

DRAFT
REVISED NORTHERN CHEYENNE LAW &
ORDER CODE

TITLE 21
GRAZING ORDINANCE

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TRIBAL GRAZING CODE

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NORTHERN CHEYENNE TRIBAL GRAZING ORDINANCE

DEFINITIONS

The following definitions shall apply throughout this ordinance:

1. *Allocation*: the apportionment of grazing permits to tribal members without competitive bidding.
2. *Animal Unit (AU)*: one cow & calf = 1 AU; one yearling steer or heifer = .75 AUs; one bull = 1.25 AUs; one horse = 1.5 AUs; one sheep = 2 AUs; one buffalo (bison) = 1 AU.
3. *Animal Unit Month (AUM)*: the amount of forage required by one AU for one month.
4. *Anniversary Date*: February 15, annual due date of grazing fees.
5. *Applicant*: Tribal Members only as defined by Northern Cheyenne Tribal enrollment, must be a resident, and 18 years or older.
6. *Bureau*: Bureau of Indian Affairs (BIA).
7. *Council*: Tribal Council of the Northern Cheyenne Tribe.
8. *Deferment*: A delay in the planned grazing turnout date or a reduction in livestock carrying capacity.
9. *Fair Market Appraisal Rate*: the grazing set by the Regional Direction that is charged for grazing privileges on allotted land.
10. *Lien*: A claim on the property of another as security as security for the payment of a just debt.
11. *Operator's Management Plan (OMP)*: the plan required for each grazing permit outlining how many AUM's and duration in a specific range unit.
12. *Overstocking*: grazing livestock numbers in excess of that authorized by permit.
13. *Permit*: a written contract between the Bureau and an individual permittee that grants grazing privileges.
14. *Permittee*: an individual issued a grazing permit privilege.
15. *New Permittee*: an individual, who has not held a permit before, is not a retired permittee, or an individual who has not held a permit in the last five years.

16. *Range Improvements*: include fences and all water developments when the source of water is from reservoirs, springs, and wells,
17. *Range Unit*: a specific tract of land permitted to grazing by the Bureau of Indian Affairs.
18. *Regional Director*: Rocky Mountain Regional Director for Bureau of Indian Affairs.
19. *Resident Tribal Member*: an enrolled tribal member must be a resident within the exterior boundaries of the Northern Cheyenne Reservation to receive an allocation. Resident status may be granted to students in school or to individuals in the Armed Forces with approval of the Grazing Board only.
20. *Stocking Rate*: the maximum number of AUMs of forage permitted for grazing in a range unit.
21. *Trespass*: the presence of any livestock on any range unit not authorized by a permit.
22. Water development and fences will meet Natural Resource Conservation Service (NRCS) specifications and standards.

I. PERMIT PERIOD

- A. All grazing permits awarded under authority of this ordinance shall be in effect from the date of issue to **February 14, 2009**, because of the improvements sought from the permittees in the units or pastures permitted to them.
- B. The Bureau of Indian Affairs, as its fiduciary responsibility in the protection of both allotted and tribal land interests, is required to exercise its full responsibility on the prosecution of violations, as set forth under 25 CFR §166, in all cases where a violation has been committed against the property of the individual landowner.
- C. Any applicant that is delinquent on a farm/pasture lease is not eligible for any additional grazing privileges until the debts are brought current.

II. GRAZING RATES

- A. The grazing rate charged for tribal original, tribal acquisition and allotted land permitted to grazing by allocation shall be the same flat rate based upon the federally appraised rates. There shall be no difference in AUM prices based upon land status, for example tribal and allotted lands will have the same grazing rate. The appraised rate at the time of the adoption of this Ordinance is \$14.75.
- B. The Bureau will collect and distribute all grazing fees.
- C. Special lower rates for Tribal grazing land may be set by the Land Authority Committee for negotiated permits in vacant range units. Such rates would be to

encourage development of historically unleased units and would only apply to resident Tribal members running their own livestock.

- D.** All Tribal grazing rates will be reviewed every three (3) years and may be adjusted by the TRIBAL COUNCIL FOR TRIBALLY OWNED LANDS.

NOTE: In instances of natural disasters or economic disasters the Land Authority Committee may adjust grazing fees. Loss of property due to natural disaster shall be considered a cost of doing business and not reimbursable by the landowner or Bureau of Indian Affairs.

- E.** The Bureau of Indian Affairs shall be required under this ordinance to exercise its fiduciary responsibility as set forth under 25 CFR § 166, to review grazing rates every three (3) years to determine whether the rates are consistent with the rates in the private sector, for and on half of individual land owners. The Bureau of Indian Affairs shall secure landowner lands, which shall be adjusted upwards to protect the economic interest of the individual land owners and not adjusted downwards to deprive the landowners.

III. ALLOCATION OF GRAZING PRIVILEGES

- A.** Grazing Ordinance Eligibility Requirements are for individuals in order to apply for allocations provided that they meet the following requirements;
1. Must be a resident of the Northern Cheyenne Indian Reservation and must be enrolled Tribal member at least 18 years old.
 2. Grazing permits shall be issued on an individual permittee basis only.
 3. Must have all livestock branded with a brand recorded with the State of Montana in the applicant's name, or the applicant and the applicant spouse's names. Must submit all liens against brand with application.
 4. No permittee may be granted additional grazing privileges in any other range unit until they have been permitted for all of any existing surplus AUM's in their currently permitted range units.
 5. Eligibility requirements must be maintained for the period covered by the permit. Failure to maintain these requirements is grounds for cancellation of permits. The permittee will be served written notice of non-compliance and given 10 days to show cause why their permit(s) should not be canceled.
 6. Any individual and or any Tribal Enterprise who wished to operate a buffalo or sheep operation shall manage the operation under strict management. These two operations must have appropriate fencing and health care. These operations shall be subject to the same rules and regulations as a cattle operation.

B. Operator Grazing Privileges and Rules:

1. Grazing Privileges:

- a. First Privilege: Current permittees have first privilege for renewing their current allocation. They also have first privilege for any additional surplus AUM's available in the range units that they are currently permitted in, except those permittees displaced by a permanent or temporary deferment will have first privilege for surplus AUM's up to the amount of their allocation that was deferred.
- b. Second Privileges: New permittees who do not hold an existing permit, or any person who has not previously granted an allocation, shall have second privilege for any surplus AUMs to be permitted during the allocation process.
- c. Third Privileges: Existing permittees shall have third privilege for any surplus AUM's not in their existing range units.

2. Grazing Privilege Rules:

- a. Whenever two or more applicants under the same grazing privilege apply for available surplus AUM's will be divided equally unless mutually agreed otherwise.
- b. To encourage new operator children under age 18 may be allowed to run up to 25 heads of livestock, under parents/guardian grazing permit, providing they are deducted from the parents/guardians allocations and included in Operator's Management Plan.

C. Application Procedures-Primary Allocation Period

1. All applications for allocation shall be on BIA Form 55524 and will be accepted annually at the Superintendent's office during the first two (2) full weeks of December. No late applications will be accepted.
2. All applications must include a copy of the applicant's current State of Montana Brand Certificate.
3. Allocation awards will be made by the Land Authority Committee according to the privileges and rules set forth in this ordinance. Successful applicants will be notified by receipt of a BIA bill for their allocation by January 15. Grazing fees are due on or before February 15 of each year. Failure to pay grazing fees by the due date will result in immediate cancellation of the unpaid permit.

NOTE: This operator may apply for grazing privileges in the competitive bid phase.

- D.** Secondary Allocation Period: AUM's surplus to the primary allocation process will be advertised annually for allocation during the third and fourth weeks of February. Successful applicants will be given fifteen (1) days to pay for their allocation. Individuals who failed to pay for allocations award during the primary allocation period may not exercise any privilege for that allocation in the secondary allocation period. All other aspects of the secondary allocation process will be conducted in accordance with Section III, part (B) of this ordinance.
- E.** When there are 3 or more applications received for available AUM's, the Land Authority has the option of holding an enrolled member allocation bid process.
1. This option would only be available only when there isn't an application received by a current permittee in the same range unit.
 2. When there are 3 or more applications received for available AUM's. The applicants will be notified to submit a sealed bid for the available AUM's. Each bid submitted will contain a bid for the Tribal AUM's and a bid for the Allotted AUM's. All bids submitted will be for the total AUMs available in the range unit. The minimum acceptable bid will be \$12.75 for Tribal and \$15.00 for allotted AUMs. Bids not meeting the minimums will be rejected. A new permittee will be given the option to match the high bid. A grazing permit for the remainder of the permit cycle will be awarded to the highest bidder in the bid amount.

IV. COMPETITIVE AND NEGOTIATED SALE OF GRAZING PRIVILEGES

- A.** Negotiated sale of grazing privileges. The BIA Superintendent will offer surplus AUM's to the competitive sale of grazing privileges annually for negotiated sale from May 1 to October 31, according to the provisions of 25 CFR § 166.11. Negotiated permits will adhere to the grazing fees set forth in Section II of this ordinance except in cases where lower rates are deemed necessary to encourage the development of historically non-permitted areas. Negotiated permits may include additional development stipulations and permit provisions in exchange for lower grazing rates. A majority vote of the Land Authority Committee is required to authorize lower grazing rates for negotiated permits.

V. SPECIAL RESTRICTIONS ON GRAZING PRIVILEGES

- A.** Individual permittees or household permittees are limited to 6000 AUM's. Permittees prohibited from acquiring less than 25 AUM's, unless Range Unit carrying capacity is less than 25. If the carrying capacity of a given range unit is less than 25 AUM's, then the permittee may not require less than 5 AUM's.
- B.** All livestock grazed under an allocation must be owned and branded by the person holding the allocation. Any liens on a resident Tribal member's brand must be by a

federally or state chartered banking institution. Any other lien on a resident Tribal member's brand is unacceptable and livestock with such lien on their brand cannot graze on the Northern Cheyenne Indian Reservation. Any resident Tribal member grazing livestock in violation of this provision shall have his/her permit revoked and his/her cattle will be deemed to be trespassing on the Northern Cheyenne Indian Reservation.

- C.** Any tribal member who has the necessary qualifications and has met all necessary requirements can meet a non-Tribal member's high bid in the competitive phase, and shall be restricted to grazing their own livestock on that range unit.
- D.** All livestock and game animals raised as livestock on the Northern Cheyenne Indian Reservation shall comply with applicable State of Montana laws pertaining to the health standards and livestock brands.
- E.** All non-Tribal member owned livestock brought on to the Northern Cheyenne Indian Reservation must be inspected by a State of Montana brand inspector prior to being removed.
- F.** The livestock allowed on range units shall be cattle, horses, sheep, and bison. Permittees grazing sheep bands of more than 500 are required to have a herder with the band at all time while on a range unit.
- G.** All permittees shall file, with the Superintendent, an Operator's Management Plan. Permittees running in common shall file a Joint Operator's Management Plan. This management plan will be made part of the stipulations of the grazing permit and must be done before any livestock can be allowed into the range unit. The management plan will be made part of the stipulations of the grazing permit and will include the following:
 - 1.** The number and kind of livestock to be grazed in each range unit.
 - 2.** The season of use for each range unit and each pasture within the range unit.
 - 3.** Any plans to develop range improvements within the range unit.
 - 4.** After water development has been done, permit holders within the Tongue River watershed will have to implement pasture rotations into their management plans. Failure to file an acceptable Operator's Management Plan by the initial due date for grazing fees, or failure to adhere to the management plan without prior approval from the Superintendent is grounds for cancellation of the permit.
- H.** Trespass: A person is guilty of trespass when he or she knowingly causes or continuously fails to prevent the unauthorized presence of any livestock on any range unit not authorized by a permit. Additionally, trespass can occur if a permittee violates this Ordinance.

- I.** Notification of Trespass: Upon notification of a reasonable belief of a trespass, the BIA shall send a notice to the alleged trespasser(s), the known or suspected owner of the livestock, the holder of the livestock, and any lien holder of the livestock suspected to be trespassing on a range unit. The Notice shall set forth:
- 1.** Basis for the trespass determination;
 - 2.** A legal description and the number of the range unit where the alleged trespass occurred;
 - 3.** Time frames for resolving the trespass;
 - 4.** Actions that will be taken or prohibited regarding the trespass.
- J.** Corrective Action: The BIA shall take immediate correction action to rectify the trespass.
- K.** Penalties, Damage & Costs: Any person that is found guilty of trespassing shall pay twice the Reservation rate for each month livestock trespassed in a range unit as damages and penalties. The trespasser must also pay the costs of confiscating and impounding the livestock until they are released. In no event shall the livestock that have been confiscated and impounded subject to a trespass be released until such costs have been paid.
- L.** Distribution of Damages and Penalties: One half of the amount collected for damages and penalties shall be distributed as damages to the Tribe and/or any allottees on a prorate basis. The Tribe shall retain one half of the collected amount as penalties after the BIA has recouped its costs for rectifying the trespass.
- M.** Settlement of Trespass: The BIA may accept your payment of damages in the settlement of civil trespass cases. In the absence of a court order, the BIA and/or Tribe will determine the procedure and approve acceptance of any settlements negotiated by the Tribe.
- N.** Failure to Pay Damages and Costs: The BIA shall sell any livestock that have been confiscated and impounded and not claimed by a trespasser, confirmed owner, or lien holder. The Tribe will have the first offer to buy such livestock. The proceeds of the sale shall be divided as provided in section L. A trespasser that fails to pay for penalties and/or damages shall not be issued a permit and all of the trespasser's existing permits shall be terminated.
- O.** Appeals: A trespasser may appeal a decision by the BIA regarding a trespass action in accordance with 25 CFR Part 2 & § 166.28.

- P.** Ordinance Controlling; This Ordinance shall be controlling concerning the trespass of any livestock not withstanding any other Tribal law concerning trespassing.
- Q.** No sub leasing of any (allocated) grazing privilege will be permitted and shall be subject to permanent loss of grazing privilege on the Northern Cheyenne Indian Reservation.
- R.** Overgrazing within any range-unit is prohibited and shall result in a monetary penalty and/or permanent loss of grazing privileges. Overgrazing will be determined by the BIA-Range Branch or Tribal Environmental Department via completion of a Range and/or Riparian Health Assessment.

VI. NORTHERN CHEYENNE LAND AUTHORITY COMMITTEE

- A.** The BIA-Range Management Specialist will attend all Land Authority Committee meetings pertaining to the Northern Cheyenne Grazing Ordinance.
- B.** The Land Authority Committee serves to administer:
 - 1. The allocation of grazing privileges to Tribal members under Section III of this ordinance.
 - 2. The settlement of disputes over interpretation of this ordinance in relation to the allocation process and decisions. All disputes, grievances, or requests to the Land Authority Committee must be in writing and signed by the complaining individual. The Land Authority Committee's ruling on disputes pertaining to this ordinance shall be final and may be appealed to the Northern Cheyenne Tribal Court and then the Northern Cheyenne Tribal Council. Complaints and disputes concerning trespass or overstocking concerns shall be submitted directly to the BIA Superintendent.
 - 3. Recommendations to the Council and Superintendent on matters pertaining to agriculture on the Reservation.
 - 4. The Range Improvement Fund.
 - 5. Setting grazing rates for Tribal lands permitted by negotiation.
 - 6. Assigning fence maintenance responsibilities.
 - 7. The Land Authority Committee shall monitor all acres withdrawn from any range unit by individual landowners to determine whether the fence is complete or not complete. This determination shall be by December 31 of each year. The Land Authority Committee shall make this determination based on BIA reports

regarding the number of acres withdrawn. The Land Authority Committee shall also determine that all fences are constructed in accordance with survey lines.

C. Range Improvement Fund

1. Twenty (20) percent of all Tribal income derived from range permit grazing fees will be set aside by the Tribe's Central Finance Department for the exclusive use of the Land Authority Committee in promoting the establishment of permanent range improvements of range units and other projects.
 - a. The Land Authority Committee shall cost-share development of range improvements up to 25% of the total cost of the project provided that: 1. The project meets Natural Resources Conservation Species (NRCS) Guidelines and specifications. 2. The project is located within a range unit on Tribal land, or on allotted land if the landowner agrees, in writing, to not withdraw the land from the range unit system for the duration of the permit period. 3. No individual may receive more than \$1,500 per year in cost-share from the range improvement funds unless a year-end budget surplus exists. Cost share requirements for the construction of range unit boundary fences are exempt from stipulation (d) this section.
 - b. The Land Authority Committee shall directly fund development of range improvements in range units with no existing permittees in order to make such units more likely to be permitted to grazing.
 - c. The Land Authority Committee shall cost-share construction of fencing around homesites in range units up to 50% of the total cost of the project, but not to exceed \$250 per homesite.
 - d. The Land Authority Committee shall cost-share construction of boundary fences for allotments withdrawn from range units up to 50% of the cost of materials only, but not to exceed \$1,000 per allotment.
 - e. The Land Authority Committee shall cost share installation of cattle guards through range unit fences up to 50% of the cost of the total project, but not to exceed \$500 per person per year.
 - f. The Land Authority Committee shall cost share weed and pest control projects up to 50% of the total cost, not to exceed \$1,500 per person.
 - g. Project costs shall not include any personal services of the applicant or any member of the applicant's immediate family. All cost-share funding can be on a reimbursable basis or cost can also be made directly to the vendor, pending receipt of complete and itemized invoices, the above projects are subject to availability of funds.

- h. All NRCS rangeland projects must be coordinated, reviewed and approved by the BIA-Northern Cheyenne Agency-Range Branch before implementation.

VII. RANGE IMPROVEMENTS

- A. Range improvements placed on permitted trust land is considered to be fixed to the land unless the permittee has received prior written exception from the Superintendent and the Land Authority Committee.
- B. It is the responsibility of the permittee to repair, install, or maintain range improvements on their range units.
- C. Construction of cross fences requires the approval of the Superintendent and Land Authority Committee. Permittees running in common must also have approval of all the other permittees in the unit affected. Pastures thus created are not to be considered separate range units.

VIII. DEATH OF A PERMITTEE

- A. The death of a permittee shall cause the permit to continue in the name of the estate of the deceased until the end of the permit period, or until the estate is settled, whichever comes first.
- B. After the end of the permit period or closure of the estate, the surviving spouse of the deceased may apply for the allocation and exercise preference for it as the current permittee provided that he/she meets the eligibility requirements set forth in this ordinance.

IX. LAND IN RANGE UNITS

- A. All Tribal land within the boundaries of established range units shall be permitted to grazing by the Superintendent, except those lands under lease for farm and pasture, homesites, or businesses, and lands designated by the Council for purposes other than grazing.
- B. Withdrawal of Land.
 - 1. Landowners may withdraw their land from the range unit system for their own use by notifying the Superintendent, in writing, of their intentions by July 1 of the year before the withdrawal will take effect. Land withdrawals will take effect January 1.
 - 2. Land withdrawn from a range unit must be fenced out of the unit at the expense of the landowner prior to the effective date of withdrawal. The fence must be

constructed to NRCS standards and is eligible for cost-share form the Land Authority Committee.

3. Any individual allottee, heir or devisee who has requested to withdraw their individual lands from any range unit, shall be required to install the fences within 180 days from the date of withdraw. The landowner shall not lose any portion of the grazing fee providing that the landowner does not close off the unit operator prior to the 180 days and all fences have been construed and are in place. If for economic reasons, the individual landowner is unable to complete the installation of the fences, the landowner shall continue to receive grazing fees without interruption.
4. Failure to meet and of the requirements of withdrawal of land set forth in this section Land Authority Committee determination Section VI. B. 7. This does not restrict the land owner from withdrawing their land from the range unit at a later date.
5. Any landowner who has or is withdrawing their individual owned lands may enter into cost-share agreement with the livestock operator to maintain nay existing fence(s).

X. ADDITIONAL PROVISIONS

- A.** Existing range unit numbers and boundaries are considered permanently established and may be only changed by written approval of the Superintendent and Grazing Board.
- B.** Landowner rate will be set by the Regional Director.
- C.** Superintendent shall inform the Tribal Council and the Landowners through restricted mail of all grass that does not sell and his explanation on why that pasture did not sell.
- D.** This Ordinance may be amended by 2/3 vote of the full Tribal Council.