



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

A Resolution Entitled: “2017-2021 Allocation of Range Units for the Grazing of Livestock on the Fort Berthold Indian 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 (Tribe) 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, Title 25, Part 166 of the Code of Federal Regulations recognizes the Tribe’s authority to develop grazing regulations; and

WHEREAS, Article VI, Sections 5(i) and (j) of the Constitutions of the Three Affiliated Tribes empowers the Tribe to manage Tribal lands and interests in Tribal lands and to protect and preserve the property and natural resources of the Tribe; and

WHEREAS, The Tribe 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 Tribes 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

NOW THEREFORE BE IT RESOLVED, The Tribal Business Council hereby authorizes the 2017 -2021 Grazing Regulations, to govern the allocations of grazing units for a five (5) year term, effective on January 1, 2017 and ending on December 31, 2021, 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.

BE IT FURTHER RESOLVED that this Resolution and the Grazing Regulations have been made available for public comment, the Natural Resources Department and Bureau of Indian Affairs held three (3) public comment meetings prior to the development of this Resolution. This Resolution shall be posted in a public place in each of the six (6) segments on the Fort Berthold Reservation.

BE IT FURTHER RESOLVED, that the 2017 - 2021 Grazing Regulations are approved and authorized by the Tribal Business Council of the Three Affiliated Tribes.



DEFINITIONS:

1. **Agency** means the Bureau of Indian Affairs, Fort Berthold Agency.
2. **BIA** means Bureau of Indian Affairs.
3. **Tribe** means the Three Affiliated Tribes.
4. **Tribal Council** means the Three Affiliated Tribes Tribal Business Council.
5. **NRD** means the Natural Resources Department of the Three Affiliated Tribes.
6. **NRC** means the Natural Resource Committee of the Tribal Business Council.
7. **Bona Fide Rancher** means an individual or entity that owns 100% of the livestock or whose primary occupation is farming or ranching.
8. **Permittee** means any individual or entity that receives a grazing permit from the BIA
9. **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;
10. **Bona Fide Rancher** means an individual or entity that owns 100% of the livestock or whose primary occupation is farming or ranching.
11. **Unit** means Range Unit as designated by the Bureau of Indian Affairs.
12. **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, 2015.
13. **AU** means Animal Unit
14. **Animal Unit Month (AUM)** means the amount of forage necessary to sustain one animal unit for one (1) month.
15. **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.
16. **Related** means relationship by blood, legal adoption, or by marriage.
17. **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.
18. **Cooperative** means an association of individuals that operate in common.
19. **Livestock** means Domestic animals such as cattle or horses, raised for home use or for profit.



GRAZING REGULATIONS OF THE FORT BERTHOLD RESERVATION

I. 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 and any other lease on all 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;
 - D. The applicant must provide 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.
 - F. All check list items, on BIA Range Unit application, must be met one (1) week prior to allocation meeting and all incomplete files will not be considered.
2. **Permit Period:** Grazing permits shall be issued for a five (5) year lease period beginning January 1, 2017 and terminating December 31, 2021.
 - Midway in the 5-year lease, Fort Berthold BIA shall conduct a systematic review of all grazing units to determine if Units are in compliance and reassess Grazing rate. Allotted landowners in grazing units shall be notified of the results of the BIA review of the grazing contact.
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 December 31, 2021 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 shall be awarded according to the following order of preference:
 - A. Enrolled member of the Three Affiliated Tribes is required for eligibility for an allocation.



- B. Applicant is in good standing and in compliance with the Bureau of Indian Affairs and provides all documents necessary on the check list items need for a full application.
 - C. Applicant is the previous Permittee for the unit and has met all contractual obligations during the previous permit period.
 - D. 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.
 - E. Applicant's headquarters and residence are located closest to the unit for which application has been made.
 - F. Shall there be more than one applicants; BIA will rate and determine eligibility using check list.
5. **Allocation Limits:** All allocations provided to any individual or entities shall not exceed 500 AU's for a twelve (12) month period. A Permittee who has been allocated 500 AU's may only obtain additional AU's through competitive bids.
6. **Pasturing Authorization:** A Pasturing Authorization approved and issued by the BIA, is required for all livestock not owned by Permittee, which are intended to be grazed on the Allocated Range Unit. Livestock cannot be placed on RU without BIA approval.
- A. Qualifying sub-lessees shall remain in "good standing" and in compliance with the Bureau of Indian Affairs requirements.
 - B. An Application for Pasturing Authorization must be submitted to the BIA by March 1st of every year for approval by the Agency.
 - C. An Application for Pasturing Authorization must then be submitted by the BIA to the NRC by April 15th of every year for approval by the NRC.
 - D. Any livestock under a Pasturing Authorization must register brands and health certificates with the BIA.
 - E. At this time the sub-lessor shall be responsible for payment of one time per grazing season pasturing fee of \$10 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 for 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:** Permittee shall pay grazing fees by certified check, money order or bank draft. In addition Permittee 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 1st of each year and will be considered delinquent if not paid prior to or on this date.
 - B. Fixed Grazing Rate of Tribal Lands: Unless a Fort Berthold BIA 5-year review determines a change, the Tribe shall adhere to a fixed grazing rate for 100% owned tribal lands in all grazing units for the five (5) year grazing period.
 - C. A performance bond satisfactory to the Agency is required in an amount that will reasonably assure performance of the contractual obligations under the permit.
 - D. However, the performance bond is waived for enrolled tribal members.
 - E. Delinquent fees will be subject to an interest rate as provided in 25 CFR Part 166.
 - F. 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.
 - G. Range unit will be immediately cancelled due to non-payment. And should be re-allocated immediately. If it is not re-allocated within 30 days. It will be advertised for competitive bidding.

II. 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 allocations of a range unit pursuant to Section II of this Resolution, the range unit will no longer be available for 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 the 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.

III. GENERAL PROVISIONS

1. **Pasture Authorization application and other relevant documents** shall be submitted to the BIA thirty (30) days prior to the turn out date, established by the Agency.
2. **Livestock allowed.** Branded Cattle, sheep, horses, buffalo, elk or any combination thereof will be permitted on all range units. The allowed ration of livestock shall be one (1) SUM for a cow and calf, one and one half (1 ½) AUM for a horse, one (1) AUM for five (5) sheep, three quarters (¾) AUM for one (1) yearling steer, one (1) AUM for buffalo and one (1) AUM for an elk.
3. **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, Bovine Trichomoniasis prevention/vaccination, and any other Livestock Disease Prevention Program recognize by the Tribe. Only 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.
4. **Unit Improvement.** A Range Unit 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. A removable improvement includes, but is not limited to, pumping equipment, tanks, and corrals, like improvements.
 - C. Confirmation of removable improvements must be provided to the BIA.
5. **Hay Cutting:** Grazing permits do not authorize the cutting of native hay. Such requests must be obtained in advance from the Agency.
6. **Fences.** The Permittee 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.
7. **Notice to BIA and the Tribe:** Any individual under a pasture authorization moving livestock on or off Range Units shall notify the Bureau of Indian Affairs, 48 hours prior to moving the livestock. In addition:
 - A. The Bureau of Indian Affairs and the Natural Resources Department must verify all stock within the boundaries of a unit for compliance purposes.



- B. The Bureau of Indian Affairs and the Natural Resources Department will count cattle at least 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 Bureau of Indian Affairs and the Natural Resources Committee is a serious trespass violation and may subject the Permittee or sub lessor to a fine, impoundment of cattle, or revocation of the pasture authorization and/or permit. The Permittee or sub lessor shall be subject to a \$3,000 fine for a first offence, a \$10,000.00 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 or unbranded livestock grazing in a unit shall constitute separate offences. The Tribal Council shall administer and enforce the penalties set out in this section.
- D. The Bureau of Indian Affairs and the Natural Resources Department will contact a Permittee before inspecting a range unit.

Tribe and Fort Berthold BIA Responsibilities

To assure the integrity of range units and/or to benefit all permittees and sub lessor, the Tribe and/or BIA shall assure:

- Recommended weed-free seed mixtures, including native grasses, are appropriately utilized by oil companies to reseed and restore disturbed areas and “washed out” oil & gas reclamation sites in all grazing units, where affected by well sites, industry roads, pipelines, and other related oil & gas infrastructure. Oil companies shall notify the Natural Resource Director in a timely manner, if, or when, disturbed soils are re-seeded. Where necessary, adequate bonding for complete remediation, including erosion control and compaction of soils in grazing units, shall be required and enforceable through formal Natural Resource Committee action.
- Oil companies maintain seasonal monitoring of grasses and replacement of noxious weeds within 1/4 mile of all oil & gas sites, roads, or other related oil & gas infrastructure for the life of all existing well sites and new well site(s), including other oil & gas structures in the grazing unit.
- BIA-recommended dust suppression measures will be utilized by the oil industry to minimize adverse impacts to cattle (e.g. dust pneumonia and pink eye) in grazing units during the grazing period. Dust suppression measures shall not adversely impact the quality of grasses, surface, or ground water in, or near, the grazing unit.
- Pipeline construction practices in grazing units will utilize separated topsoil and subsoil in reclamation and shall exclude rocks and boulders as filler both on the surface and within, of rights-of-way within all grazing units. The biological and chemical properties



of topsoil are critical to site recovery and this practice is beneficial to the permittee and to the grazing unit owners.

- Permittee is present at, and during, the staking of well sites, siting of pipeline ROWs, and other significant oil & gas infrastructure(s) in the grazing unit.
- Cattle guards installed by oil industry in grazing units shall remain free of build-up during the grazing period. Range unit information shall be posted at the gate(s) of each range unit.
- Permittee has unencumbered access of the approved grazing unit for the grazing season. Gates to grazing units shall remain unlocked by the oil & gas company(s) during the grazing season.
- Permittees receives a GIS layer of oil & gas infrastructure impacting grazing permits.
- Maintain a database of permittee contact information for purposes of notification. The permittee is responsible for providing contact information in a timely manner. The Natural Resource Director will assure all field staff receive the most current database of permittee contact names and contact information.
- Shall make timely determinations as to whether, and to what extent, any wildlife populations (e.g. prairie dogs) are adversely impacting grazing units. Lacking a tribal ordinance or management plan, the Tribe and BIA shall determine appropriate measures and notify all land owners, including allotted landowners in the grazing unit.
- The Natural Resource Committee is notified, via the Natural Resource Director, of issues with grazing line fencing, gates, cattle guards pertaining to grazing units and timely recommendations are identified to resolve matters.
- The Tribe shall allocate funding for fencing crews of all range units and develop a “range rider policy”. The Natural Resource Director will recommend and administer an annual budget for these purposes. An annual report by the Director to the Natural Resource Committee shall identify measurable improvements of range unit management from this program.
- The Tribe participates with technical assistance on NEPA documents for water development for livestock.
- Supply materials, “based on need,” shall be available through the BIA Superintendent’s office. Permittee shall contact the BIA Superintendent directly.
- Shall coordinate public meeting(s) with Great Plains BIA to allow permittees to provide input on the grazing rate for allotted lands in a grazing unit. Allotted landowners with land within any grazing units shall also be notified, in advance, and allowed to attend and participate.



Permittees responsibilities:

- Be in compliance with all identified requirements in this grazing unit resolution prior to approved allocation or competitively-bid processes of grazing unit. Permittees are responsible for sub-lessor(s) compliance in their grazing unit.

BIA Compliance Practices: All stock within the boundaries of a unit will be counted annually by Bureau of Indian Affairs and/or the Natural Resources Department, against the authorized permitted capacity, and pasturing authorizations.

- A. Units may be inspected 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 as the owner, on the pasture authorization as stated on the grazing permit and on the application for a unit.
- 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 for the reason for the non-compliance, and possible consequences for 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 NRC, 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. If the BIA or the NRC sends 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 then (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 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 Tribal Business Council may revoke or withdraw all or any part of 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:** the owner or owners of the land, including the Tribe, can remove allotted lands or Tribal lands from a unit in accordance with BIA regulations. The removed land must be fenced by the owner or owners, except that where the cause of the removal of the land from the units 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. If an allotment or allotments is removed from the unit by majority consent, a 180 day notice will be sent to the permittee, if the allotment(s) is not fenced out by landowner(s) within the 180 days said allotment shall be put back in to the Range Unit.
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 regulations in 25 CFR Part 166, this Resolution and Applicable tribal law.

IV. 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 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 the application for a grazing permit or the cancellation of the 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.
- E. The Tribal Council may appeal Bureau of Indian Affairs decisions on behalf of grazing permittees.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 30th day of August, 2016; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 2 members not voting, and that said Resolution has not been rescinded or amended by any way.

Chairman voting. not voting

Dated this 30th day of August, 2016

ATTEST:

Tribal Secretary L. Kenneth Hall
Tribal Business Council
Three Affiliated Tribes

Tribal Chairman Mark N. Fox
Tribal Business Council
Three Affiliated Tribes