



FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK

CHAPTER 70 - COMPENSATION FOR PERMITTEE INTEREST IN RANGELAND IMPROVEMENTS

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Approved:

Associate Deputy Chief

Date Approved:

Posting Instructions: Amendments are numbered consecutively by Handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this Handbook was 2209.13-2005-10 to 2209.13_70.

New Document	2209.13_70	6 Pages
Superseded Document(s) by Issuance Number and Effective Date	2209.13_70 (Amendment 2209.13-2005-10, 09/09/2005)	4 Pages
	2209.13,70 Contents (Amendment 2209.13-92-1, 08/03/1992)	1 Page
	2209.13,70 (Amendment 2209.13-92-1, 08/03/1992)	2 Pages

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

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.

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

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Digest--Continued:

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

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

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

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

73 - Explains that once a permittee signs and executes a waiver of 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.

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71 - COMPENSATION PROVISIONS

71.1 - Applicability

Under sec. 402(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), 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, etc. 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 as well as on the national grasslands in Texas 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, etc.) 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 (NFS) through a land exchange or administrative transfer to another Federal or State agency 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, etc.; 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 are no longer permitted to graze their livestock on the land, are not eligible for compensation under this provision,

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nor are permittees who are grazing their livestock on the NFS land, but did not contribute to the improvement.

This provision of the FLPMA does not apply to a decision that reduces livestock numbers or seasons of use due to resource conditions, or requires a change in the timing of use for compatibility with other resource needs, or cancels livestock grazing due to noncompliance by the permittee.

Permittees should be informed, as an interested party, of any analysis and decision that may result in devoting lands to purposes other than grazing. 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.

Use Forest Service accepted appraisal methods to determine the adjusted value in the area where the improvements are located; use a Forest Service appraiser or obtain the services of a qualified third-party appraiser. 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 database, 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 to permittees for their interests in range improvements shall be handled as obligations of the United States in conformance with current Agency policy; releases from the permittees shall be obtained to indicate compensation has been paid.

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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 receiving agency (such as the State game and fish agency), or the land use (such as a coal mining operation) 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 and it is not proper to use appropriated range funding since the livestock grazing program is harmed, not benefitted, by the changed land use decision.

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.

The only exception to this restriction is if the current permittee reorganizes into a different entity for estate planning purposes. The previous permittee must be an individual of the new entity formed for estate planning purposes to remain eligible for compensation under this situation.

All future right of improvement compensation ceases upon the death of that original permittee, even if the newly formed family entity continues to operate on the allotment(s) (*see* chapter 10, sec. 16.6 of this Handbook).