

**Forest Service Handbook
Service Wide - Washington Office
Washington, DC**

**Forest Service Handbook 2209.13 – Grazing Permit Administration Handbook
Chapter 70 – Compensation for Permittee Interest in Rangeland Improvements**

Amendment: 2209.13-2023-4

Effective date: June 30, 2023

Duration: This amendment is effective until superseded or removed.

Approved by: Troy Heithecker, Associate Deputy Chief, National Forest System

Date approved: June 28, 2023

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

Last Change:

Superseded Document(s): 2209.13_70, Amendment 2209.13-2005-10, September 09, 2005; 2209.13,70 Contents, Amendment 2209.13-92-1, August 03, 1992; 2209.13,70, Amendment 2209.13-92-1, August 03, 1992

Digest: Following is an explanation of the changes throughout the directive by section.

This amendment clarifies who may qualify for compensation and under what circumstances compensation payments may be paid. Major revisions include:

Section 71.1: Adds the National Grasslands in Texas to the list of National Forest System lands upon which rangeland improvement compensation provisions may be applied to be consistent with administration of all other National grasslands under Federal Land Policy and Management Act authority.

Section 71.1: Provides examples of where lands may be devoted to another public purpose.

Section 71.1: Clarifies that only the current term permittee would be eligible for compensation; previous term permittees are not eligible.

Section 71.2: Explains compensation procedures if the improvements have been constructed by a grazing association or grazing district.

Section 72: Explains that the benefitting use, resource, or receiving agency shall bear the cost of range improvement compensation.

Section 72: Reiterates that range betterment funds or conservation practice monies cannot be used to pay for range improvement compensation.

Section 73: Explains that once a permittee signs and executes a waiver of a term grazing permit, that permittee shall cease to be eligible for compensation of any rangeland improvements completed by him or her. The only exception is if the current permittee reorganizes into a new entity for family estate planning purposes and he or she continues as a member of the new entity.

Table of Contents

71 - Compensation Provisions.....	4
71.1 - Applicability.....	4
71.2 - Compensation Determination	5
72 - Payment to Permittees	6
73 - Waiver of Interest in Permanent Range Improvements	6

71 - Compensation Provisions

71.1 - Applicability

Per 43 U.S.C. §1752(g) (sec. 402(g) of the Federal Land Policy and Management Act of 1976), a permittee may be entitled to reasonable compensation for the adjusted value of his or her investment in authorized permanent rangeland improvements (such as fences, water developments, corrals, cow camps in certain cases, and so forth, as listed in the term grazing permit) in those limited situations where the permit has been cancelled, in whole or in part, to devote the permitted grazing land to another public purpose that precludes livestock grazing. Such compensation shall not exceed the fair market value of the terminated portion of the permittee's interest in such improvements. Generally speaking, this provision only applies under both of the following conditions:

1. A term permit for grazing on all National Forest System (NFS) lands in the 16 contiguous western states is cancelled, in whole or in part, to devote the land to another public purpose which precludes livestock grazing. Decisions to devote the land to another public purpose are commonly made through the land management plan (LMP) development or revision. Examples of such actions are:
 - a) The creation or expansion of a military reservation or training ground;
 - b) Mining operations (coal, phosphate, copper, uranium, rare earth elements, and so forth) that take the land out of any other type of production for 30-50 years or more;
 - c) When lands are removed from the National Forest System through a land exchange and where livestock grazing would be discontinued;
 - d) When Agency decisions specifically preclude livestock grazing from specific areas or allotments to avoid impacts to or conflicts with other resource uses or management purposes such as Endangered Species Act (ESA) critical habitat designations, bighorn sheep risk management closures, wild horse and burro management areas, municipal watersheds, wild and scenic river specific proclamation, closing Research Natural Areas to grazing, and so forth; or
 - e) If tribes exercising their treaty rights to graze livestock displace current term permit holders.
2. The current permittee made a quantifiable and verifiable investment of money, labor, or materials to construct one or more permanent improvements on the subject land. Former permittees who contributed to an improvement but lost or waived their term grazing permit prior to the subject lands being devoted to another public purpose, are not eligible for compensation under this provision, nor are permittees who are grazing their livestock on the NFS lands but did not contribute to the improvement.

This provision of the Federal Land Policy Management Act of 1976 does not apply to administrative decisions that reduce livestock numbers or seasons of use due to resource conditions or require a change in the timing of use for compatibility with other resource needs. It also does not apply to permit cancellations due to noncompliance by the permittee.

Per 43 U.S.C §1752(g), except in cases of emergency, no term grazing permit shall be cancelled to devote the lands covered by the permit to another public purpose without two years' prior notification. See FSH 5409.13, chapter 30-36 for more direction on how to provide the two-year notification which may include a request for the permittee to provide a voluntary waiver of the two-year notification if they so choose. It is the responsibility of the Forest Service to advise the permittee that he or she is eligible for compensation and the amount of the compensation. Compensation shall not exceed fair market value of the permittee's share of the terminated portion of improvements, as determined by acceptable appraisal methods, at the time the permit is cancelled in whole or in part.

71.2 - Compensation Determination

Reasonable compensation on the adjusted value of the permittee's investment may not exceed the fair market value of the permittee's investment at the time of permit cancellation. Any portion of improvement funding contributed by the Forest Service from appropriated funds, including range betterment funds, is not eligible for compensation under this provision. Cooperative construction funds provided by other State or Federal agencies (such as Environmental Quality Incentives Program funds through the Natural Resources Conservation Service) will not be considered part of the permittee's investment.

A Forest Service appraiser, or the services of a qualified third-party appraiser (managed by a qualified Forest Service employee), will use Forest Service accepted appraisal methods to determine the adjusted value based on the national and local conditions that influence costs where the improvements are located. Generally, amortization schedules are not to be used to determine adjusted value; the appraisal states the present value which includes an assessment of the condition of the improvement due to regular maintenance or lack thereof. Only the value of the improvement will be considered for compensation, not how much the improvement may have increased the value of the land for grazing. Compensation may not exceed the amount of the original investment by the permittee in the construction, or reconstruction, of the improvement(s).

Completed permit modifications for range improvement work, electronic improvement records in the Rangeland Information Management System (RIMS), and/or other documentation and records from the Agency and permittee are used to verify the costs incurred by both parties to construct the improvements.

Payments for this compensation shall be handled as obligations of the United States in conformance with current Agency policy which includes a validation and documentation that compensation has been paid.

In some cases, the improvements may have been constructed by a grazing association or grazing district (on a national grassland), entitling the association or district to compensation in accordance with the foregoing principle. However, that portion of the improvement funded by conservation practice funds shall not be eligible for compensation. The grazing association has responsibility to distribute any compensation money paid by the Forest Service to the association back to the member(s) who contributed funds to the improvement(s) (see chapter 20 of this Handbook).

72 - Payment to Permittees

The multiple use resource discipline (such as anadromous fisheries or bighorn sheep) or the land use program area (such as minerals or recreation) that benefits by the elimination of livestock grazing shall bear the cost of compensation.

Range betterment funds and conservation practice funds should never be used to compensate permittees for their interest in range improvements.

73 - Waiver of Interest in Permanent Range Improvements

Compensation can only be made to the grazing permittee who contributed to the cost of constructing the original permanent range improvement. If the improvement has since been completely reconstructed, the same compensation provision applies to the cost of the reconstructed improvement but only if the authorized reconstruction was completed by the current permittee. Care should be taken to differentiate between required heavy maintenance and actual reconstruction.

As stated above, compensation cannot be made to persons who are no longer permittees, nor can it be made to permittees presently using the allotment and associated permanent range improvements that were placed or constructed by former permittees.

When a term grazing permit holder executes a permit waiver and it is accepted by the authorized officer, all interest in the range structural improvements to which the permittee has contributed, and any potential right to compensation upon permit cancellation, cease to exist.