

NATIONAL GRASSLANDS MANAGEMENT

A PRIMER

Appendix L



United States
Department of
Agriculture

Office of
General
Counsel

Washington,
D.C.
20250

Jan 21, 1983

TO: William L. Evans, Director¹
Range Management Division
Forest Service

Attention: Bob Williamson

FROM: James P. Perry (/s/ Perry)
Deputy Assistant General Counsel
Natural Resources Division

SUBJECT: Description of Legal Relationship Between Grazing
Associations and the Forest Service

Pursuant to your request, we have looked at the responsibilities of grazing association and the Forest Service in an effort to state a general description of that relationship. Our description is only a generalization and does not purport to cover specific agreements. Each agreement between the Forest Service and an association is different as are each association's constitution, bylaws and rules of management. State laws under which associations are organized also vary.

The associations are organized under state laws of incorporation and/or cooperatives. The corporation is a separate legal entity from its members who have limited liability for corporate debts and obligations. Management and control is centralized in the hands of the board of directors and officers. Officers and directors are subject to certain fiduciary duties and responsibilities owed to the corporate entity and the members. Generally, these fiduciary duties include a duty of due care by which the directors are expected to exercise good business judgment and to use ordinary care and prudence in management, a duty of loyalty whereby the officer cannot personally profit at the expense of the corporation (an unfair, personal transaction with the corporation profiting an officer can be held void in certain situations) and a duty to protect the interests of the other intracorporate parties. Limits on authority of directors and officers are usually specified in the articles of incorporation and bylaws.

State statutes grant broad powers to corporations and the corporate powers may be explained or limited by the articles of incorporation. Most jurisdictions recognize that corporations enjoy implied powers to do all things reasonably necessary to carry out their stated business purposes. All jurisdictions recognize the corporate power to sue and be sued in corporate name.

¹ Transcribed from original for legibility.

For a grazing association to be recognized by the Forest Service and eligible to sign a grazing agreement, basic requirements must be met. Pursuant to 36 C.F.R. § 222.7(a)(3)(i)–(iv), a majority of individuals grazing on the range allotment (s) must be members of the association, officers other than the Secretary and Treasurer must be grazing on the involved range allotment(s), officers must be elected by a majority of the association members or by a specified quorum and the association must be governed by a constitution and bylaws acceptable to and approved by the Forest Supervisor.

The document signed by the authorized association officer and the Forest Supervisor is generally called a grazing and management agreement. This document essentially constitutes a grazing permit from the Forest Service to the association as to National Forest System lands within the pertinent allotment(s). By joining overall management of adjacent public and private grazing lands, more efficient and sound resource management is intended to result. Pursuant to the agreement, the association assumes responsibility for various administrative and management duties for the allotment(s). Members are issued permits from the association and not from the Forest Service. Permits issued by the association to individuals cannot exceed the term period of the agreement between the Forest Service and the association.

A member's grievances must be addressed through the association and pursuant to remedies provided by state law. The members do have a remedy as a group under federal regulations analogous to shareholder remedies under state corporate law in that the Forest Supervisor may withdraw recognition of the association, which would nullify the agreement, when majority of the association grazing permittees or members request that association be dissolved. See 36 C.F.R. part 222.7(a)(4). Recognition may also be withdrawn where the association becomes inactive and does not meet in annual or special meetings during a consecutive two-year period.

In turn, grievances of the Forest Service with members must be addressed through the association, the entity with which the Forest Service has a legal relationship. If a member's actions which are of concern violate the agreement between the Forest Service and the association, the association may be considered in violation of its agreement if it has not acted. The specific responsibilities and rights of the Forest Service and association are those outlined by the parties in the grazing and management agreements. Under this agreement between the Forest service and the association, final authority for any use of National Forest System lands involved in the agreement rests with the Forest Service.

The details of a specific grazing association arrangement can be found in several documents. The Articles of Incorporation are legal authorizations to form a grazing association pursuant to state law. Articles of Incorporation usually contain the corporate name, the association purposes and powers, duration, structure, place of business, and registered agent. The bylaws generally state how meetings will be called, membership fees, and the election, compensation, and authority of directors and officers. In addition, the association normally writes association policies to cover more detail on office procedures, standing committees and so forth.

Specific information on the legal relationship with the Forest Service is found in the Grazing and Management Agreement. The agreement states the purpose and objectives of the agreement, the responsibilities of the Forest Service and the association, the joint Forest Service and association responsibilities, the term of the agreement and provisions for termination and amendment. Each agreement provides that the agreement is subject to all rules and regulations of the Secretary of Agriculture and the agreement may be revoked or suspended for noncompliance. The agreement also contains the mutually agreed upon rules of management by which all association controlled lands are operated. Additional Forest service policy on grazing agreements may be found in Part 2237 of the Forest service manual (FSM). Under the decentralized organization of the Forest service, internal direction for Forest Service personnel is published in a national Forest Service manual with more specific guidelines published by each of the ten regional offices as to forests within that particular region.

In summary, two separate legal relationships exist under the management tool of grazing and management agreements with recognized associations. The relationship between the Forest Service and the association has separate and distinct responsibilities and duties. Complementary but distinct from this relationship is the relationship between the association and its individual members with its accompanying responsibilities and duties.

cc:

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