



**RESOLUTION OF THE GOVERNING BODY  
OF THE  
THREE AFFILIATED TRIBES  
OF THE  
FORT BERTHOLD INDIAN RESERVATION**

***A Resolution Entitled: “One Year Extension of Grazing Permits and Invitation for Public Comment on Regulations Governing the Issuance and Allocation of Range Units for the Grazing of Livestock on the Fort Berthold Reservation.”***

**WHEREAS**, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

**WHEREAS**, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS**, Article VI, Section 5(j) of the Constitution of the Three Affiliated Tribes empowers the Tribe to protect and preserve the natural resources of the Fort Berthold Indian Reservation; and

**WHEREAS**, Title 25, Part 166 of the Code of Federal Regulations recognizes the Tribe’s authority to develop grazing regulations; and

**WHEREAS**, The Three Affiliated Tribes, in cooperation with the Bureau of Indian Affairs, allocates and manages more than 92 range units of varying sizes located on the Fort Berthold Reservation on lands owned by the Tribe and by its members and held in trust for the Tribe and its members by the Bureau of Indian Affairs, and which are used for grazing livestock; and

**WHEREAS**, The Tribal Business Council has previously enacted Regulations governing the criteria and procedure for allocating the range units managed by the Tribe and the Bureau of Indian Affairs; and

**WHEREAS**, The permit period for 2005 – 2010 has expired and there is a need to extend the Permits for one year, to allow the existing Grazing Regulations to be put out for public comment; and

**WHEREAS**, The Tribal Business Council desires to invite public comment on the existing regulations prior to allocating grazing permits for a new five year period.

**NOW, THEREFORE, BE IT RESOLVED**, The Tribal Business council hereby authorizes and grants a one year extension of the 2005-2010 grazing permits, effective on the date that the Permits expired; and





**NOW, THEREFORE, BE IT FURTHER RESOLVED**, That the Tribal Business Council hereby authorizes a ninety (90) day public comment period, commencing from the date of enactment of this Resolution, on the Grazing Regulations set forth below, containing the procedures and conditions for the permitting, enforcement, and cancellation of grazing privileges on tribal, federal, trust and all lands subject to its jurisdiction; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, That the Chairman is authorized to post this Resolution and the Grazing Regulations in a public place in each Reservation Segment and to publish the proposed regulations in one or more local newspapers; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, That all comments shall be in written form and shall be submitted to the Chairman's office prior to the expiration of the comment period; and

**BE IT FINALLY RESOLVED**, That the Tribal Business Council shall consider the Public comments at the first regular meeting of the Council following the expiration of the comment period, prior to amending the existing Regulations or allocating Grazing units.

## GRAZING REGULATIONS

### OF

### THE FORT BERTHOLD RESERVATION

#### **I. DEFINITIONS**

1. ***Bona Fide Rancher*** means an individual or entity that owns 100% of the livestock or who's primary occupation is farming or ranching.
2. ***Beginning Rancher*** means an individual or entity who has not operated a farm or ranch for more than 10 continuous years and owns 50% of the livestock to be grazed on a unit.;
3. ***Agency*** means the Bureau of Indian Affairs, Fort Berthold Agency.
4. ***Tribe*** means the Three Affiliated Tribes.
5. ***Unit*** means Range Unit as designated by the Bureau of Indian Affairs.
6. ***BIA*** means Bureau of Indian Affairs.
7. ***Tribal Council*** means the Three Affiliated Tribes Tribal Business Council.





8. **Stocking Rate** means the carrying capacity of the Range Unit in terms of Animal Unit Month (AUM) utilizing existing data or relevant data from the EcoSystems Research Group report entitled "Ecological Site and Survey for the Fort Berthold Reservation and Three Affiliated Tribes" dated November 29, 2004.

9. **Animal Unit Month (AUM)** means the amount of forage necessary to sustain one animal unit for one month. coop

10. **Proof of Ownership** means:

A. **For Individuals/Businesses:** A document revealing the brand used by the applicant as executed by the North Dakota Brand Inspector that is identical with the brand on the livestock. Any brands with non-related multiple owners that are not tribal members shall not satisfy as proof of ownership.

B. **For the Mandan, Hidatsa & Arikara Nation:** Such information as demonstrating ownership of the livestock to be placed on the range unit, including a bill of sale, a letter of transfer (such as for elk, buffalo or other wild animals transferred to the Tribe), or other documentation indicating ownership.

11. **Related** means relationship by blood, legal adoption, or by marriage.

12. **Pasture Authorization** means a written agreement whereby the BIA authorizes the permittee to rent a portion of his or her range unit to a third party.

13. **AU** means Animal Unit.

14. **NRD** means the Natural Resources Department of the Three Affiliated Tribes.

15. **NRC** means the Natural Resource Committee of the Tribal Business Council.

16. **Permittee** means any individual or entity that receives a grazing permit from the BIA.

17. **Cooperative** means an association of individuals that operate in common.

## II. ALLOCATION OF RANGE UNITS

1. **Applicant Qualifications for Allocations:** Qualified applicants can secure an allocation of grazing privileges provided that:

A. The applicant is an enrolled member of the Tribe;

B. The applicant is not delinquent on any present grazing permit for any





grazing unit or any other lease or use permit for any trust land leased by the applicant;

- C. The applicant owns at least 80% of all livestock to be grazed on the unit applied for or is deemed a beginning rancher as defined above;
- D. The applicant can show proof of livestock ownership; provided, the Tribe may allocate a permit to an applicant based on a demonstration of extreme hardship or unique circumstances, as determined by the Tribal Business Council, whose decision shall be final;
- E. After above qualifications are satisfied, applicants that own over 50 % but less than 80% of all livestock to be grazed on the unit shall be considered.

2. **Permit Period.** Grazing permits shall be issued for a five (5) year lease period beginning December 1, 2005 and terminating November 30, 2010.

3. **Land Use Practice Exception to Permit:** Should the Permittee participate in a program which requires the Permittee to maintain a conservation or other land use practice or makes improvements to the Range Unit for a time period longer than the permit period pursuant to 25 CFR 166, the Agency, with the approval of the Natural Resources Committee of the Tribe, may extend the contract period of the applicable permit to facilitate the implementation of improvements required by the program provided such an extension shall not extend past November 30, 2015 and the Agency may also extend a permit if an individual utilizes his own funds to make improvements on a Range Unit or utilizes Conservation Plans with prior NRC or BIA approval.

4. **Preferences in Allocation.** In the event two or more eligible applicants apply for an allocation of the same range unit, the unit shall be awarded according to the following order of preference:

- A. Applicant is the most recent Permittee for the unit and has met all contractual obligations during the previous permit period.
- B. Applicant owns the largest interest in the land which is part of the unit, or is an heir, pending a BIA probate determination in progress at the time of the application.





C. Applicant owns an interest in the land within the unit and is the only family member owning land within the unit who is a “bona fide rancher” or a “beginning rancher” or meets the criteria set out in Section II, 1 (F) of this Resolution.

D. Applicant’s headquarters and residence are located closest to the unit for which application has been made.

5. **Allocation Limits:** All allocations provided to any individual or entities shall not exceed 300 AUM’s for a twelve (12) month period. A permittee who has been allocated 300 AUM’s may only obtain additional AUM’s through competitive bids.

6. **Pasturing Authorization:** A Pasturing Authorization, issued by the BIA, is required for all livestock that are not owned by Permittee and are intended to be grazed in the Permittee’s Range Unit.

A. An Application for Pasturing Authorization must be submitted to the BIA by March 1<sup>st</sup> of every year for approval by the Agency.

B. An Application for Pasturing Authorization must then be submitted by the BIA to the NRC by April 15<sup>th</sup> of every year for approval by the NRC.

C. Any livestock under a Pasturing Authorization must register brands and health certificates with the BIA.

D. At this time the sub-lessor shall be responsible for payment of one time per grazing season pasturing fee of \$3 for each animal to be grazed in the unit which shall be paid through the BIA for distribution to the landowners.

7. **Applicant Requirements:** The applicant must agree to an inspection by personnel of the Three Affiliated Tribes or the BIA of all livestock placed on the unit before the allocation process.

A. After such inspection and based on all information available, the NRC will make an initial finding of ownership of livestock by the applicant, using all information and will present its findings to the Tribal Council at or prior to any allocation of the unit by the Tribal Council, and will





provide such information to the applicant.

- B. The Tribal Council will provide public notice to all interested parties of the time and place of any meeting at which a decision on allocation of any unit may be made. Each applicant at the meeting will have an opportunity to present information relevant to the application for a unit. Meetings at which these decisions are to be made may be continued at the discretion of the Tribal Council.

8. ***False Statements:*** If an applicant knowingly has provided false or misleading information in the application, the application will be immediately rejected and the applicant will not be eligible for an allocation for the remaining portion of the permit period.

9. ***Grazing Rates and Payment:*** Permittees shall pay grazing fees by certified check, money order or bank draft. In addition Permittees receiving allocations shall be required to pay the minimum grazing rates as established for allotted land by the BIA and for Tribal land by the Tribal Business Council.

- A. Unless otherwise determined by the Tribal Business Council, all grazing fees are due December 1<sup>st</sup> of each year and will be considered delinquent if not paid prior to or on this date.
- B. A performance bond satisfactory to the Agency is required in an amount that will reasonably assure performance of the contractual obligations under the permit.
- C. However, the performance bond is waived for enrolled tribal members.
- D. Delinquent fees will be subject to an interest rate as provided in 25 CFR Part 166.
- E. Should an operator bring in full payment after notice of violation of a permit within ten (10) business days after receiving a notice of violation, the permit will not be cancelled.

### III. COMPETITIVE BIDDING

- 1. Any individual or entity issued a permit for a range unit under this Section will





comply with all requirements of this Resolution, including ownership of livestock requirements. A permit issued by competitive bid will be valid for no more than one grazing season and in the event a tribal member becomes eligible for allocation of a range unit pursuant to Section II of this Resolution, the range unit will no longer be available competitive bidding.

2. In the event no applicant is entitled to a preference, the Tribal Business Council shall make the allocation decision based on all available information.
3. When range units are allocated according to the competitive bidding process set out in this section, any tribal member who does not meet the criteria for allocation under Section II of this Resolution shall be granted preference in the award of units under the competitive bidding process. Preference shall be granted to a tribal member provided that the difference in the tribal member's bid does not exceed 10 % of the non-members bid.
4. In accordance with 25 CFR 166, the Agency shall advertise by sealed bids the sale of grazing privileges which are surplus to the allocated needs of the Tribe and its members.
5. In any advertisement or sale of grazing privileges, the Agency shall provide Indian preference in meeting the high sealed bid. In the case of more than one preference bid, an oral auction shall be held between the preference bidders. Any successful bidder shall be subject to the rules of this Resolution.

**IV. GENERAL PROVISIONS**

1. ***Livestock allowed.*** Cattle, sheep, horses, buffalo, elk or any combination thereof will be permitted on all range units. The allowed ratio of livestock shall be one (1) AUM for a cow and calf, one and one half (1 ½) AUM for a horse, one (1) AUM for five (5) sheep, three quarters (3/4) AUM for one (1) yearling steer, one (1) AUM for a buffalo and one (1) AUM for an elk.
2. ***Livestock Health.*** All persons who graze livestock on the Fort Berthold Reservation will be required to participate in the Federal and State Brucellosis Eradication program and any other Livestock Disease Prevention Program





recognized by the Tribe. Any livestock entering the Reservation must have valid health certificates. The USDA Animal & Plant Health Inspection Service (APHIS) Veterinary Services will be contacted for verification of health certificates. Failure to comply with these requirements shall be cause for cancellation of the grazing permit.

3. **Unit Improvement.** A Range Improvement Form must be on file with the BIA prior to making any improvements. A reasonable period of time shall be allowed for the previous Permittee to remove all removable improvements placed in the Unit at their own expense. In addition:
  - A. The Time period to remove such improvements shall not exceed one (1) year.
  - B. Removable improvements includes but is not limited to pumping equipment tanks, corrals and like improvements.
  - C. Confirmation of removable improvements must be provided to the BIA.
4. **Fences.** The Permittees shall maintain fences within the Unit and external boundary fences. In the case of shared boundary fences, parties sharing the fences shall be responsible for the repair and maintenance of the fences and shall share the costs equally.
5. **Notice to BIA and the Tribe:** Any individual under a pasture authorization moving livestock on or off Range Units shall notify the TAT NRD and the BIA 48 hours prior to moving the livestock. In addition:
  - A. The BIA and the Tribe's Natural Resource Department must verify all stock within the boundaries of a unit for compliance purposes.
  - B. The BIA and the Tribe's Natural Resource Department will count cattle at lease annually and compare the count, against the authorized permitted capacity and pasturing authorizations, range health, certifications, brands, and head counts prior to off-reservation livestock entering or leaving, range units shall be counted prior to transferring on and off the







Reservation.

- C. Failure to comply with notification to the BIA and TAT Natural Resource Department is a serious trespass violation and may subject the permittee to a fine, impoundment of cattle, or revocation of the pasture authorization and/or permit. The permittee shall be subject to a \$1,000.00 fine for a first offence, a \$2,000.00 fine for a second offence and a \$3,000 fine and cancellation of the permittee's permit for a third offence within a grazing period. Unauthorized livestock of different brands grazing in a unit shall constitute separate offences. The Tribe's NRD and NRC shall administer and enforce the penalties set out in this section.
- D. The BIA or the Tribe's Natural Resource Department will attempt to contact a Permittee before inspecting a range unit.

6. **Hay Cutting:** Grazing permits do not authorize the cutting of native hay on Trust land. Separate permits for cutting hay must be obtained in advance from the Agency.

7. **BIA Compliance:** All stock within the boundaries of a unit will be counted at least annually by BIA personnel and the Tribe's Natural Resources Department, against the authorized permitted capacity, and pasturing authorizations.

- A. Units may be inspected at least annually for compliance with practices required by the permit or Tribal regulations or BIA regulations by BIA personnel.
- B. The brands on all livestock inspected and on the Unit must be the same brand of the owner or on the pasture authorization as stated on the grazing permit and on the application for a unit to the BIA.
- C. If information is obtained from any count or inspection which indicates that the Permittee is not in compliance with the terms of the permit, including the terms of this resolution, not later than 30 days following the count or inspection, notice of the reason for non-compliance, and possible consequences of the non-compliance, shall be given to the Permittee by the BIA or the NRD. Notice shall be given in accordance with 25 CFR Part 166.





D. If notice of violation regarding the permit is given to the Permittee by the BIA or NRD, the Permittee will be given an opportunity to schedule a hearing before the NRC regarding the violation.

1. A hearing will be held, when possible, before the effective deadline of the notice of violation of the permit for which actual notice has been given by the BIA or NRD.
2. A hearing will be informal and will be in accordance with procedures established by the NRC.

E. The BIA or the Tribe's Natural Resource Department sends the Permittee a notice of violation and recommends that a permit be cancelled, the Permittee shall have the opportunity to schedule a hearing before the NRC regarding the notice of violation.

1. A hearing will be informal and will be in accordance with procedures established by the NRC
2. Should an operator cure the violation or bring in payment within ten (10) business days after a notice of violation has been issued, the permit can be reissued to the operator for the balance of the permit period.

F. The NRC shall hear the matter and make a recommendation concerning the disposition of this matter to the full Tribal Council. Final action on the recommendation of cancellation or modification of the permit *or* other action recommended shall be made by the full Tribal Council. The Permittee shall have the right to attend the Tribal Council meeting at which his or her permit will be considered and have the right to address the Tribal Council. The Tribal Council's decision may be appealed to the Fort Berthold District Court in accordance with this resolution.

8. ***BIA Cancellation.*** The Agency, in consultation with the Tribe or the NRD may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 days written notice for use by any holder of land held in trust by the BIA for that holder who wishes to withdraw that land from the unit. Such





withdrawal shall be effective only at the end of the permitted annual grazing season.

9. **Removing Land from a Unit:** Allotted lands or Tribal lands can be removed from a unit in accordance with BIA regulations by the owner or owners of the land, including the Tribe. The removed land must be fenced by the owner or owners, except that where the cause of the removal of the land from the unit is overgrazing. The Tribe and the BIA or both, shall equally share the cost of such fencing, including any survey needed, with the land owner or owners. Tribal lands shall not be removed from or made inaccessible within a unit without the express approval of the Tribal Council.
10. **Hunting Access:** Access for the purposes of hunting on Tribal lands located within a range unit is subject to the Game and Fish Department of the Three Affiliated Tribes and Chapter 18 of the Code of Laws of the Three Affiliated Tribes, known as the Game and Fish Code, and in accordance with Resolution No. 96-157-DSB. Locks on gates preventing access to Tribal lands for the purpose of hunting are prohibited. Hunters will notify permittee before accessing a unit.
11. **BIA Regulations Apply:** All Permits shall be issued subject to all applicable BIA in 25 CFR Part 166, this Resolution and applicable tribal law.

**V. APPEALS**

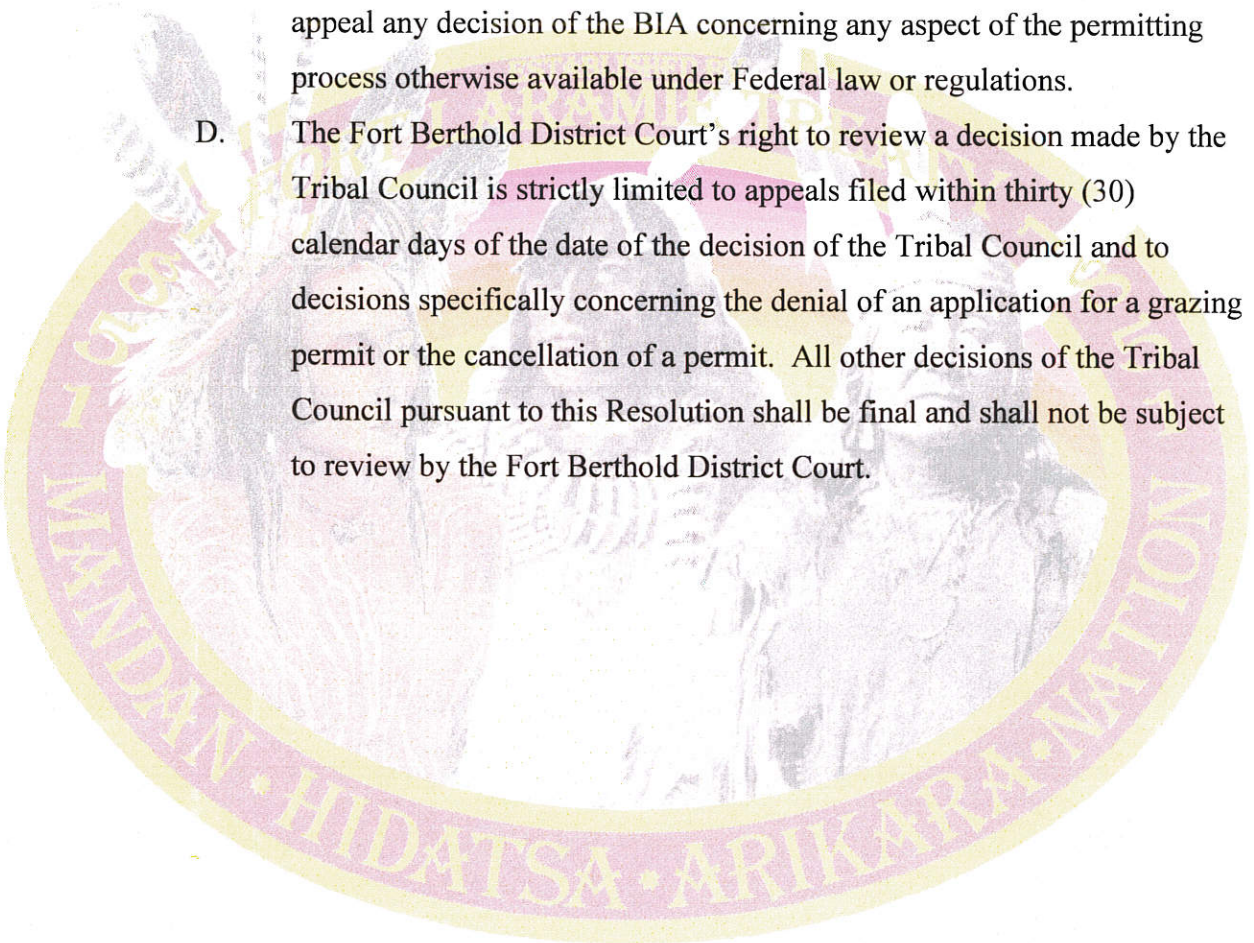
1. **Appeals Process:** Appeals of an adverse decision made by the Tribal Business Council concerning the denial of an allocation of an application for a grazing permit or concerning any cancellation of a permit may be made by filing a notice of appeal with the Fort Berthold Tribal District Court within 30 calendar days of the receipt of the decision by the appellant.
  - A. The standard of review by the Fort Berthold Tribal District Court of an appeal authorized by this section shall be “abuse of discretion.”
  - B. The Tribal Council shall certify the record related to any appeal under this resolution for review by the Fort Berthold Tribal District Court.  
Information not presented to the Tribal Council by the appellant shall not





be considered by the Fort Berthold Tribal District Court, unless the appellant demonstrates to the satisfaction of the Fort Berthold Tribal District Court adequate reasons why such information was not, or could not have been available to the Tribal Council at the time it made the decision from which appeal has been taken.

- C. The right to appeal under this Section shall be in addition to any right to appeal any decision of the BIA concerning any aspect of the permitting process otherwise available under Federal law or regulations.
- D. The Fort Berthold District Court's right to review a decision made by the Tribal Council is strictly limited to appeals filed within thirty (30) calendar days of the date of the decision of the Tribal Council and to decisions specifically concerning the denial of an application for a grazing permit or the cancellation of a permit. All other decisions of the Tribal Council pursuant to this Resolution shall be final and shall not be subject to review by the Fort Berthold District Court.






**CERTIFICATION**

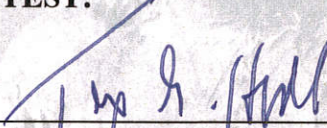
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 10<sup>th</sup> day of February, 2011, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [  ] Not Voting.

Dated this 10<sup>th</sup> day of February, 2011.

**ATTEST:**

  
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Executive Secretary, V. Judy Brugh.  
Tribal Business Council

  
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Chairman, Tex G. Hall  
Tribal Business Council

