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LEGAL PROVISIONS FOR COOPERATIVE GRAZING ASSOCIATIONS
IN THE NORTHERN GREAT PLAINS STATES

by

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Table of Contents

	<u>Page</u>
<u>Introduction.</u>	1
Purpose of this report	1
Purpose of a grazing association	1
<u>Montana</u>	2
History of legal provisions.	2
Grass conservation commission.	3
Formation of grazing associations.	4
Powers of grazing associations	5
Membership	6
Grazing preferences and permits.	6
Grazing control.	7
Rights of nonmembers	8
State lands.	9
Construction of improvements	9
Dissolution of an association.	9
Grass conservation fund.	10
<u>North Dakota.</u>	10
Requirements for organization.	10
Articles of incorporation.	10
Bylaws	11
Powers of a grazing association and its board of directors.	12
Rights of members.	12
<u>South Dakota.</u>	13
Requirements for organization.	13
Articles of incorporation.	14
Bylaws	14
Powers of a grazing association and its board of directors.	14
Special provisions for the lease of county-owned land.	15
Rights of members.	15
<u>Organizing Grazing Associations Under General Statutes</u> <u>in Other States.</u>	15
Colorado	16
Kansas	16
Nebraska	17
Wyoming.	18

(Continued)

Table of Contents (Concluded)

	<u>page</u>
<u>Other Organizations Performing Functions of Grazing</u>	
<u>Associations</u>	18
Private corporations	18
Round-up associations	19
Soil Conservation districts	19
<u>Summary</u>	20

LEGAL PROVISIONS FOR COOPERATIVE GRAZING ASSOCIATIONS
IN THE NORTHERN GREAT PLAINS STATES *

A cooperative grazing association has been defined as a nonprofit cooperative corporation organized for the conservation of forage resources within a designated area and for the joint use of these resources by its members. A grazing association is a specialized type of tenure improvement association. Because a grazing association operates within a definite area, it is frequently referred to as a "grazing district" in both common parlance and the statutes of some states, but in this report, the term "grazing association" is used to refer to the business organization, and the term "grazing district" is used to refer to the area within which an association operates.

Purpose of this report.- There is considerable variation among the states in the legal provisions under which grazing associations may be formed. Montana, North Dakota and South Dakota have adopted special laws for the organization of such associations. One grazing association in Colorado and three in Wyoming have been incorporated under general laws which provide for organization of nonprofit corporations and an attempt is being made at the present writing to organize such an association in Kansas. There are no grazing associations in Nebraska, but it is believed that it would be legally possible to organize them under the 1941 enabling act for cooperative tenure improvement associations. The purpose of this report is to describe the salient features of the laws under which grazing associations can be organized in each of the states in this region.

Purpose of a grazing association.- The purpose of a grazing association is to enable local stockmen to gain control of range lands for conservative use by bringing together under

* This is the second of a series of memoranda on the legal aspects of the state and local land management in the Northern Great Plains States. The objective of each report is to provide a brief description of the statutory provisions in each of the states for a single subject, so as to furnish a convenient reference for administrators, technicians and laymen who are working on post-war agricultural problems in this region. The previous report was entitled "Soil Conservation District Enabling Acts of the Northern Great Plains States." Subsequent memoranda in this series will cover such subjects as state and county land administration, rural zoning enabling acts, and tax-title procedure.

uniform local management all types of public and private land ownership. A grazing association can make its greatest contribution in a range area where land ownership is split up into a myriad of relatively small holdings, a large number of which are owned by absentees, corporations and public agencies interspersed with the holdings of ranch operators. A grazing association tends to stabilize the livestock industry within such an area in several ways as follows: (1) by allocation of range or grazing rights to each member operator on a rather permanent basis, (2) by elimination of competitive bidding for range lands, (3) by establishment of lease rates based on the livestock carrying capacity of the land, (4) by the elimination of transient operators, and (5) by discouraging certain types of speculative operators. A grazing association also may be beneficial to landowners, because it protects and improves the land and enables landowners, as a group, to secure a reasonable annual income from all of their lands, based on forage value rather than on control value of a few strategically located tracts. On the other hand, stockmen at times have used grazing associations as a means of forcing down lease rates to an unwarranted level.

Montana

History of legal provisions.- The first cooperative grazing association was the Mizpah-Pumpkin Creek Grazing Association, which was organized in 1928 in Custer County, Montana. The early experience of this association provided the basis for drafting the original Montana grazing association law. (Ch. 66, S.L. 1933) This law was comparatively simple. It provided for the incorporation of nonprofit grazing associations and defined their powers and organization, but it did not provide for any state administrative agency. Interpretation of the act and development of policy was left entirely to whatever court litigation might grow out of the act. This lack of a central administrative authority was corrected by a 1935 amendment, which established a state grazing commission as the administrative agency over all grazing associations previously organized or to be organized in the future. All associations were required to secure the approval of the commission before they could be organized or reorganized and to abide by all rules and regulations promulgated by the commission. (Ch. 195, S.L. 1935)

By the spring of 1935, (that is, a few months after the establishment of the grazing commission) 92 associations had been incorporated under these acts. Many of these were

too small and weak or were founded under conditions which were not conducive to successful operation. This is indicated by the fact that during the next few years there was considerable abandonment, reorganization, and consolidation. For example, in the spring of 1936 there were only 9 associations in Blaine, Phillips and Valley counties, compared with 57 a year earlier.

The experience gained by the grazing commission and the associations during this period of reorganization revealed still further defects in the grazing laws. There was considerable agitation among stockmen to have the entire act revised in the 1937 session of the legislature, but the proposed revision failed to become a law. Two years of additional study enabled the stockmen to draft a much better bill and the 1939 legislature adopted an act, substantially in the form recommended by the stockmen and grazing districts, known as the Montana grass conservation act. (Ch. 208, S.L. 1939)

At the time the 1939 law was adopted, there were 31 grazing associations which were actually functioning. All of these reorganized under the new act. In addition, there were 10 others which had been incorporated prior to 1939 but which were automatically abandoned for failure to reorganize within 6 months under the new law. Several new associations have been incorporated under the 1939 act. During the 1943 grazing season, 43 districts were in operation.

In general, the 1939 act sets out to do 4 things: (1) to establish a grass conservation commission in place of the Montana grazing commission; (2) to provide procedures for the incorporation and organization of grazing districts; (3) to define the powers and duties of the grass conservation commission and the districts; and (4) to enumerate the rights and options of both members and nonmembers who graze livestock in or near an organized district.

Grass conservation commission.- The grass conservation commission is composed of 5 members appointed by the governor for 4-year terms. Three of these must be livestock operators and officers or directors of an organized grazing association and in addition must have the following qualifications: One must be a member of the Montana Stock Growers Association; one, a member of the Montana Wool Growers Association; and one, a member of the County Commissioners Association. The fourth member must be a livestock operator and a member of a grazing association and the fifth member must be a person who is familiar with the livestock industry to represent the general public. Members serve without pay, although they may be reimbursed for actual expenses while attending meetings of the commission or holding hearings. The commission appoints a full time secretary to act as executive officer.

The powers of the Montana grass conservation commission include the authority: (1) to standardize the various forms used by grazing associations; (2) to supervise and regulate all associations incorporated under the new act or incorporated under the 1933 and 1935 acts; (3) to dissolve any association, which had been organized under the 1933 and 1935 acts, if it failed to reorganize under the new act within 6 months; (4) to issue citations directed to any person requiring his attendance before the commission and to subpoena witnesses; (5) to require any officer or director of a grazing association to submit any or all records to the commission for the purpose of aiding any investigation conducted by the commission or the secretary; (6) to delegate to the secretary or any member of the commission the authority to hold hearings on any matters affecting the commission; (7) to require grazing associations to furnish itemized financial reports annually; (8) to hire or discharge employees, to fix their compensation and to designate their duties; (9) to enter into agreements with any governmental department on behalf of a grazing association with its consent; (10) to approve the bylaws adopted or amended by each association and to order any association dissolved which fails to adopt bylaws which it approves; and (11) to act in an advisory capacity to the state board of land commissioners and boards of county commissioners for the purposes of developing sound plans for the use of lands in or near grazing districts.

Appeals from any decision of the secretary may be taken to the commission, and from any decision of the commission, to the courts.

Formation of grazing associations.— A grazing association may be formed by 3 or more persons who own or control commensurate property and are livestock operators. The procedure may be outlined as follows: (1) A petition requesting organization of an association is submitted to the grass conservation commission; (2) the secretary, on behalf of the commission, conducts hearings on the matter; (3) if it appears at these hearings that a grazing association would be desirable for the majority of the livestock operators who must own or control more than 50 percent of the land included within the proposed district, the commission issues a certificate of approval; (4) at least 3 of these livestock operators file the certificate of approval and articles of incorporation with the secretary of state; and (5) the secretary of state issues a certificate of incorporation.

The articles of incorporation must contain the following information: (1) the name of the association, the last 4 words of which must be "Cooperative State Grazing District;" (2) the county or counties within which the association is to

operate and the address of the business office of the association; (3) the membership fee, which must not exceed \$5 per member; (4) the term for which the association is incorporated, which may not exceed 40 years; (5) the names and addresses of the incorporators, together with a statement that each owns or controls land and is a livestock operator within the district of the proposed association; (6) the powers of the association; (7) the officers of the association and their principal duties; and (8) the purpose for which the association is incorporated. No fee is required for filing articles of incorporation.

Upon issuance of the certificate of incorporation, the association must file with the county clerk of each county within which it operates a map or plat which shows the boundaries of the grazing district and a copy of the articles of incorporation. Any change in district boundaries or in articles of incorporation also must be filed with the county clerk. It is made the duty of any person who herds or controls livestock within the approximate vicinity of a grazing district to find out for himself the exact location of these boundary lines.

A grazing association may amend its articles of incorporation by a two-thirds majority vote of the members present at a regular or special meeting, notice of which is given according to procedures specified in the bylaws. If the commission approves of the amendment, the association files the certificate of approval and the amendment with the secretary of state and the county clerk of each county in which the association operates.

Powers of grazing associations.- The powers of a grazing association, as enumerated in the statutes, are as follows: (1) to acquire forage-producing lands by lease, purchase or otherwise from private owners, the state and federal governments, and the county in which the district is located; (2) to manage and control the use of its range, to determine the size of preferences and permits according to a fixed method stated in its bylaws, to allot range to its members or nonmembers, and to decrease or increase the size of permits if the carrying capacity of the range changes; (3) to acquire or construct fences, reservoirs or other facilities for the care of livestock; (4) to fix the amount of grazing fees to be imposed on members and nonmembers for the purpose of paying leases and operating expenses, and to determine the amount of assessments to be made on members (on an animal unit basis) for the purpose of buying land or constructing improvements; (5) to specify the breed, quality and number of male animals which each member must furnish when stock are grazed in common; (6) to employ and discharge riders or other employees; (7) to purchase or market

livestock, livestock products, supplies and equipment; (8) to sue and be sued in its corporate name; (9) to set up and maintain a reasonable reserve fund; (10) to borrow money and, if necessary to mortgage the physical assets of the association, provided that such borrowing is approved by at least 80 percent of the permittee members and by the state grass conservation commission; (11) to change the boundaries of the district, to combine with another association and to subdivide, provided that no merger be made unless approved by a majority of the members of each merging association as well as by the commission and that no subdivision be made unless approved by a majority of the members in the area affected and by the commission; (12) to regulate the driving of stock into or through the district; to collect crossing fees, and to impose sanitary regulations; and (13) to undertake reseeding and other range improvement practices and to enter into cooperative agreements with the federal government or other agencies for such improvement work.

Membership.- Membership in a grazing association is open to all persons, partnerships, corporations and associations engaged in the livestock business and who own or lease forage producing lands within or near the grazing district. Permittee members are the only ones entitled to vote on issues submitted to the members. No member may have more than one vote, and voting by proxy is prohibited. When any member disposes of part of the lands owned or leased by him so that another person acquires the right to membership, the rights and interests involved are determined by the directors of the association, subject to approval by the commission.

Grazing preferences and permits.- Grazing preferences are distributed to members who own or control dependent commensurate property as defined in the act. If the carrying capacity of the range exceeds the reasonable needs of the members on the basis of dependent commensurate property, preferences may be apportioned to nondependent commensurate property. If the carrying capacity exceeds the needs of members, based on both dependent and nondependent commensurate property, temporary grazing permits may be issued to nonmembers, preferably to those who used the range prior to 1934. Temporary permits are merely privileges granted from year to year and their possession does not establish a preference. A person entitled to a grazing preference within a grazing district must make application within 1 year after the organization of the association in order to qualify for preferences. Although the act mentions nonuse permits in several places, it does not define them, it being the apparent intention to have nonuse permits defined by the bylaws of each association. The general practice seems to be that a nonuse permit will be issued upon payment of 10

percent of the amount of the grazing fee. The nonuse permit enables the person entitled to a grazing preference to hold his full rights for a year or more without payment of the full amount of the grazing fees if he does not need that much grass.

Grazing preferences are appurtenant to the dependent property on which they are based, but are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge or mortgage, except as provided in the act and in the bylaws of the association. In the event of a change in ownership or control of land to which a preference is attached, the preference changes with the land, providing of course, that the person to whom such control or ownership accrues secures either a nonuse permit or pays the usual grazing fees. If the new owner or lessee fails to secure such permit or to pay the grazing fees, the preference may be revoked by the association. If a lessee fails to pay the grazing fees or to take out a nonuse permit, the district notifies the landowner by registered mail that the preference will be revoked at the end of a 60-day period of grace unless either grazing fees or nonuse fees are paid. Upon revocation, a preference is detached from the dependent commensurate property to which it was formerly appurtenant and shifts to the association which may then allocate it to other dependent commensurate property or commensurate property in the manner provided in its bylaws.

Grazing control.-- A grazing association in Montana can exert much greater control over grazing lands within the boundaries of its district than can an association organized under the laws of other states. Under the Montana law, no person, either member or nonmember of the association, may graze stock within the district or trail stock across the district without first obtaining a grazing permit or a crossing privilege from the association. Violation of this provision is termed a misdemeanor, punishable by a fine of \$10 to \$500. The association may impound stock which trespass upon its holdings and sell such stock in the manner now provided by law. Injunction, however, is probably the most effective weapon against trespass.

Legally, the above grazing control provisions cannot apply to operators who graze livestock upon land they own or lease, if such stock are restrained by fences or herders from grazing upon or trailing across land controlled by the association. As a practical matter, however, the association can deny access to the majority of owned and leased holdings of livestock operators who refuse to secure grazing permits and crossing privileges. An association, of course, has no control over the highways and public roads, but because of the paucity of public ways in grazing areas, only a few tracts can be

reached without crossing over land owned or leased by some other operator. If the association and its members can control by deed and lease the strategic tracts lying between public ways and the holdings of an operator who refuses to cooperate, the operator has only one alternative to abandoning his holdings. He can bring condemnation proceedings to secure a private road through the holdings of the association, but the costs of action, the damages to be paid for the land taken and the costs of fencing both the grazing tract and the private road make this impractical.

In addition to the control which associations can exercise through the permit system, several exceptions are made to the usual trespass laws to favor the operations of the association and its members. In case land situated within the boundaries of the district is not leased or controlled by the association and is not surrounded by a legal fence, the owner or lessee has the right to obtain a grazing permit from the association according to the carrying capacity of such land. If such owner or lessee declines to secure a permit or refuses to lease the land to the association and at the same time does not fence the land at his own expense, he is not entitled to recover damages for trespassing of stock which are grazed under permit. Farming lands within the district must be protected by the owner or lessee to the extent of a legal fence as described in the statutes, and if this is not done, neither the association nor its members are liable for damages of trespassing stock.

Rights of nonmembers.- In general, nonmembers have about the same rights and privileges as members have. There are, however, a few exceptions to this, with the result that it is usually more advantageous for the livestock owner who operates within a grazing district to be a member. As previously indicated, any nonmember who owns or leases land within or near the boundaries of the grazing district is entitled to membership.

If a livestock operator does not wish to become a member he has the following options: (1) He may fence the tracts he owns or leases at his own expense, in which case he may use his land as he sees fit; (2) he may lease his land to the association or a member; ^{1/} (3) he may exchange his holdings for land controlled by the association or its members by trading deeds and leases; or (4) he may obtain a grazing

^{1/} Most associations make standing offers to lease any or all lands within the boundaries of their districts. The lease rates, however, are frequently rather low.

permit from the association, the size of which will depend upon the carrying capacity of the land he actually owns or leases. If he does not do one or the other of these 4 things, he runs the risk of being held a trespasser on association controlled land, while at the same time he cannot recover damages for any trespass on his holdings committed by stock being grazed under permit.

State lands.- Any state-owned land within the boundaries of a grazing district not otherwise disposed of by the state board of land commissioners must be leased by the association at a reasonable rental. In case a dispute arises as to what is a reasonable rental, the association is authorized to present evidence showing the fair lease value of state lands and the state board of land commissioners is empowered to reappraise the land in question. As previously indicated, the grass conservation commission may act in an advisory capacity to the state land board. This permits the commission to smooth out any disputes that may arise between the land board and the associations.

Construction of improvements.- One of the purposes of organizing a grazing association is the development of water holes and facilities for care of livestock. If an association constructs improvements on any of its leaseholds with the consent of the landowner, it is entitled to compensation for these improvements at the expiration of the lease from either the subsequent lessee or landowner. If the landowner and the association cannot agree as to the value of these improvements, the association may elect to remove or abandon the improvements. If the subsequent lessee and the association cannot agree as to the value, the compensation is fixed by the commission.

A person who loses his grazing preference or withdraws his membership from the association is entitled to receive a proportionate share of the excess of physical assets plus fiscal reserves over the liabilities of the association. A new member, before he may receive a grazing preference, must pay the association the value of his equitable interest in the assets of the association which accrue to him by virtue of his membership.

Dissolution of an association.- A grazing association may be dissolved at any time with the consent of three-fourths of its permittee members. The state grass conservation commission supervises the liquidation of the assets of a dissolved association and the apportionment of the proceeds among its creditors and members.

Grass conservation fund.- A state grass conservation fund was created by the act to support the activities of the grass conservation commission. This fund consists of monies appropriated by the legislature, as well as the balance of the state grazing fund created by the 1935 act. The commission has authority to impose fees against the various associations up to 5 cents per animal unit for which the associations grant permits. The funds thus obtained are used to defray any expenses of the commission and to repay the state treasurer for any and all appropriations provided by the state for the establishment of the commission. If a district fails or refuses to pay its fees by May 1 of each year, the commission can compel levy, collection and payment by writ of mandate.

North Dakota

The cooperative grazing association law, enacted by the 1935 session of the North Dakota legislature, is patterned after the original Montana act of 1933. (Ch. 106, S.L. 1935, as amended by Ch. 112, S.L. 1937 and Ch. 116, S.L. 1941) Four associations have been organized under this act.

Requirements for organization.- An association may be organized in an area where the federal government has acquired 50,000 acres or more of grazing land which would be available to lease by the association. From this, it will be seen that the original purpose of the law was the organization of local associations to cooperate in the use and management of lands within federal acquisition projects. The 1937 amendment modified this requirement to permit incorporation of associations with as low as 5,000 acres of grazing land. ^{2/} Formerly only 1 association could be organized in a county, but this restriction was removed by the 1937 amendment. At least 15 persons who are owners or lessees of land within the grazing district are required to form a grazing association.

Articles of incorporation.- Each association formed under this act must file articles of incorporation with the secretary of state and with the dean of agriculture of the North Dakota Agricultural College. The articles must include the following: (1) the name of the association, which must include the words "grazing association"; (2) the purpose for

^{2/} The amendment is not entirely clear, but presumably this 5,000 acres must be grazing land which is owned by the federal government and which would be available for lease by the grazing association.

which it is formed; (3) the county in which it will operate and the address of its business office; (4) the membership fee, which must not exceed \$5; (5) the term for which it is to exist, which must not exceed 40 years; (6) the name and addresses of the incorporators, of which there must be at least 15, all of whom must own or lease land within the boundaries of the district; (7) the number of directors, their term of office, and the names and addresses of those who are to serve as directors until regular directors are elected; and (8) whether the property and grazing rights of the members are to be equal or unequal, and if unequal, the rules for determining the rights of each member.

The articles of incorporation may be amended at any regular or special meeting upon approval of two-thirds of the directors and adoption by a vote of at least two-thirds of the members. The articles may empower the association to admit new members who are entitled to share in the property of the association in accordance with general rules. This provision, however, may not be amended or repealed without the consent of three-fourths of the members.

The secretary of state issues a certificate of incorporation to the association upon payment of the proper fees, which are \$2 for filing the articles of incorporation and \$3 for issuing the certificate.

Bylaws. Within 30 days after incorporation, each association by majority vote of its membership, must prepare its own bylaws, which must contain: (1) the time, place, and manner of calling and conducting its meetings; (2) the number of members which constitutes a quorum; (3) the number of directors which constitutes a quorum; (4) the number, compensation, and duties of directors and other officers (whose terms of office shall be 1 year) and the time and manner of election; (5) the number of directors (if the district is larger than 50,000 acres, 1 director must be elected from each congressional township by the majority vote of members living in such township, but if the district is smaller than this, any or all directors may live in 1 township); (6) penalties for violation of bylaws or regulations imposed by the board of directors for the conservation, development, improvement and utilization of forage resources; (7) the amount of membership fees, which may not exceed \$5; (8) the amount of annual dues, which may not exceed \$5, and the charges to be paid by each member for services rendered; and (9) the date of the annual meeting and the method of calling general and special meetings.

The bylaws may be amended at any regular or special meeting by a two-thirds majority vote of the members. Soon after organization, the association must file a plat showing the boundaries of the district with the county register of deeds and the dean of agriculture of the North Dakota Agricultural College.

Powers of a grazing association and its board of directors.- Each grazing association has the following powers: (1) to lease land from the United States, the State of North Dakota, the county, or any individual or corporation for grazing and forage purposes, and to assign and transfer these leases to operators; (2) to construct or acquire fences, reservoirs, and other facilities for handling livestock; (3) to apportion grazing rights within the district to members; (4) to borrow money; (5) to issue grazing permits to nonmembers; (6) to act as agent for or in cooperation with any department of the state or federal government; and (7) to exercise various corporate powers not inconsistent with the grazing statutes or other acts relating to corporations.

The board of directors has the power: (1) to exercise the corporate powers authorized in the act; (2) to make rules and regulations for the management and control of the affairs of the association; (3) to apportion grazing rights to association members, taking such factors into consideration as winter feed production on land owned or leased by each member within 2 miles of the district, dependence, priority and carrying capacity of the range; (4) to create subdivisions within the district, and to specify kind and number of livestock to be grazed in each; (5) to determine the grazing period for the district and each subdivision; (6) to determine the grazing fees to be paid by each member; (7) to grant grazing privileges to nonmembers; (8) to enter into lease agreements on behalf of the association; (9) to specify the breed, quality and number of male breeding animals to be turned out by each member if stock are grazed in common; (10) to make sanitary regulations to prevent and control disease; (11) to suspend members for nonpayment of fees or failure to abide by the rules; (12) to make rules regarding settlement and transfer of interest of members; (13) to set up financial reserves; (14) to cooperate with state and federal agencies in the conservation, restoration and improvement of range; and (15) to set up an executive committee of not less than 5 members to run the association when the board of directors is not in session.

Rights of members.- Membership in a grazing association is open to all owners or lessees of land within or near the boundaries of the district who run livestock and have been

dependent upon the land within the grazing area for pasturage, and who pay the membership fees, subscribe to the bylaws and comply with the rules and regulations determined by the board of directors. Disposal of land owned or leased upon which membership is based cancels the membership and the board of directors determines the rights and interests of all parties concerned. Each member has but 1 vote in the association, and except for the debts lawfully contracted between him and the association, no member may be made liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fees.

No member is allowed to graze within the district more than 500 animal units for a full 12-month period each year or a correspondingly larger number for a shorter grazing period. An animal unit is defined as 1 bull, cow or steer or 5 sheep over 6 months of age on May 1. Two horses are equivalent to 3 animal units. Animals less than 6 months of age that are the offspring of the permitted livestock are not counted in the computation of animal units. The bylaws of some associations have established even lower maximum numbers of units per member than the 500 established by statute.

South Dakota

The South Dakota cooperative grazing association law, which was enacted by the 1935 session of the legislature, is similar in many respects to the North Dakota law. (Sec. 40.1801 to Sec. 40.1809, R.C.S.D. 1939) Twelve associations have been incorporated under the act. One of these consolidated with an adjoining district during the winter of 1941-42 and 2 others apparently have never operated. The other 9 associations, however, were all functioning during the 1943 grazing season.

Requirements for organization.- Unlike the North Dakota law, the South Dakota act has few limitations on the organization of grazing associations. Only 3 incorporators are required compared with 15 in North Dakota and there are no limitations or requirements on the area of a grazing district except that the districts of 2 adjoining associations may not overlap. In case there is a dispute between 2 adjoining districts as to the boundaries, a board of arbitration is set up, composed of an arbitrator appointed by each association and a third appointed by these 2. This board of arbitration determines the boundaries of both districts, its decision being final and binding upon each association.

Articles of incorporation.- Three or more persons may incorporate a grazing association by filing articles of incorporation with the secretary of state. The articles must contain: (1) the name of the association; (2) the purpose for which it is organized; (3) the county or counties in which the grazing district is located; (4) the principal office or place of business; (5) the membership fees, which must not exceed \$5; (6) the period for which the association is incorporated, which must not exceed 40 years; (7) the names and residences of those who have subscribed for membership with a description of the lands of each; and (8) the names and residences of the persons who subscribe to the articles of incorporation, together with the legal descriptions of the lands owned by them. Upon organization, the grazing association must file with the register of deeds of each county in which the districts lie, a map or plat showing the boundaries of the district. Failure to file such a map is sufficient cause for revocation by the county commissioners of the lease of county lands to such district.

Bylaws.- Each association, within 30 days after incorporation, must adopt a code of bylaws by majority vote of its members. These bylaws, among other things not inconsistent with the act, may provide for the following: (1) the time, place and manner of calling meetings; (2) number of directors and officers of the association, their tenure of office, manner of their election and their duties; (3) the number of members which constitutes a quorum; and (4) penalties for violation of the bylaws or of any regulations imposed for the conservation of forage within the district. The bylaws may be amended at any regularly called meeting of the members by a two-thirds majority vote of the members present.

Powers of a grazing association and its board of directors.- A grazing association has the following powers: (1) to acquire land by lease, purchase or otherwise for grazing purposes or the production of forage crops and to dispose of lands purchased; (2) to construct or acquire fences, reservoirs and other facilities for the care of livestock; (3) to lease county-owned lands located in or contiguous to the district and not already under lease; and (4) to apportion grazing rights to members within the district.

The powers of the directors are as follows: (1) to exercise the corporate powers of the associations; (2) to make regulations for the management and control of the association and the utilization of the grazing land within the district; (3) to apportion grazing rights within the district to members on a commensurate basis; (4) to grant grazing permits to non-members when the carrying capacity of the district is greater than the needs of the members; (5) to determine the grazing fees

to be imposed on members and nonmembers for grazing rights; (6) to assess members to secure funds for the purchase of land; (7) to lease land in the name of the district from public agencies and private interests; (8) to specify the breed, quality and number of male breeding animals which each member must furnish when stock are grazed in common; and (9) to set up financial reserves.

Special provisions for the lease of county-owned land.-

Grazing associations may purchase or lease any or all lands owned by the county within the district and not already under lease. Such leases may not be for a period of more than 10 years and the lands thus leased are not subject to sale to other parties nor to the provisions of the statutes which regulate sales and leases to private interests. The board of county commissioners, however, must reserve the right to regulate and limit the amount of grazing on county land, such restrictions being made a part of the lease. The county board also may provide for a variable scale of rental charges based on market prices of livestock or livestock products, the number and character of the stock, the carrying capacity of the land, or on any combination of these factors. The board of county commissioners may exchange county lands outside the grazing districts for privately owned tracts of approximately equal value within a grazing district, and to put such lands under lease to the association.

Rights of members.- Membership is open to all persons, partnerships, associations, and corporations which own or lease forage producing lands within or contiguous to the boundaries of the district and who pay the membership fees and comply with the bylaws of the association, the regulations laid down by the board of directors and the terms of the leases. Each member has but 1 vote. Voting by proxy is prohibited. In case a member disposes of all or part of the land owned or leased by him so that some other operator acquires the right to membership, the rights and interests involved are determined according to rules laid down in the bylaws.

Whenever a grazing district is dissolved by act of its board of directors or otherwise, the rights and interests in the assets of the association are distributed among the members in proportion to the amount of assessments paid by each, as nearly as the board of directors is able to determine.

Organizing Grazing Associations
Under General Statutes in Other States

As previously indicated, the statutes of Colorado, Kansas, Nebraska and Wyoming contain no special provisions for the incorporation of grazing associations. It is believed, however,

that grazing associations could be organized under the general cooperative association enabling acts of these states. The provisions of these acts which would be especially pertinent to grazing associations are described in the following paragraphs. ^{3/}

Colorado.- The statutes of this state provide for the incorporation of nonprofit cooperative agricultural and livestock associations without capital stock. (Sec. 215, et seq. Ch. 41, C.S.A. 1935) One grazing association has been organized under this act. The requirements for organizing an agricultural and livestock association may be met with comparative ease. Only three incorporators are required; these must be farmers, stockmen or people engaged in processing or marketing agricultural products. The fee for filing the certificate of incorporation with the secretary of state is \$15. Such an association has the express power to engage in processing, production or marketing of livestock or agricultural products or in any branches of these enterprises.

Kansas.- There are two laws under which grazing associations probably could be organized in this state. One of these is a short enabling act to legalize the formation of nonprofit corporations "for the purpose of preventing or aiding in the prevention of soil erosion, or both. Such corporations may lease or otherwise acquire the management or control of land subject to erosion and may cultivate in any manner or plant to cover crops for the purpose herein specified. Such corporations shall not engage in the general business of farming and shall not market any grain or forage crops produced from the cover crops planted for the purpose of preventing or aiding in the prevention of soil erosion." (Sec. 17-202b and Sec. 17-202c, 1941 Supp. G.S.K. 1935)

Of course, not all types of grazing associations could meet these rather narrow requirements as to purpose. At the present writing, an attempt is being made to organize an association under this act to manage federal land within an L U project. The enabling act does not give the details of organization nor the corporate powers of the association. These are found in the general corporation statutes, particularly those which relate specifically to nonprofit corporations. (Sec. 17-2901 to Sec. 17-2904, 1941 Supp. G.S.K. 1935) These provisions,

^{3/} A more detailed discussion of these laws will be made in a subsequent memorandum of this series entitled "Legal Provisions For Cooperative Tenure Improvement Associations in the Northern Great Plains States."

however, are comparatively liberal and no great difficulty should be experienced in drafting articles of incorporation for a grazing association within the framework established by the statutes. Nonprofit corporations, for example, may be organized either with or without capital stock and only three incorporators are required for filing the articles of incorporation.

The second statute under which grazing associations probably could be organized in Kansas is the general cooperative societies act. (Sec. 17-1501, et seq. G.S.K. 1935) For most situations, this act would be less adaptable than the enabling act described above. At least 20 incorporators, for example, are required. The association probably would have to be a stock company since no mention is made in the act of the nonstock type of organization. This need not necessarily be an obstacle, however, since the par value of each share could be made low enough so that it would be comparable to initiation or membership fees in a grazing association organized under the specific laws of other states. Furthermore, the capital-stock type of organization might prove advantageous if an association intended to carry out an extensive land purchase program. The required fees for small associations are \$27.50 plus a capitalization fee amounting to 0.1 percent of the authorized capital stock.

Nebraska.— This state adopted an enabling act in 1941, under which cooperative farm land companies may be formed for the express purpose "of facilitating the acquisition of agricultural and grazing lands by farmers and stock raisers". (Sec. 24-2101, et seq. 1941 Cum. Supp. to C.S.N. 1929) Such a company is definitely empowered to purchase or lease land for its members. Only five incorporators are required. The company may be formed either with or without capital stock. Required fees are moderate; the fees for filing articles of incorporation vary according to the amount of capital stock, with a minimum of \$10. The fee for recording articles of incorporations is 10 cents per 100 words. Also required, is an annual filing fee of \$1, which is in lieu of the annual occupational fee required of other corporations.

Although this act seems quite adequate for the organization of grazing associations, none have been incorporated. Prior to the adoption of the 1941 act, plans were made to organize a grazing association in the LU project area of Dawes and Sioux counties, under the general cooperative corporation statutes. Before articles of incorporation were filed, however, it was decided to organize a soil conservation district on each of the two acquisition sites of the project instead. These soil conservation districts operate in much the same manner as do grazing associations in other states.

Wyoming.- This state permits the incorporation of county stock and agricultural societies, the object of which is to aid the industrial or productive interests of the state or locality. (Sec. 28-501 and Sec. 28-502, W.R.S. 1931) These are nonprofit associations with no capital stock. Only one association may be formed per county and membership must be open to all who desire it and will abide by the rules and regulations set up in the bylaws. A minimum of three persons is required for incorporation. The required fees are reasonably low, totaling only \$14.50, and the association is exempted from payment of the annual license tax required of other corporations. Three cooperative grazing associations have been organized under this law to act as management agencies for federal land on the LU projects in the northeastern part of the state. These associations operate in practically the same manner as do grazing associations in the Dakotas; that is, they lease land from several owners and apportion grazing permits on the basis of prior use and commensurability.

Other Organizations Performing Functions of Grazing Associations

There are a number of organizations which can and do perform some of the functions of grazing associations. Although only three types of organization are discussed, there are others which might be included in this group. No attempt is made to give the advantages and disadvantages of these organizations compared with grazing associations.

Private corporations.- The use of corporations as intermediaries between livestock operators and landowners is not new in the Northern Great Plains. In Wyoming, for example, there are several grazing associations which have been incorporated under the general corporation laws to acquire grazing land by purchase and lease for ranch operators. Some of these associations have been quite successful and at least three of them have been in operation for over 30 years. ^{4/} The use of the cooperative type of organization, however, is an innovation that has developed during the past decade. A cooperative grazing association differs from a private corporation in three important respects: (1) voting control in a private corporation

^{4/} Loomer, Charles W., "Group Tenure in the Northern Great Plains," unpublished manuscript of the Bureau of Agricultural Economics, Lincoln, Neb.; and Craig, Glenn H., and Loomer, Charles W., "Collective Tenure on Grazing Land In Montana," Mont. Agr. Exp. Sta. Bul. No. 406, Feb. 1943, p. 26.

is according to shares of stock owned, whereas in a cooperative, each member has but 1 vote; (2) membership in a private company is conditional upon ability to purchase stock in the company, while membership in a cooperative grazing association usually is open to all livestock operators within the district who abide by the rules and regulations of the association and pay their assessments and grazing fees; and (3) grazing rights are apportioned among members of a private company according to number of shares of capital stock owned, while in a cooperative association, grazing rights are distributed according to procedures which are defined in the bylaws, and are usually based on a combination of priority, dependence, and commensurability, described previously.

Round-up associations.— This type of organization is found in Wyoming and perhaps in other western states as well. These associations apparently are seldom incorporated. They perform some of the range management functions of grazing associations, although they do not own or lease land for use by members. The U. S. Grazing Service cooperates with round-up associations in range management work, but the grazing permits on federal land are issued directly to the individual operators.

Soil conservation districts.— There are at least four soil conservation districts in the Northern Great Plains States, which operate as grazing associations. ^{5/} One of these is in Colorado, two are in Nebraska and one is in North Dakota. Like grazing associations, these districts lease range from various public and private owners and sublease the land or apportion grazing rights to individual operators. They enter into cooperative agreements with federal agencies for range management and improvement work.

Soil conservation districts in most states have been delegated the authority to exercise the police power of the state to control erosion. This is accomplished by the adoption of land-use ordinances by the local electorate which have the force and effect of law. The Cedar Soil Conservation District in Sioux County, North Dakota, is attempting to control grazing by land-use ordinance, in addition to the control it may exercise through its leasing program. According to this ordinance, no operator may stock his range at a higher rate than the actual carrying capacity of the land as determined by the range examiner.

^{5/} The legal provisions for organization and powers of soil conservation districts in the Northern Great Plains States are described in a previous memorandum of this series, "Soil Conservation District Enabling Acts of the Northern Great Plains States," Research Memorandum No. 14, Dec. 1943.

Until such time as the carrying capacity is determined for any operating unit, the maximum rate is set arbitrarily at 30 acres per animal unit for a 12-month period or a proportionately smaller number of acres for a shorter period. Anyone desiring to bring livestock into the district must file an application for a permit at least 10 days prior to bringing in the stock. The application must show: (1) the number and kind of stock; (2) the length of grazing season; (3) legal description of the grazing unit; and (4) proof of ownership, copies of leases or other proof of right to use land. If the application shows sufficient range for the livestock, the permit is issued. Stock being driven to or from land on which a grazing permit is issued, must not be allowed to dally; sheep must be moved at least five miles per day and cattle, at least 10. In cases of unnecessary delay or willful trespass, the livestock are considered to be on the district without a permit. If a herd is moved without a permit or is allowed to overstay the permit, the owner is fined 25 cents per animal unit per day. If more livestock are brought into the district than is provided in the permit, the owner is fined 25 cents per animal unit per day for the excess. The district supervisors have authority to seize part or all of a herd to enforce payment of the fines.

Summary

There is considerable difference between the grazing associations in Montana and those of the other states in the Northern Great Plains Region. In Montana, the associations have some of the characteristics of public corporations. They are subject to regulation by a state commission, they may exercise considerable influence over the use of land within their boundaries owned or leased by nonmembers, and their powers are supplemented to some extent by the legislative delegation of the state's police power. Grazing associations in Colorado, Wyoming, and the two Dakotas, on the other hand, are nonprofit or cooperative corporations which may gain control over land only by lease or purchase.

There does not seem to be a great deal of difference between a grazing association organized under special grazing legislation, as in North or South Dakota, and one organized in Wyoming as a nonprofit corporation. Regardless of type of enabling act, the grazing associations lease land from both public and private landowners, apportion the use of these lands among their members, and adjust the number of livestock turned onto the range according to carrying capacity. Enabling acts of a broad, general nature such as Wyoming's or Nebraska's may have some advantage over the special acts of the Dakotas because of fewer

requirements and restrictions placed upon the associations. On the other hand, the mere fact that the legislature considers and adopts special legislation may be of some incidental educational or publicity benefit. Furthermore, special legislation, as in the Dakotas, may eliminate certain fees and considerable "red tape" in the process of incorporation. . .

The first part of the report deals with the general
 situation of the country and the progress of the
 work done during the year. It is followed by a
 detailed account of the various projects and
 the results obtained. The report concludes with
 a summary of the work done and the prospects
 for the future.