



December 2, 2020

**Submitted via online portal**

U.S. Forest Service  
Director  
Forest Management  
Range Management and Vegetation Ecology  
Attn: Myra Black  
210 14<sup>th</sup> Street SW, Suite 3SE  
Washington, D.C. 20250-1124

**Re: Notice of Proposed Rulemaking: Assessing Fees for Excess and Unauthorized Grazing (November 2, 2020) – Docket No.: FS-2020-0010**

To whom it may concern:

American livestock producers play a pivotal role in the management of hundreds of millions of acres of both private and public lands throughout the United States. As groups representing members who produce food and fiber on private, state, and federal lands, the Public Lands Council (PLC), the National Cattlemen's Beef Association (NCBA), the American Sheep Industry Association (ASI) and our respective affiliates appreciate the opportunity to provide comment on the U.S. Forest Service's (USFS or "agency") proposal to amend the regulations related to nonmonetary settlement when unauthorized or excess grazing is determined to be non-willful.

The PLC is the sole national association whose singular focus is to represent the interests of approximately 22,000 cattle and sheep producers who hold federal grazing permits throughout the West; NCBA is the nation's oldest and largest trade association representing cattle producers; and ASI is the national organization representing the interests of more than 100,000 sheep producers located throughout the United States. These organizations (collectively identified throughout as "the livestock groups"), as well as our undersigned affiliates, are actively engaged with federal agencies like the USFS to utilize grazing as a fuels and forage management tool and support robust and intentionally-managed multiple use. These comments below are not intended to supplant or supersede any separate or individual comments submitted individually by the undersigned groups.

The livestock groups appreciate the agency's efforts to respond to recommendations made by the Government Accountability Office (GAO) in their 2016 report to Congress entitled "*Unauthorized Grazing: Actions Needed to Improve Tracking and Deterrence Efforts*" (GAO-16-559). Among the recommendations in that report is a recognition that the USFS authority and

policy for identifying, documenting, and remedying incidents of unauthorized and excess grazing lacked the nuance applied by other agencies, including those employed by the Bureau of Land Management (BLM) in similar situations. Efforts to bring USFS policy into conformance with BLM policy will, in this situation, provide a great deal of clarity and reduce uncertainty for permittees who hold permits from both agencies. Further, federal agencies have sought to employ similar, complementary policies across agencies to facilitate ease of federal implementation. The livestock groups appreciate the efforts to do the same here.

### ***Remedy for Excess Use***

The livestock groups appreciate the agency's efforts to delineate non-willful activities from those that are persistent or willful and provide for authorized remedies for USFS to employ as appropriate. The livestock groups represent thousands of federal permittees whose grazing activities will not and should not be affected as part of this proposal, as the vast majority of grazing activities comply with all terms and conditions set forth during the permitting process. In limited cases where this proposed policy will apply, the livestock groups agree that informal resolution is "an effective way to resolve non-willful unauthorized grazing". It is imperative that USFS grazing and range program staff have positive working relationships with permittees in their area in order to achieve the best ecological and functional outcomes.

In the case of non-willful excess or unauthorized use, personal interaction should be the first step to allow a remedy to occur. The notice of proposed rulemaking provided that: "Informal resolution involves the permittee or non-permittee removing the livestock following a phone call from or face-to-face conversation with the authorized officer." The livestock groups wish to emphasize that in cases of informal resolution, livestock should not be removed by anyone other than the permittee responsible for the livestock, or an authorized officer. While the livestock groups do not believe the intent of the proposal is to provide for a non-permittee to remove livestock that do not belong to them or livestock for which they are not responsible, the groups believe clarification is warranted.

### ***Definition of Non-Willful***

As defined in the proposal, "non-willful" unauthorized or excess use is incidental, unintentional, and accidental. Logically, these activities are not due to gross negligence, as typically applied. Gross negligence is legally differentiated from ordinary negligence. The agency should consider carefully whether the standard of gross negligence is the most appropriate standard to differentiate non-willful from willful excess or unauthorized use, and further differentiate willful from persistent willful excess or unauthorized use. The livestock groups wish to support a standard that would allow the agency personnel the ability to apply informal resolution without unintentionally prohibiting the personnel from applying a more appropriate standard, depending on the context.

### ***Forage Consumption***

Revisions to § 222.50, the proposal recommends modification of paragraph (h) to include new subparts that address (2) whether excess or unauthorized use is "not significant" and that (3) National Forest lands have "not been damaged significantly" by the excess or unauthorized use. The livestock groups appreciate the direction USFS here provides to agency staff to ensure the remedy is commensurate with the scenario. The livestock groups and the permittees we represent

prioritize healthy landscapes and compliance with grazing permits to achieve favorable natural resource outcomes and conditions that further the ongoing positive dynamic between federal land management agencies and the permittees who steward the resource.

Finally, we appreciate the USFS's statement that further direction for implementing the GAO recommendation related to recording incidents of unauthorized grazing, including those resolved formally, will be developed at a later date. The livestock groups will appreciate the opportunity to comment on any future direction at that time.

We thank you for the opportunity to provide supplementary comments and look forward to ongoing dialogue.

Sincerely,

American Sheep Industry Association  
National Cattlemen's Beef Association  
Public Lands Council  
California Cattlemen's Association  
Colorado Cattlemen's Association  
Colorado Wool Growers Association  
Florida Cattlemen's Association  
Idaho Cattle Association  
Louisiana Cattlemen's Association  
Maryland Cattlemen's Association  
Montana Public Lands Council  
Montana Stock Growers Association  
New Mexico Cattle Growers Association  
New Mexico Wool Growers Association  
Oregon Cattlemen's Association  
Oregon Public Lands Committee  
South Dakota Cattlemen's Association  
Utah Wool Growers Association  
Washington Cattlemen's Association  
Wyoming Stock Growers Association  
Wyoming Wool Growers Association