parties hereto that John and Mary Doe and the Forest Service agree that the Juniper Ridge Allotment is in need of changed and improved management in order to achieve ecologically based resource objectives and livestock production within the capabilities of the Juniper Ridge Allotment.

In recognition of the above, Permittees John and Mary Doe since acquiring the grazing permit for Juniper Ridge Allotment in 2010, have reduced stocking to a level of 350 head of adult cattle for the permitted season of use. Based on the Permittee's efforts since acquiring the permit the Forest Service recognizes there has been improvement in resource conditions. Both the Forest Service and the Permittee agree, however, that the Allotment is in need of additional infrastructure (fencing and water developments) in order to provide for adequate control of the timing, intensity, and duration of permitted livestock grazing and improved livestock distribution for proper use of available forage.

The Juniper Ridge Allotment is scheduled for NEPA analysis in 2019. Therefore, in consideration of the above John and Mary Doe agree to further reduce stocking on the Allotment to a level of 300 head commencing with the 2014 grazing season, continuing through the 2018 grazing season with 200 head of permitted livestock placed in nonuse for resource protection or development purposes.

During this period of time the Forest Service agrees to work closely with the Permittee in monitoring and assessment of the Allotment's forage resources prior to initiating the NEPA process in 2019. The Forest Service also agrees to work closely with the Permittee to jointly develop an adaptive grazing management alternative to be brought forward through the NEPA process.

This MOU is herewith included in Part 3 (Special Terms and Conditions) of permit number 030406 issued to John and Mary Doe on January 7, 2010, and is binding on any successors to the Permittee's interest.

District Ranger: _____

Permittee: _____

Date: _____

Date: _____

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17.2 – Exhibit 04

Example Memorandum of Understanding for Resource Protection or Development Nonuse

Memorandum of Understanding
Between

The District Ranger of the Big Gulch Ranger District of the Aztec National Forest
AND

John and Mary Doe holders of term grazing permit number 030406 issued on January 7, 2010, for 400 cow/calf pairs for a yearlong season of use on the Mesquite Mesa Allotment.

In May of 2012, the Big Flame wildfire burned 50,000 acres of the Big Gulch Ranger District including 40,000 acres of the 65,000 acre Mesquite Mesa Allotment. Further, this wildfire destroyed or heavily damaged 40 miles of allotment boundary and interior division fences, along with 30 miles of water distribution pipelines and 20 drinkers associated with 2 windmills and 2 spring developments which were also heavily damaged. Further, 10 earthen stock tanks have completely silted in as a result of this catastrophic wild fire.

National forest personnel and the Permittee have estimated replacement/repair costs of all destroyed and/or damaged range improvements may be as much as \$800,000. Currently 15,000 acres made up of 4 pastures out of 17 associated with past management of the allotment are available for use.

Therefore, in consideration of the above, the Forest Service and Permittee are exploring possible funding sources for reconstruction and/or repair of priority range improvements. At this time approximately \$250,000 has been identified for this purpose. In response to this situation, the Permittees reduced stocking of the allotment to 100 head of adult cattle immediately after the fire.

It is mutually agreed, therefore, that the Mesquite Mesa Allotment will continue to be stocked with a maximum of 100 head of adult cattle and that the remaining 300 head will be held in resource protection or development nonuse until December 31, 2015. It is also mutually agreed that this is the estimated minimum time frame needed for forage and watershed recovery of burned areas while at the same time priority range improvements are being reconstructed and/or repaired with available funding.

During the late summer and early fall of 2014, an interdisciplinary assessment of vegetation and watershed recovery will be conducted by Forest Service personnel; the Permittees are encouraged to participate in this assessment. Based on the findings of the assessment, and progress towards reconstruction of range improvements, a determination will be made jointly between the Forest Service and the Permittee on the level of livestock use to be reinstated at that time. A revised MOU documenting the need for continued nonuse will be developed at that time and will be in effect until 2017 when NEPA analysis is scheduled to be completed for the Mesquite Mesa Allotment at which time an array of management practices/alternatives will be considered.

This MOU is herewith included in Part 3 (Special Terms and Conditions) of permit number 030406 issued to John and Mary Doe on January 7, 2010, and is binding on any successors to the Permittee's interest.

District Ranger: _____

Permittee: _____

Date: _____

Date: _____

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18.5 – Bankruptcy.

A term permit holder may file a petition with the United States Bankruptcy Court to gain relief from the collection of debts, including debts owed to the United States, such as grazing permit fees. When the authorized officer learns of the possibility of bankruptcy by a term grazing permit holder, the following actions should be taken:

1. Notify the forest or regional range management specialist and OGC of the bankruptcy filing and provide a copy of the bankruptcy petition or other notice of bankruptcy, or request confirmation from OGC to determine if a bankruptcy case has been initiated.
2. If a bankruptcy petition has been formally filed with the Bankruptcy Court, determine the amount of any outstanding debts owed to the Forest Service by the permittee at the time of the bankruptcy filing and if directed by OGC, prepare a proof of claim for filing with the Bankruptcy Court.
3. If a bankruptcy petition has been formally filed with the Bankruptcy Court, immediately cease all collection activities, including any demand letters for payment of fees, until directed otherwise by OGC.

18.51 - OGC Procedures for Bankruptcy Proceedings.

1. OGC initiates discussions with the Office of the United States Attorney in the State in which the bankruptcy was filed. The U.S. Attorney will assure the interests of the United States are protected.
2. OGC provides counsel and direction for management of the permit and interactions with the Bankruptcy Court during bankruptcy proceedings.
3. OGC or the Forest Service should obtain the following information from the Clerk of the Bankruptcy Court:
 - a. A copy of the petition and if applicable, the deadline for filing proofs of claim.
 - b. The name and address of the trustee in bankruptcy or debtor-in-possession.
 - c. Whether the term grazing permit(s) is listed as one of the assets of the debtor's estate.
 - d. Whether outstanding grazing fees are listed as a debt and in what amount.
 - e. A copy of any proposed re-organization plan if applicable.

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4. OGC or the authorized officer should determine if the debtor-in-possession or the trustee will assume the term grazing permit as a part of the debtor's estate or if they have rejected it. If the latter situation occurs, the Bankruptcy Court should be notified of the consequences of this action and also that, with the permission of the Bankruptcy Court, the authorized officer may take actions to permit livestock grazing on the allotment(s) by another party.

When a permittee files a petition for bankruptcy the Bankruptcy Court appoints a trustee in bankruptcy (or the permittee will be designated by the court as the debtor-in-possession) to administer the permittee's estate during the proceedings. Generally, the debtor-in-possession has all of the rights and duties of a trustee in bankruptcy.

Once a petition for bankruptcy is filed and a trustee or debtor in possession is designated, the authorized officer should direct all correspondence regarding the administration of the permittee's term grazing permit to the attention of the trustee or debtor in possession. The trustee's duties include, among other things, collecting and reducing to cash the assets of the estate, operating the debtor's business to preserve the value of the business assets, examining the debtor at a meeting of creditors, filing inventories and making periodic reports to the court on the financial condition of the estate, examining the debtor's financial affairs, examining proofs of claims and objecting to improper claims, and furnishing information related to the bankruptcy to interested parties.

The filing of a petition for bankruptcy by a permit holder generally results in the following:

1. The permittee's property becomes an estate under the jurisdiction of the Bankruptcy Court (11 USC 1471 and 541).
2. Creditors and other persons are prevented from taking action directly against the permittee and his/her property by an automatic stay. Violation of the stay may be treated as contempt of court by the Bankruptcy Court.
3. Actions by the Forest Service to collect grazing fees or to cancel, suspend, or modify a permit may require approval of the Bankruptcy Court because the permit action could have a significant effect on the value of the permittee's estate. Approvals of such requests may be granted by the Clerk of the Bankruptcy Court in the form of a relief from stay order.
4. In some bankruptcies, the debtor may file a plan of re-organization which may propose to reduce or affirm certain debts, may propose to assume or release a grazing permit, and may propose other future actions on the part of the debtor as part of the re-organization that may involve or rely on future actions by the Forest Service. As directed by OGC, staff may be asked to review any proposed re-organization plan to determine

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legality or feasibility and if necessary provide objections to the proposed plan before the bankruptcy court takes action to approve or reject the plan.

5. Bankruptcy is a highly specialized field and specific questions should be directed to the appropriate attorneys in OGC who will consult with the U.S. Attorney as necessary.

If a bankruptcy results in an approved plan of re-organization that contains provision relating to the term grazing permit, permit fees, or future actions of the permittee in relation to their grazing activities, a copy of the approved plan of re-organization should be requested from OGC and should be maintained in the 2230 permit file for future reference.

18.52 - Status of Permit.

The Forest Service's responsibility to administer livestock grazing activities on NFS lands according to applicable law and regulation exists regardless of whether a permit holder has filed a petition for bankruptcy. As a result, the authorized officer must be willing to take appropriate action to administer grazing on the permittee's allotment(s) after the bankruptcy petition is filed even if to do so might result in a reduction in the value of the estate.

The term grazing permit does not automatically become part of the bankrupt's estate. The debtor, the debtor-in-possession, or trustee is bound to perform the terms and conditions of the permit after a petition in bankruptcy is filed with the Bankruptcy Court. A definite action must be taken by them to assume the requirements of the permit. If the permit is not assumed by the trustee or debtor-in-possession, neither the estate nor the debtor has any remaining privileges under the permit.

During the course of bankruptcy proceedings, it may be necessary to inform the court that term grazing permits are privileges issued by the Federal Government to the permittee and not contracts. The Trustee or Bankruptcy Court may attempt to treat these relationships as contracts. It may be necessary to remind the Trustee or Bankruptcy Court of the difference between rights and privilege to ensure that mistakes in dealing with the bankrupt estate are not made due to a misunderstanding of the nature of the term grazing permit. This may take the form of informal discussions with the Trustee or could result in official filings with the court to reverse or vacate illegal actions or proposals concerning the term grazing permit.

All correspondence concerning the term grazing permit and actions required to maintain it in good standing must be addressed to the trustee or the debtor-in-possession. The name and address of this individual can be obtained from the Clerk of the Bankruptcy Court.

The United States (U.S.) Attorney in the State where the bankruptcy is filed represents the United States in Bankruptcy Court. All actions involving the Bankruptcy Court must be coordinated with the forest or regional range management specialist, who works with OGC. OGC, in turn, works with U.S. Attorney to ensure the interests of the United States are protected.

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18.53 - Types of Bankruptcy Filings.

Bankruptcy filings are made under various chapters of the bankruptcy code. Specifically, those chapters are:

1. Chapter 7. This chapter provides for liquidation (selling of assets) of the debtor's estate. In Chapter 7 proceedings, a trustee is appointed to handle the sales of the estate and to distribute the proceeds to the creditors. After administration costs for the liquidation of the debtor's estate are paid, the trustee pays all or part of the creditor's claims against the estate.

2. Chapter 11. This chapter provides a means for debtors to reorganize their business operations and be restored to economic health. Generally, the debtor is in charge of this effort and is referred to as the debtor-in-possession. The debtor-in-possession may be authorized by the Bankruptcy Court to deal with the Forest Service on all issues pertaining to grazing of livestock on NFS lands. Consult the Clerk of the Bankruptcy Court to determine whom the authorized officer should be dealing with in regard to grazing of livestock on NFS lands.

3. Chapter 12. This chapter provides a special procedure for the reorganization of agricultural debts of a family farmer with regular annual income. This chapter has features resembling both Chapters 11 and 13. The treatment of the eligible family farmer is substantially similar to Chapter 13 and the protections and remedies afforded to creditors are essentially similar to Chapter 11. As in Chapter 11 cases, there is a presumption that the debtor will continue as the debtor-in-possession with respect to the farming and/or ranching operation.

4. Chapter 13. This chapter provides a procedure for persons with regular income to adjust their debts. As in chapters 11 and 12, the debtor usually remains as the debtor-in-possession. If this is not clear, the authorized officer should check with the Clerk of the Bankruptcy Court to determine what authority the debtor-in-possession has to deal with the Forest Service.

19 – General Administration of Grazing Permits.

19.1 – Drought Guidelines.

Drought is an inevitable occurrence in the southwestern United States. The question for land managers is not *will* drought occur, but *are land managers prepared for drought?* Land managers and grazing permittees, must plan for drought as a normal part of management and business. The Standardized Precipitation Index (SPI) is a unit of measure that compares recent precipitation values for a period of interest with long term historical values to assess moisture conditions in a given area. In the Southwestern Region, anytime the SPI reaches a value of minus 1.00 or less for the preceding 12 month period, grazing allotments should be evaluated for existing drought conditions.

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It is imperative that land managers understand how drought affects plants, thereby affecting rangeland resources and how management can buffer the consequences of drought. It is equally imperative to communicate the effects of drought and the associated management actions taken to buffer those consequences.

Drought effects are varied, depending upon the attribute being reviewed. On an individual plant basis, vigor and reproductive ability may be hampered. On a landscape scale, various species within a vegetation community may be affected differently, thereby affecting community dynamics amongst plants, soil conditions, and water quantity and quality.

A diversity of factors should be considered when devising management actions on the National Forests in the Southwestern Region. Such factors would include species diversity, past grazing use, timing of grazing, intensity of management, and conditions of improvements to support grazing activities. These factors along with precipitation data provide flexibility to the line officer to make decisions based on recommendations from district rangeland management specialists.

Livestock Grazing Guidelines consist of four elements.

1. Drought Evaluation.

- a. The Regional Forester will monitor trends in the SPI in order to provide Forest Supervisors and District Rangers adequate time to begin discussions with the livestock industry and grazing permittees before viable options for coping with drought conditions are foregone.
- b. Anytime the SPI reaches a value of - 1.00 or less for the preceding 12 month period, grazing allotments will be evaluated for the existence of drought conditions.
- c. When drought conditions have been identified, Forest Supervisors will evaluate grazing allotments for drought related conditions from an interdisciplinary perspective.
- d. Although SPI may not have reached – 1.00, for the preceding 12 month period, Forest Supervisors may evaluate grazing allotments for apparent drought conditions.
- e. When the SPI for the preceding 12 month period becomes positive rangeland resources may be evaluated for indications of recovery of drought conditions.

2. Management Process

- a. Vegetation resources affected by drought across the Forest will be evaluated from an interdisciplinary perspective.

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- b. Drought evaluation should result in recommended management actions needed to protect rangeland resources.
 - c. Factors considered in evaluations include, but are not limited to, local precipitation data and departures from normal, current range management status, current stocking levels, available water, and management intentions of the permittee.
 - d. District Rangers have the responsibility to consider recommendations from drought evaluations and implement appropriate management in consultation with affected permittees.
 - e. Drought evaluations should be conducted periodically to reassess conditions and evaluate the need for further action.
3. Stocking During and After Drought
- a. District Rangers will consider stocking levels on allotments based on precipitation events, and allotment specific conditions in collaboration with livestock permittees.
 - b. Stocking levels should consider circumstances such as: drought-induced mortality thereby reducing forage produced per acre, species diversity, plant vigor, condition of range improvements, management intensity, and availability of water.
 - c. Management following drought should be devoted to allowing for the recovery of the rangeland vegetation.
 - (1) This means providing for improved plant vigor and restoring soil cover through plant litter.
 - (2) Focusing on recovery of the resource through rest or incremental restocking will ensure more rapid and longer lasting recovery from drought.
 - d. General recommendations for drought recovery.
 - (1) Rest pastures for at least one entire growing season or more following severe droughts.
 - (2) Use pastures when key forage species are dormant for at least one growing season.
 - (3) Defer grazing until key forage species have produced mature seed.
 - (4) Assess various attributes of an allotment prior to making decisions regarding restocking.

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- (a) Plant vigor- The relative robustness of a plant in comparison to other individuals of the same species.
 - (b) Current forage production- The amount of forage currently produced usually expressed as pounds of herbaceous forage per acre.
 - (c) Multiple Use Values- The other values provided for by rangeland resource, i.e. wildlife habitat, and aesthetics.
 - (d) Permittees ability to restock- The ability of the permittee to place livestock on the allotment. This could be related to such items as current herd size, available labor, and current condition of range improvements.
4. Communication Plan. Most permittees will want to protect the grazing resource, which they are dependent upon. Early communication provides them maximum time to develop alternatives for their operations and provide suggestions to the Forest Service. Consistent effective communication with others, such as NRCS, FSA, BLM, State, Local, and Tribal Governments as well as non-governmental organizations regarding effects of drought, and potential collaborations is essential.
- a. Drought related communications involving multiple Forests will be coordinated by Forest Supervisors with assistance from the Regional Forester as requested.
 - b. Communications concerning rangeland management during and after drought on individual Forests will be coordinated by Forest Supervisors.
 - c. District Rangers will initiate communication with grazing permittees at the first sign management changes may be needed due to drought.
 - d. Management due to drought must be approached in a collaborative manner between district personnel and permittees.

19.2 – Considerations for Re-stocking and Management of Grazing Allotments Post Wildfire and Other Disturbances.

Rangelands have evolved with a high degree of disturbance. The ability to adapt management to respond to changing conditions in the ecosystem is critical to the sustainability of rangelands. Management must be responsive to outcomes from managed actions such as livestock grazing and prescribed fire, but also must be responsive to unplanned events such as wildfire, flood and extreme drought. These disturbances can produce critical changes in resource conditions. It may be necessary to gather information quickly and perform an assessment of each allotment in order to adapt range management to allow for ecosystem recovery following disturbance. The following provides a strategy for prioritizing the assessment of impacts and determining appropriate post-disturbance management.

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Adapting management following a significant disturbance often requires a fairly rapid assessment of ecological conditions and infrastructure damage. In the case of wildfire, indicators such as ground cover, species presence, forage production, and infrastructure damage may be the focus of the assessment and/or monitoring needed for designing restocking strategies. The need for and intensity of assessment required is dependent upon the degree of disturbance. Smaller scale disturbances of less intensity may require a different degree of analysis than larger scale disturbances with greater degrees of intensity. For example a small fire with low to moderate burn severity, would likely require a less intensive analysis than a large fire with extensive moderate to high burn severity. Other considerations include factors such as the presence of riparian areas or federally listed species or their habitat. The Inter-Disciplinary Team (IDT) and line officer should determine the level of assessment required prior to restocking and document the rationale for their determination.

Prioritizing allotment assessment after disturbances is often needed when a large-scale disturbance (e.g., wildfire) involves multiple allotments. Priorities can be based on various criteria, such as livestock permitted on-dates, potential resource management issues and permittee dependence on national forest system lands. Once allotments have been prioritized, quantitative or qualitative information can be used to identify impacts to potential livestock use and management. At a minimum, forage availability, water availability, ground cover and infrastructure damage may need to be assessed. Forage availability often includes information about plant species presence or composition including multiple life-forms, vigor, production, and plant reproductive capacity.

As part of the assessment, the need for Endangered Species Act (ESA) section 7(a)(2) consultation with Fish and Wildlife Service should also be determined.

19.3 – Suggested Applications and Coordination for Restocking Analysis and Evaluation.

Several readily available tools can be utilized for assessing the ability to return livestock to an allotment post disturbance. The following provides guidance to efficiently conduct an analysis for the appropriate return of livestock.

Geographic Information System (GIS) layers are helpful to assist in anticipating damage, assessing priorities for analysis and informing management decisions. Example GIS layers to be used include: Burn Severity, Soil and Vegetation Types, Slope Class, Infrastructure, Monitoring Areas, Threatened and Endangered (T&E) Species, Aquatics, and Wildlife Habitat.

Burn Severity - Burn Severity maps provide a broad over view of the affected areas. Pastures comprised of primary range, readily accessible by livestock with low burn severity can potentially be assessed first for the possibility of restocking. Low burn severity areas often are composed of vegetation types which recover quickly, such as grasslands. Pastures comprised of primary range, readily accessible to livestock with moderate-high burn severity often require longer periods of time for vegetative recovery, have increased potential for invasive species,

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(Hunter et al, 2006) and increased potential of infrastructure damage. These pastures may require additional actions to achieve resource objectives and remain compliant with AMPs and ESA requirements.

Vegetative recovery may be slowed in areas of high burn severity in part due to hydrophobic soil conditions. All fires do not result in hydrophobic soils. Factors contributing to their formation are: a thick layer of litter before the fire; a severe slow-moving surface and crown fire; and coarse textured soils such as sand or decomposed granite. Hydrophobic conditions increase the rate of water runoff. Percolation of water into the soil profile is reduced, making it difficult for seeds to germinate and for the roots of surviving plants to obtain moisture (DeGomez, 2011).

Soil and Vegetation Types - Areas dominated by herbaceous vegetation prior to fire may be prioritized for assessment for several reasons. Fire in herbaceous dominated areas generally moves faster with less intensity. Generally herbaceous vegetation types recover faster than those dominated by trees. This is influenced by several relationships such as the factors contributing to hydrophobic soil conditions as described above. Herbaceous dominated areas often provide the majority of the forage and therefore need to be prioritized for assessment. This is especially true when combined with factors affecting animal behavior such as proximity to water and slope, which is addressed below.

Slope Class - Although areas with steep slopes may have experienced more intense fire due to preheating of the fuels uphill and may be more prone to erosion, this does not necessarily increase cause for concern when assessing an allotment for restocking. Areas with slopes above 40 percent generally are not readily utilized by livestock. Therefore, the re-introduction of livestock may not hinder the recovery of steep slopes. Initially, attention may be focused on slopes below 40 percent to assess recovery and to ensure any management, including possible livestock grazing, allow these areas to continue to recover. Areas with slopes less than 15 percent slope serve as filters for erosional sediment coming from the slopes above. Assessing these areas is critical as these areas are readily accessible by livestock. Management of these areas must address leaving enough residual vegetation to protect the site, allow for continued vegetation recovery and to allow for the filtering of sediment from the slopes above.

Infrastructure - Infrastructure, (e.g. fencing, watering facilities, and animal working facilities) is critical to management of livestock and therefore needs to be assessed prior to returning livestock. Restocking must be supported by infrastructure repair, often requiring the phasing in of livestock commensurate with the reconstruction of the infrastructure.

T&E, Aquatics and Wildlife Habitat Areas - The presence or absence of T&E species, aquatic habitat, and wildlife habitat is important for addressing potential impacts to species, multiple use concerns, and possible cumulative impacts from the disturbance and the planned grazing. Effects to species may occur as a direct result of the fire or post-fire effects such as flooding or ash flows.

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Monitoring Areas - Monitoring areas are reflective of the areas important to the livestock operation and reflective of the livestock management effects in pastures and, therefore, are important areas to assess when determining the return of livestock. Collecting monitoring data can be helpful; however, abbreviated assessment can occur as well, especially when large scale disturbance has occurred which necessitates a rapid assessment of several allotments. Forage availability assessment on a pasture-by-pasture basis can provide reliable and valuable data. Important indicators to address when assessing forage availability include ground cover, species composition and forage production. Observations of features associated with erosion can also be observed and documented.

Established monitoring areas can be utilized to compare pre-disturbance and post-disturbance conditions. These may address both upland and riparian areas which were likely impacted by the disturbance and which likely are influenced by livestock management. Established monitoring areas offer the opportunity and the ability to evaluate the integration of the 1) impact of the disturbance, 2) ecosystem recovery, and 3) effects of planned livestock management.

Addressing impacts from disturbance such as fire may utilize established monitoring procedures and formalized assessments for uplands and riparian areas. Formalized assessments such as Proper Functioning Condition (PFC) can be utilized to address allotments with riparian areas. Areas displaying high-moderate burn severity can have PFC assessments conducted to document fire and flood-related effects or changes since previous PFC assessments. Streams to be reassessed can be prioritized using Burn Severity mapping, and knowledge of Burned Area Emergency Response (BAER) treatments, and potential effects from flood events.

Each allotment needs to be evaluated individually for restocking opportunities as there is no formula for determining when returning livestock is appropriate. Site-specific factors should be considered. The allotment site-specific analysis considers the recovery of soil and perennial plants. Allotments are evaluated on a pasture-by-pasture basis. The items listed above in combination should be reviewed relative to total pasture area, livestock behavior, management objectives and weather patterns following the fire to ascertain the ability to sustain livestock grazing.

It is important that the plants likely to be grazed are not permanently damaged by livestock and, therefore, can still experience recovery. Examples of criteria for assessing if plants are ready to be grazed include: 1) seed heads or flowers present, 2) multiple leaves or branches present, and/or 3) a root system that does not allow plants to be easily pulled from the ground. Presence of at least one of the criteria being present prior to livestock being re-introduced can be documented as evidence of plant recovery, high vigor and plant reproductive ability (Fraser, 2003).

In summary, there are ecological aspects of restocking, such as ground cover for soil protection, species composition and production to provide for wildlife and livestock forage needs while allowing for plant recovery. There are management aspects such as water availability and

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presence of a functional infrastructure. In addition, collaboration amongst stakeholders is important. This includes the local inter-disciplinary (ID) team, permittees, federal, state, county and local government entities and non-governmental organizations (NGOs). When developing a strategy for restocking, document the criteria evaluated; the assessment and/or monitoring results including GIS analysis; the collaboration amongst stakeholders; and the rationale for the restocking strategy. The strategy may be a staged approach to incrementally restock based on continuing evaluation of fire affected areas.

19.4 – References.

DeGomez, Tom. 2011. Soil Erosion Control After Wildfire. University of Arizona Cooperative Extension AZ1293.

<http://extension.arizona.edu/sites/extension.arizona.edu/files/pubs/az1293.pdf>

Fraser, D. A. 2003. Using Range Readiness Criteria. Forest Practices Branch British Columbia Ministry of Forests, Victoria, B.C. Rangeland Health Brochure 5.

http://www.for.gov.bc.ca/hra/publications/brochures/Rangeland_Health_Brochure5.pdf

Gade, Gene. 2006. Fire and Follow-up Management. University of Wyoming Extension.

<http://www.uwyo.edu/barnbackyard/files/documents/resources/area-newslet-article-7-06.pdf>

Howery, Larry. 1999. Rangeland Management Before, During, and After Drought. University of Arizona Cooperative Extension AZ1136.

<http://extension.arizona.edu/sites/extension.arizona.edu/files/pubs/az1136.pdf>

Hunter, Molly E, Philip N. Omi, Erik J. Martinson, and Geneva W. Chong. 2006. Establishment of non-native plant species after wildfires: effects of fuel treatments, abiotic and biotic factors, and post-fire grass seeding treatments. International Journal of Wildland Fire, 15, 271-281.

http://www7.nau.edu/mpcer/direnet/publications/publications_h/files/Hunter.pdf

Texas AgriLife Extension. Checklist of Considerations for Post-Fire Management.

<http://texashelp.tamu.edu/004-natural/pdfs/checklist-of-considerations-for-post-wildfire-management.pdf>

USDA Forest Service. 2008. Travel Management Rule Guidelines (Revised June 30, 2008).

http://fsweb.r3.fs.fed.us/rec/documents/TravelManagementDocs/Final%20Revision%204_R3_TMR%20Guidelines_06_30_08.doc