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**FSM 2200 – Rangeland Management
Chapter 40 – Rangeland Improvements**

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Approved by: Christopher French, Deputy Chief National Forest System

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Responsible Staff: Forest Management, Range Management, and Vegetation Ecology (FMRMVE)

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Digest:

Section 2240: Changes chapter title from “Range Improvements” to “Rangeland Improvements” and sets forth direction. Revises, recodes and organizes chapter in its entirety.

Section 2240.1: Removes direction on authorities from this section and moves to FSM 2201 and consolidates with other authorities.

Section 2240.2: Revises objectives to increase focus on Land Management Plans (LMPs) and on project level National Environmental Policy Act (NEPA) based decisions.

Section 2240.3: Revises policy section to better align with updated direction. Adds and clarifies direction to include the requirement that all agency employees must inform and consult with rangeland management experts for all proposed projects that involve rangeland vegetation resources or may potentially effect or impact livestock management operations.

Section 2240.4: Removes direction on responsibilities from this section and moves to FSM 2204 and consolidates with other responsibilities.

Section 2240.5: Removes definitions from this section and moves to FSM 2205 and consolidates with other definitions.

Section 2240.6: Establishes code, caption, and sets forth direction on “Livestock Intrusion,” direction previously set out in FSM 2230.06 “Lands Not Under the Jurisdiction of the Forest Service” to “Livestock Intrusion.”

Section 2241: Changes section title from “Financing Range Improvements” (recoded to FSM 2245) to “Structural Rangeland Improvements,” and incorporates direction formerly coded to 2242 to this section.

Section 2241.12: Removes this section and incorporates the direction on the Range Betterment Fund into section 2245.21.

Section 2241.32: Removes section with obsolete direction on procurement.

Section 2242: Changes section title from “Structural Range Improvements” to “Non-structural Range Improvements” and incorporates direction on non-structural range improvements from 2243 into this section.

Section 2243: Changes section title from “Non-structural Improvements” to “Maintenance of Improvements,” and incorporates direction formerly coded to FSM 2244 into this section.

Section 2244: Changes section title from “Maintenance of Improvements” to “Rangeland Improvements within Wilderness Areas,” and adds direction clarifying construction, repair, and maintenance of rangeland improvements in congressionally designated wilderness areas.

Section 2245: Establishes code, caption and sets forth direction on “Financing Rangeland Improvements.” Moves direction on financing range improvements in its entirety from section 2241 to this section and updates for clarification.

Section 2245.2 – Establishes code and caption for a new section title “Special Funds and Trust Funds” to better organize and characterize existing information and direction related to Range Betterment Fund and Knutson-Vandenberg Fund.

Section 2245.21: Establishes code, caption and sets forth direction on “Range Betterment Fund (RBF).” Consolidates and clarifies policy on the use of Range Betterment Funds (RBF) for expenses associated with the planning, design, layout, contracting, and inspection of rangeland improvements, not to exceed six percent of the total project costs (para. 2).

Section 2245.3: Changes section title from “Conservation Practices” to “Conservation Practices and Fee Credits on National Grasslands” and sets forth direction. Removes detailed direction on

funding rangeland improvement through fee reductions and fee credits from this section and incorporates it into FSH 2209.13, chapter 20.

Section 2245.4: Changes section title from “Range Improvement Investment” to “Grazing Fee Credits on National Forests in Regions 8 and 9 except for Oklahoma” and replaces former direction on range improvement investment with new direction on grazing fee credits for rangeland improvements on Eastern National Forests.

Section 2245.5: Establishes code, caption and sets forth direction on “Non-Forest Service Contributions.” Moves direction on private contributions previously set out in section 2241.3 to this section.

Section 2245.51: Establishes code, caption and sets forth direction on “Permittee Contributions.” Moves direction on permit modifications previously set out in section 2241.3 to this section and revises for clarity.

Section 2246: Establishes code, caption and sets forth direction on “Compensation for Permittee Investment in Rangeland Improvements where National Forest System Land is Devoted to Another Purpose.” Moves and clarifies direction concerning compensation for permittee investment in rangeland improvements, where permits are cancelled to devote land to another public purpose previously set out in FSH 2209.13, chapter 70 to this new section.

Forest Service Manual 2200 – Rangeland Management

Chapter 40 – Rangeland Improvements

Amendment: 2200-2024-5

Effective date: June 11, 2024

Table of Contents

2240.1 – Authority	5
2240.2 – Objectives	5
2240.3 – Policy.....	5
2240.4 – Responsibility	7
2240.5 – Definitions.....	7
2240.6 – Livestock Intrusion.....	7
2241 – Structural Rangeland Improvements.....	8
2242 – Non-structural Rangeland Improvements	8
2242.1 – Vegetation Management	9
2242.2 – Invasive Plants and Noxious Weeds	9
2242.3 – Pesticides	9
2242.4 – Animal Damage Control	9
2242.5 – Insect, Disease, and Pest Management	10
2243 – Maintenance of Improvements.....	10
2244 – Rangeland Improvements within Wilderness Areas	10
2245 – Financing Rangeland Improvements	11
2245.1 – Appropriated Funds.....	11
2245.2 – Special Funds and Trust Funds	11
2245.21 – Range Betterment Fund	11
2245.22 – Knutson-Vandenberg Fund	12
2245.3 – Conservation Practices and Fee Credits on National Grasslands.....	13
2245.4 – Grazing Fee Credits on National Forests In Regions 8 and 9 except for Oklahoma	13
2245.5 – Non-Forest Service Contributions.....	13
2245.51 – Permittee Contributions	13
2245.52 – Collection Agreements	14
2245.53 – Memoranda of Understanding	14
2245.54 – Interagency Agreements	14
2246 – Compensation for Permittee Investment in Rangeland Improvements where National Forest System Land is Devoted to Another Purpose	14
2246.1 – Applicability	14
2246.2 – Compensation Determination	15

2240.1 – Authority

See FSM 2201 for authorities related to rangeland improvements.

2240.2 – Objectives

In addition to the objectives set forth at FSM 2202, objectives of rangeland improvements are to:

1. Assist in achieving the desired conditions established in applicable Land Management Plans (LMPs) and project level National Environmental Policy Act (NEPA) based decisions with the resultant Allotment Management Plans (AMPs);
2. Ensure that rangeland improvements are designed, constructed, and maintained for optimal effectiveness and cost efficiency.

2240.3 – Policy

In addition to policy set forth at FSM 2203, the policy regarding rangeland improvements is to:

1. Use an interdisciplinary approach to plan and analyze rangeland improvements.
2. Design and locate rangeland improvements to reflect the LMP objectives and requirements.
3. Consult rangeland subject matter experts on improvement practices and management decisions within rangeland ecosystems.
4. Ensure plans and specifications are described as part of a permit modification and followed when constructing new rangeland improvements. The requirement for maintaining the new rangeland improvement must be assigned to the appropriate permittee(s) in the terms and conditions of the grazing permit(s). Update the Rangeland Information Management System to include the new rangeland improvement and maintenance responsibilities.
5. Design and construct/implement rangeland improvements to minimize adverse effects to National Forest System (NFS) lands, wildlife, and other resources.
6. Reimburse permittees for their contributions to rangeland improvements when a decision is made to devote the affected NFS land to another public purpose (including disposal) in accordance with FSM 2248, which results in the need to cancel their permits in whole or in part. See FSH 2209.13, chapter 70 for specific direction.

Forest Service Manual 2200 – Rangeland Management

Chapter 40 – Rangeland Improvements

Amendment: 2200-2024-5

Effective date: June 11, 2024

7. Require permittees to contribute to rangeland improvements with proportionate contributions of money, labor, or materials for cooperative rangeland improvements on NFS lands.
8. Document permittee contributions to rangeland improvements through permit modifications, collection agreements, and/or established procurement procedures. Permittee contributions shall be documented in the official grazing permit file and the database of record (see FSH 2209.13, ch. 60).
9. Hold the titles to permanent rangeland improvements unless specifically designated otherwise. Temporary structures to manage livestock, such as corrals and dipping vats, may be exempt. These temporary structures must be removed by the permittee when their use is no longer needed.
10. Evaluate non-permittee proposals to construct rangeland improvements under the same criteria that apply to permit holders, to determine if the improvements contribute towards accomplishing the overall resource management objectives for the area.
11. Establish and maintain an Agency approved electronic inventory of all rangeland improvements on NFS lands.
12. Do not convey exclusive rights to use a rangeland improvement or the lands on which the improvement is located to a cooperator or permittee who performs the required rangeland improvement work on NFS lands (36 CFR 222.9(b)(5)).
13. Assign the responsibility for maintenance of rangeland improvements related to livestock grazing to permittees as a term and condition of their grazing permits.
14. Require grazing permittees to maintain all assigned range improvements even during periods of nonuse and suspension. Maintenance responsibility can be assigned to temporary permit holders, filling in behind nonuse, suspensions, and grazing on vacant allotments.
15. Costs of rangeland improvement maintenance may only be funded by the Forest Service in those instances where the rangeland improvement is constructed for purposes other than permitted livestock management or in emergency situations where prompt action is required.
16. Ensure that rangeland improvements for livestock grazing purposes, in congressionally designated wilderness areas, are developed in conformance with the Congressional Grazing Guidelines. See FSM 2320 and FSM 2244 below for direction on construction, reconstruction, and maintenance of rangeland improvements within wilderness areas.

17. Design structural rangeland improvements using appropriate standards (FSM 2206). See section 2241 below for the list of standard publications that detail the standards for planning and installing numerous structural rangeland improvements.

18. Include responsibility for the construction, maintenance, and removal of improvements in the terms and conditions of the permit. The Forest Service and the permittee(s) should remove non-functional and unnecessary structural rangeland improvements based on the cost-share agreement at the time of construction.

2240.4 – Responsibility

See FSM 2204 for responsibilities for rangeland improvement.

2240.5 – Definitions

See FSM 2205 for definitions of terms used in this chapter.

2240.6 – Livestock Intrusion

The United States is not required to fence its lands to:

- keep unauthorized livestock from entering NFS lands or
- keep permitted livestock from leaving NFS lands and entering neighboring lands (nor for the settlement of controversies between the owner of the livestock and the owner of the land)

Federal courts have rendered decisions addressing both types of situations. For example, *Shannon v. United States*, 160 Fed. 870 (9th Cir., 1908) clarified that the United States is not required to fence its lands according to states' fence laws to protect it against unauthorized livestock, and that the Constitution gives the United States the right to control and regulate the occupancy of federal lands. This has been further clarified with subsequent decisions, including but not limited to *Light v. United States*, 220 U.S. 523 (1911); *United States v. Gurley*, 279 Fed. 874 (N.D. Ga., 1922); and *United States v. Johnston*, 38 F. Supp. 4 (S.D.W. Va., 1941).

Authorized officers have discretion relative to when to expend agency funds on boundary fences. Authorized officers should evaluate each situation on a case-by-case basis. Depending on the site-specific conditions and circumstances (for example, natural disasters such as wildfires), authorities such as the Wyden Authority (16 U.S.C. 1011a), allows the Forest Service to work with partners and/or cooperating agencies to complete actions (for example, construct fences) on NFS and non-NFS lands that benefit resources within a watershed.

2241 – Structural Rangeland Improvements

Authorize construction, installation, and maintenance of structures on NFS lands or other lands under Forest Service control that are designed to improve desired rangeland conditions, produce forage, change vegetative composition, control patterns of use, provide water, stabilize, and improve soil and water conditions, and provide habitat for wildlife. Except as otherwise specifically provided, title to structural rangeland improvements shall be in the name of the United States.

The following publications are the recommended sources for construction standards and maintenance requirements:

1. Facilities for Handling, Sheltering, and Trailing Livestock, 8724-2809, September 1987. Society for Range Management, 1839 York Street, Denver, CO 80206. From the Vegetative Rehabilitation and Equipment Workshop. Prepared by the Missoula Technology and Development Center, USDA, Forest Service.
2. Rangeland Water Developments at Springs: Best Practices for Design, Rehabilitation, and Restoration. Gurrieri, Joseph T. 2020. Gen. Tech. Rep. RMRS-GTR-405. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 21 p.
3. Facilities for Watering Livestock and Wildlife, MTDC 89-1, January 1989. Society for Range Management, 445 Union Street, Suite 230, Lakewood, CO 80228. The Vegetative Rehabilitation Workshop. Prepared by Missoula Technology and Development Center, USDA, Forest Service.
4. Fences, 8824-2803, July 1988. Society for Range Management, 445 Union Street, Suite 230, Lakewood, CO 80228. From the Vegetative Rehabilitation Workshop. Prepared by the Missoula Technology and Development Center, USDA, Forest Service.
5. Specifications for Structural Range Improvements, Gen. Tech. Rep. PNW-GTR-250. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station.

In addition, there are several other regional research publications and state documents available that can be used to access standard specifications for livestock and wildlife needs.

2242 – Non-structural Rangeland Improvements

Implement practices and treatments not involving the construction or installation of structures that are designed to change vegetative composition, improve production of forage, control

patterns of use, provide water, stabilize soil and water conditions, and provide habitat for livestock and wildlife.

In the absence of national direction, regional handbooks for non-structural Rangeland Improvements (FSH 2209.23) may serve as references.

2242.1 – Vegetation Management

Use cultural, manual, mechanical, biological (including, but not limited to, animals such as sheep or goats), chemical, or prescribed fire treatments to eliminate, reduce, perpetuate, or otherwise alter vegetation composition and density. Where appropriate, use a combination of methods to most effectively achieve established resource management objectives.

A Temporary Grazing or Livestock Use Permit (FS-2200-05) can be used to authorize livestock grazing for altering vegetation composition and density or to assist in achieving desired vegetative conditions.

2242.2 – Invasive Plants and Noxious Weeds

See FSM 2900 for direction concerning the prevention, detection, control, and restoration of effects from aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens).

A Temporary Grazing or Livestock Use Permit can be used to authorize livestock grazing to reduce or control invasive plants and noxious weeds.

2242.3 – Pesticides

See FSM 2100 Environmental Management, chapter 2150 concerning the use, management, and coordination of pesticides on rangelands.

2242.4 – Animal Damage Control

See FSM 2600, Wildlife, Fish, and Sensitive Plant Habitat Management, chapter 2650 regarding Animal Damage Management. Animal damage management and predator control activities may be initiated against animals that are causing unacceptable damage to NFS rangelands and/or to domestic livestock as well as wild ungulate populations. Conditions and circumstances may warrant coordinated action for population control to be carried out by USDA Animal and Plant Health Inspection Service (APHIS) personnel, Wildlife Damage Management (WDM) division.

2242.5 – Insect, Disease, and Pest Management

See FSM 3400, Forest Health Protection, chapter 3420 Management for direction concerning circumstances under which actions to control or eliminate rangeland insects, diseases, and pests may be appropriate.

Conditions and circumstances may warrant communication with state wildlife management agencies regarding coordinated action for control to be carried out by USDA Animal and Plant Health Inspection Service (APHIS) personnel, Wildlife Damage Management (WDM) division.

2243 – Maintenance of Improvements

Require permittees to maintain all assigned rangeland improvements related to livestock grazing on NFS lands or other lands under Forest Service control and keep them in operable condition throughout their normal life expectancy, except as specifically provided. Include this maintenance requirement with a detailed list of all assigned range improvements as a term and condition of the grazing permit.

Money from the Range Betterment Fund (RBF) shall not be used for maintenance of structural rangeland improvements (see 2245.21 below).

The requirement that grazing permittees are to maintain all assigned rangeland improvements (as well as cost-share in the funding of new improvements) is one of the factors used in calculating the costs of grazing livestock on NFS lands to determine the grazing fee formula.

2244 – Rangeland Improvements within Wilderness Areas

In the Wilderness Act of 1964, Congress directed agencies to administer wilderness areas in a way that preserves their wilderness character. In order to accomplish this objective, commercial enterprise[s], motor vehicles, motorized equipment, and structures and installations are prohibited except as otherwise provided for by the Act.

Section 4(d)(4)(2) of the act provides a limited exception to these prohibitions for livestock grazing where the activity was established prior to the date of the area's designation as wilderness. In these cases, the Wilderness Act authorized the continuation of grazing subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

Due to varying interpretations of this provision since 1964, the House Interior Committee issued a report in 1980 clarifying Forest Service administration of grazing activities in Congressionally designated wilderness areas. The report outlined five nationwide guidelines

and specific statements of legislative policy and became generally known as the Congressional Grazing Guidelines (H. Report 96-617). Several of these guidelines deal specifically with the issue of legally allowed construction, reconstruction, and maintenance of improvements within wilderness areas (see FSM 2320.22).

2245 – Financing Rangeland Improvements

2245.1 – Appropriated Funds

These funds are allocated by Congress to the Forest Service through the annual appropriation process to construct or maintain improvements necessary for proper use, protection, and improvement of rangeland resources. Use appropriated funds as available to support planning and construction of rangeland improvements.

The primary benefiting activity should provide funds for rangeland improvements needed to support that activity. Review the purpose and need for constructing the rangeland improvement and associated objectives to determine the primary benefiting activity.

Maintenance or replacement of rangeland improvements that occupy the road prism or that are required by the existence of the road should typically be funded by road maintenance funds. Rangeland improvements in the form of road right-of-way fences and cattleguards that become necessary due to the construction or reconstruction of roads should typically be included in the cost of construction or reconstructing and funded accordingly.

2245.2 – Special Funds and Trust Funds

2245.21 – Range Betterment Fund

Congress established the RBF in the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. §1751) to finance rangeland improvements on lands in National Forests in the sixteen contiguous Western States. This money is deposited into a separate account to finance on-the-ground rangeland rehabilitation, protection, and improvement projects. It is used to arrest rangeland deterioration and improve vegetation conditions on rangelands in order to benefit forage production for livestock and wildlife, and to improve watershed conditions.

1. One-half of the grazing fee receipts goes into the Treasury's General Fund. The remaining one-half or \$10 million, whichever is greater, constitutes the Range Betterment Fund. One-half of the money deposited into the RBF from a national forest is returned to that national forest for use on rangeland improvement projects. The remaining money deposited to the RBF from a national forest is returned to the region in which the forest is located and may be allocated for rangeland improvement projects anywhere within the region, as determined by the regional forester on a case-by-case

Forest Service Manual 2200 – Rangeland Management

Chapter 40 – Rangeland Improvements

Amendment: 2200-2024-5

Effective date: June 11, 2024

basis; in many cases, the entire amount is allocated to the forest that collected it. Coordinate with permittees, and other interested parties, to evaluate and prioritize rangeland improvement projects that are proposed for financing under the RBF.

2. Money from the RBF is used principally for on-the-ground rangeland improvement expenses; however, expenses associated with the planning, design, layout, contracting and inspection of rangeland improvements may be paid from the RBF in an amount not to exceed 6 percent of total project costs so long as Congress continues to provide the authority to do so. As such, units must confirm with their Forest/Grassland and/or Regional Rangeland Management Program leads that the authority has continued to be available during the fiscal year in question.

3. Priority is assigned to those rangeland improvement projects eligible for funding under the RBF, based upon the relative contribution of each project to: the protection of rangeland from deterioration, the rehabilitation of deteriorated rangeland, and the improvement of forage quality and quantity.

4. Costs associated with general administration, range program management, and allotment management planning to RBF must not be assessed, except as specifically provided in paragraph 2 above, and then are only allowed at the ranger district level.

5. Money from the RBF may be used for rehabilitation, protection, and improvements including, but not limited to: seeding, restoration, fence construction, invasive plant control, noxious weeds control, water development, and fish and wildlife habitat enhancement.

6. Money from the RBF may be used for improvement, new construction, or reconstruction of rangeland improvement(s).

7. Money from the RBF may not be used for maintaining structural improvements.

2245.22 – Knutson-Vandenberg Fund

Under the Knutson-Vandenberg Act (K-V) of June 9, 1930 (16 U.S.C. 576-576b; 46 Stat. 527), as amended by the National Forest Management Act of October 22, 1976 (16 U.S.C. §§1600-1606 and §§1607-1614), funds are available to reestablish, protect, and improve the production of renewable resources on timber sale areas, which may include rangeland resources inside timber sale area boundaries (FSH 2409.19 Renewable Resources Handbook). FSH 2409.19, chapter 10 discusses Cooperative Work, Knutson-Vandenberg (CWKV) project planning.

To be funded by K-V funds, rangeland improvements must be identified in the official sale area improvement (SAI) plan (see FSH 2204.19). As such, Rangeland Management Specialist should engage early in the timber sale planning process to identify what rangeland improvements may be needed (for example, the construction of a fence that becomes necessary to control cattle

movements once timber has been removed from a specific portion of the allotment, control/containment of noxious weeds).

2245.3 – Conservation Practices and Fee Credits on National Grasslands

Rangeland improvements may be funded through fee reductions for approved conservation practices. Grazing fees on national grasslands and land utilization projects can be reduced by up to 50 percent for conservation practices. Conservation practices include structural and non-structural improvements. See FSH 2209.13, ch. 80 for more instruction related to fee reductions.

Rangeland improvements may also be funded through grazing fee credits on National Grasslands. In most cases, grazing fee credits are approved where direct permittees are involved. These credits are often approved because the permittee pays all costs for the improvement at the time of installation, and the fee credit is allowed in subsequent years to allow for permittee reimbursement of the agency's cost-share portion of the required improvement. See FSH 2209.13, ch. 80 for more instruction related to grazing fee credits.

2245.4 – Grazing Fee Credits on National Forests In Regions 8 and 9 except for Oklahoma

Rangeland improvements may be funded through grazing fee credits. These credits are often approved because the permittee pays all costs for the improvement at the time of installation, and the fee credit is allowed in subsequent years to allow for permittee reimbursement of the agency's cost-share portion of the required improvement.

The procedure for determining grazing fee credits for agency required rangeland improvements is the same regardless of whether the grazing fee is established by noncompetitive fair market value or by competitive bid. See FSH 2209.13, ch. 80 for more instruction related to grazing fee credits.

2245.5 – Non-Forest Service Contributions

Ensure that improvements financed by private contributions are cost-effective and that they are located and built to written Forest Service specifications.

2245.51 – Permittee Contributions

It is essential that permittees make proportionate contributions towards the cost associated with cooperative rangeland improvements on NFS land. Contributions may be in the form of money, materials, and/or labor. Document all contributions in writing.

Grazing permit modifications shall authorize rangeland improvement construction involving grazing permittee contributions. Permit modifications need to (1) specify any degree of cost-sharing (50 percent is the generally accepted contribution); and (2) accept contributions in the form of labor, materials, and/or equipment, as well as direct funding.

2245.52 – Collection Agreements

Use a collection agreement for any funds that non-federal parties deposit with the Forest Service for rangeland improvements (FSH 1509.11, ch. 40).

2245.53 – Memoranda of Understanding

Use a memorandum of understanding when cooperation is between the Forest Service and a non-permittee (including States), in those instances that do not involve an interchange of funds, materials, or services (FSH 1509.11, ch. 60).

2245.54 – Interagency Agreements

Use an interagency agreement when an agreement is between the Forest Service and other Federal agencies, including those instances that involve sharing of costs, equipment, and expertise (FSH 1509.11, ch. 50).

2246 – Compensation for Permittee Investment in Rangeland Improvements where National Forest System Land is Devoted to Another Purpose

2246.1 – Applicability

A current permittee may be eligible for compensation for the adjusted value of investment in rangeland improvements where a decision has been made to devote the grazing land to another public purpose (43 U.S.C. 1752(g)), which results in the permit being cancelled in whole or in part. This provision only applies where:

1. A decision is made to devote the land to another public purpose that precludes livestock grazing on lands within national forests in the sixteen contiguous Western States, which results in the term permit for grazing being cancelled in whole or in part. The decisions to devote the land to another public purpose are commonly made through the forest planning process.
2. The permittee made a quantifiable and verifiable investment of money, labor, or materials to construct one or more improvements on the subject land. Former permittees who contributed to an improvement, but are no longer permitted to graze on the land, are not eligible for compensation under this provision, nor are current permittees who are grazing on the NFS land but did not contribute to an improvement.

This provision at 43 U.S.C. 1752(g) does not apply to decisions which reduce livestock numbers or seasons of use due to resource conditions or suspend or cancel livestock grazing due to noncompliance.

2246.2 – Compensation Determination

Compensation shall be based on the adjusted value of the permittee's investment that is present market value of the improvement and may not exceed the fair market value of the permittee's investment at the time of permit cancellation. Any portion of improvement funding derived from appropriated funds, including Range Betterment Funds, is not eligible for compensation under this provision. Appraisals to determine adjusted value shall be done by accepted appraisal methods in the area where the improvements occur; utilize a Forest Service appraiser or obtain the services of a qualified third-party appraiser. Generally, amortization schedules shall not be used to determine adjusted value; the appraisal states the present real value. Compensation shall not be based on the value of the improvement contribution to the land for grazing use.

Payments to permittees for the adjusted value of their investment in range improvements shall be handled as obligations of the United States; obtain an acknowledgement from the permittee to indicate that compensation has been paid.

When rangeland improvements are funded by a grazing association (or grazing district), the grazing association may be eligible for compensation in accordance with the foregoing principle, based on the extent of their financial contributions to project construction. Any portion of the rangeland improvement that was funded through fee reductions for conservation practices shall not be eligible for compensation. The Forest Service will compensate the association. The association is responsible for compensating the member(s) who contributed funds to the improvement(s), or to make the determination that the monies will be invested in other range improvements. See FSH 2209.13, chapter 20 for further direction regarding grazing associations.