

CHAPTER 4-11 RANGELAND MANAGEMENT

GENERAL PROVISIONS

4-11-1

Purpose and Objectives

(a) It is the purpose of this Chapter to:

(1) Support the integrated management and preservation of the land, water, fish, forest, vegetation, wildlife, and recreational values on rangelands within the Colville Reservation and improve and build up these resources where they have deteriorated;

(2) Promote use of the range resource by Colville tribal members to support them in earning a living, in whole or in part through the grazing of their own livestock;

(3) Provide for the administration of a grazing management program, which will:

(A) Yield the highest rate of return to grazing permittees consistent with the principles of sustained yield management;

(B) Promote long term resilient and sustainable rangeland ecosystem conditions;

(C) Fulfill the resource management objectives of the Colville Confederated Tribes and the Natural Resources Department;

(D) Promote fulfillment of the overall trust obligations of the federal government as administered by the Superintendent, Colville Indian Agency;

(E) Preserve and promote tribal authority and provide processes to implement such authority as recognized in federal law.

(4) Promote the use of an ecosystem approach as defined and developed by the Natural Resources Department of the Colville Confederated Tribes in managing rangelands.

(b) This Chapter shall be construed as consistent with the objectives set out in federal law related to the management of tribal rangelands.

4-11-2

Definitions

(a) "Adult Tribal Member" means a member of the Colville Tribes who has attained the age of 18, unless otherwise provided by the Business Council.

(b) "Conservation" means the practice of management action to protect, conserve, utilize, and maintain the sustained yield productivity of land.

(c) "Department" shall mean the Range Department of the Confederated Tribes of the Colville Indian Reservation unless another department is clearly intended.

(d) "Director" means the Director of the Range Department of the Confederated Tribes of the Colville Indian Reservation or his designee.

(e) "Domestic Livestock" means, but is not limited to, cattle, sheep, goats, horses, buffalo, swine, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden.

(f) "Individually Owned Land" means land owned in fee by a member of the Confederated Tribes of the Colville Reservation or land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to federal restrictions

against alienation or encumbrance.

(g) "Permit" means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land.

(h) "Rangelands" means those lands which are currently used for or have the potential to be used for the grazing of domestic livestock or wildlife.

(i) "Rangeland management plan" means a five (5) year plan developed by the Director which will carry out the provisions of this Chapter.

(j) "Secretary" means the Secretary of the Interior or his authorized representative, acting pursuant to delegated authority.

(k) "Superintendent" means the Superintendent of the Bureau of Indian Affairs of the Colville Indian Agency.

(l) "Tribal Lands" means land owned in fee by the Confederated Tribes of the Colville Reservation or a tribal member and/or land held in trust by the United States for the Tribes or individual tribal members.

(Amended 12/16/04, Resolution 2004-776)
(Certified 12/28/04)

4-11-3 Jurisdiction

Unless otherwise exempted by this Chapter or federal law, this Chapter shall apply to all tribal and individually owned rangelands located within the boundaries of the Colville Reservation including all persons and property thereon.

4-11-4 Civil Remedy

Any violation of this Chapter or regulation adopted hereunder for which a remedy is not otherwise provided by this Chapter shall be subject to a civil fine as provided for in Chapter 2-2. Nothing in this Chapter shall preclude the Tribes from filing criminal charges to the extent permissible under tribal law.

MANAGEMENT OF RANGELANDS

4-11-30 Range Units

All rangelands under the jurisdiction of the Tribes shall be consolidated into management units. This shall be conducted by the Business Council upon consideration of the recommendations of the Director, in a manner which will best meet the needs of the Tribes, the permittees, land ownership status and proper land use.

4-11-31 Grazing Capacity

Subject to the approval of the Business Council, the Director shall prescribe the maximum number of livestock which may be grazed on each range unit and the season, or seasons of use to achieve the purpose and objectives of this Chapter. The grazing capacity so prescribed shall take into consideration the implementation of tribal objectives, the objectives of the integrated resource management plans as developed by the Natural Resource Management department, and the land use and conservation requirements of this Chapter. Stocking rates shall be reviewed on a continuing basis and adjusted as conditions warrant.

4-11-32 Grazing Seasons

No livestock shall be turned on the open range at the beginning of the grazing season until properly authorized by the Director. **This will include notification of Range staff prior to release, so an accurate count can be established. Any animals released without notification, and Range personnel present will be considered a violation unless otherwise arranged with the Director.** All stock shall be promptly removed from the range at the end of the grazing season. **Range staff must also be notified prior to transport to allow**

for final end of season counts. Failure to do so will be considered a violation unless otherwise arranged with the Director. Penalties will be assessed for any animal left out after the closing date.

(Amended 03/17/11, Resolution 2011-170)
(Certified 04/01/11)

4-11-33 Grazing Fees

(a) The Business Council shall determine the minimum grazing fees for the issuance of grazing permits. Any Indian corporations, Indian associations, or adult tribal members of the Tribes obtaining a permit without competitive bidding as provided by this Chapter, shall be required to pay not less than the minimum rate established by the Business Council in accordance with this section, for all non-Indian owned livestock which they may be authorized to graze in accordance with the grazing permit issued.

(b) Landowners in giving the Business Council written authority to grant grazing privileges on their individually owned land as provided by this Chapter, may stipulate a minimum rate above that established in accordance with this section if justified because of the above average value. Landowners may also stipulate a lower rate than the reservation minimum, subject to approval of the Business Council, when the permittee is a member of the landowner's immediate family.

(c) In addition to the grazing fee, the permittee shall pay annually in advance a fee as determined by the Business Council, to cover the cost of work performed in the preparation of grazing permits.

(d) All fees related to livestock grazing on the Colville Reservation shall be billed for and paid annually in advance to the Tribes. The due date for annual grazing fees shall be made a provision of the permit. Failure to make payment will subject the grazing permit to cancellation and may disqualify the permittee from future permits.

4-11-34 Conservation and Land Use Requirements

Livestock grazing within the Colville Reservation shall be conducted in accordance with recognized principles of proper rangeland management and conservation and the protection of nonlivestock uses including but not limited to fish and wildlife habitat, water quality, vegetation and recreation.

4-11-35 Range Improvements—Ownership

(a) Improvements placed on permitted rangelands shall be considered affixed to the land and cannot be constructed or removed without written permission secured by the Director. This section shall not apply if the improvement is specifically excepted therefrom under the permit terms which will include the maximum time allowed for removal of such improvements.

(b) The Range Department assumes responsibility for maintaining fence lines on range unit boundaries where that boundary is not defined by an intersection of a lease or other tribal property. If the property is private or fee or an allotment or a lease the Range Department assumes responsibility, contingent on the availability of funds, for one-fourth (1/4) of the fencing materials and labor supplied to maintain that fence boundary. If a parcel of private land is located entirely within the boundaries of a range unit, it is the responsibility of that landowner to "fence out" the range unit and livestock therein.

(c) Fencing: The Range Department is not responsible for maintaining the fences on private or lease land unless permitted livestock from the range unit have damaged that fence and are trespassing.

(d) Impoundment: The Range Department assumes livestock control and compliance issues within range unit boundaries. Animals trespassing from range units to other properties will be the responsibility of the Range Department. Any livestock issues concerning trespass, neglect, or abandonment that occur on private, lease, or other tribal properties other than range units will be the responsibility of the Range Department.

(Amended 12/16/04, Resolution 2004-776)
(Certified 12/28/04)
(Amended 03/17/11, Resolution 2011-170)
(Certified 04/01/11)

4-11-36 Rangeland Management Plan

Every five (5) years the Director shall produce and implement, upon approval of the Business Council, a rangeland management plan designed to carry out the provisions of this Chapter.

MANAGEMENT OF LIVESTOCK

4-11-70 Counting Livestock—Moving Permit

All livestock authorized to graze upon or trail over restricted Indian land must be counted by a tribal representative or by the Superintendent or his representative. Arrangements must be made for counting all livestock before they enter or leave the reservation. Permittees or owners trailing livestock are required to notify the Director a sufficient length of time in advance to permit it to have a representative present when stock are counted on or off the reservation.

4-11-71 Branding and Inspection

(a) All livestock grazing on the Colville Reservation shall be properly branded with a registered Washington State brand.

(b) In order to secure compliance with this Chapter and correct conditions injurious to livestock on the open range, all livestock being transported or driven to, from or within the boundaries of the Colville Reservation are subject to brand inspection or examination for disease by a tribal representative or a representative of the Superintendent. A moving permit shall be required for all livestock trucked to and from the reservation. Such livestock shall be checked by a representative of the Tribes or the Superintendent who, if appropriate, shall issue the moving permit.

4-11-72 Trust Lands

No livestock shall be driven upon or across any tribal lands within the reservation without first securing a crossing permit from the Superintendent and, unless otherwise exempted, paying a crossing fee as determined by the Director.

4-11-73 Control of Livestock Disease

(a) Whenever livestock on Indian lands become infected with contagious or infectious diseases, or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable federal, state and tribal laws. Animals that die from contagious or infectious diseases shall be burned at once and the carcasses of all animals which die close to water, trails, or other places where they will be a nuisance shall be removed immediately.

(b) Lessees or permittees are required to participate in the State-Federal Brucellosis Eradication Program. All herds must participate in the area certification and recertification program and when found to be infected, must remain under quarantine, be segregated from all other herds, and complete scheduled retests until released from quarantine.

(c) All female calves to be kept for breeding purposes should be vaccinated between three (3) and eight (8) months of age. Breeding cattle being transferred into the Indian lands covered by lease or permit must originate:

(1) From herds that are in a Modified Certified or Certified Free Area not under quarantine for brucellosis; or

(2) From herds that are officially vaccinated female animals under thirty (30) months of age; and

(3) From herds which have tested negative to the blood test within the past twelve (12) months, and the animals moving into the area have tested negative to the blood test not more than thirty (30) days prior to entry.

4-11-74 Kind of Livestock

Upon consideration of the recommendations of the Director, the Business Council may determine the kind of livestock that may be grazed on range units within the reservation. The kind of livestock shall be subject to the grazing capacity determined in accordance with this Chapter and the conservation and land use requirements of this Chapter. **Domestic sheep and goats will be restricted from range, due to the potential spread of disease to wild big horn sheep populations.**

(Amended 03/17/11, Resolution 2011-170)
(Certified 04/01/11)

GRAZING PERMITS

4-11-100 Grazing Permits

Unless otherwise provided by this subchapter, all use of range units for livestock grazing, shall be authorized by a grazing permit issued by the Business Council upon the recommendation of the Director. Unless otherwise provided by the Business Council, each grazing permit shall last for a period of five (5) years and non-members whose permanent residence is not within the boundaries of the Colville Indian Reservation shall not be permitted to graze livestock on the reservation.

4-11-101 Individually Owned Lands

Except as provided by this section, any individually owned lands shall be excluded from the permitting process. The Business Council may include individually owned land in grazing permits on behalf of:

- (a) Orphaned minors;
- (b) Persons who are not sound of mind and without legal guardians;
- (c) Undetermined heirs or devisees of a deceased Indian owner;
- (d) Adults whose whereabouts are unknown;
- (e) Heirs or devisees, none of whom are using the land and who have not been able to agree upon the permitting of their land during a three (3) month period, and after notice given by posting a general notice in all post offices on the reservation;
- (f) Any owner who gives the Tribes written authority to grant grazing privileges; and
- (g) Any other minor or person who is not sound of mind or is otherwise under legal disability, if that person's guardian, conservator, or other fiduciary, appointed by a State or Tribal Court of competent jurisdiction, gives the Business Council written authority to grant grazing privileges.

4-11-102 Issuance of Grazing Permits

(a) Unless otherwise provided by this section, grazing permits shall be advertised for competitive bid by the Director. Advertisements shall:

- (1) Be for a thirty (30) day period unless otherwise authorized by the Business Council;
- (2) Call for sealed bids;
- (3) Contain a statement, where applicable, that an oral auction subsequent to sealed bid may occur opening at the discretion of the governing body; and
- (4) Limit the privilege of meeting high sealed bids of non-Indians to adult tribal members, Indian corporations, and Indian associations, according to preference determined by the Business Council.

(b) The Council reserves the right to reject any or all bids.

(c) The Business Council may authorize the issuance of grazing permits by negotiation when, in its discretion, no useful purpose would be served by advertisement. Negotiated permits shall be limited to the grazing capacity established pursuant to this Chapter.

(d) The Business Council may authorize the issuance of grazing permits without competitive bidding on rangelands within the reservation to Indian corporations, Indian associations, and adult tribal members of the Tribes. Tribal members residing on or near the reservation may be given preference in issuance of permits over members residing away from the reservation providing land ownership patterns dictate this to be logical.

(e) Grazing permits shall not be issued to persons owing delinquent fees or other payments under this Chapter.

(Amended 12/16/04, Resolution 2004-776)
(Certified 12/28/04)

4-11-103 Special Permit Requirements and Provisions

(a) All grazing permits shall provide that:

(1) The permittee agrees he will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose;

(2) If the Director finds upon examination of the range, at any time after issuance of the permit, the condition of the range requires adjustment in the amount or other respect of grazing use, the permittee shall adjust his use to the extent the Director deems necessary;

(3) The permit authorizes the grazing of livestock only and the permittee shall not utilize the permitted area for hay cutting, post or timber cutting, or any other use without written authorization from the Business Council.

(b) Nothing in this Chapter shall be construed to affect the general privileges shared by all tribal members to access on tribal properties.

4-11-104 Bonding and Insurance Requirements

(a) The Director may require the permittee to submit a performance bond that will reasonably assure performance of the permit obligations. A bond when required, may be for the purpose of guarantying the estimated construction cost of any improvement to be placed on the land which will become the property of the landowner or to insure compliance with special or additional contractual obligations.

(b) The permittee may be required to provide insurance in an amount adequate to protect any improvements on the permitted premises; and may also be required to purchase appropriate liability insurance and such other insurance as may be necessary to protect the landowner's interest.

4-11-105 On-and-Off Grazing Privileges

The permittee may be allowed credit for the grazing capacity of other rangelands not covered by the permit, but which are owned or controlled by him and grazed in common with the permitted lands as a part of the range unit. The grazing capacity will be determined by the Director and shown on the grazing permit.

4-11-106 Assignment of Grazing Privileges

Grazing permits shall not be assigned, subpermitted or transferred without the consent of the Business Council. In addition to any other penalty provided for a violation of this Chapter or a permit issued under this Chapter, any income received by the permittee for a violation of this section shall be returned to the Tribes and the permittee may be subject to civil penalties as provided by this Code.

4-11-107 Modification and Cancellation of Permits

(a) Following a hearing on the record as provided by the administrative procedures provisions of this

Code, the Director may revoke or withdraw all or any part of a grazing permit by cancellation or modification for a violation of the permit or this Chapter.

(b) The Business Council may, without the necessity of a hearing by cancellation or modification, revoke or withdraw all or any part of :

- (1) A tract of individually owned land from a grazing permit upon the request of the individual Indian owner(s) on one hundred and eighty (180) days written notice;
- (2) Any lands on thirty (30) days written notice if the Tribes no longer has jurisdiction over such lands.

TRESPASS AND RELATED VIOLATIONS

4-11-140 Acts Prohibited on Restricted Lands

The following acts are prohibited under this Chapter:

- (a) Grazing upon or driving across any individually owned or tribal lands of any livestock without an approved grazing or crossing permit;
- (b) Unless otherwise provided by this Chapter, allowing livestock to drift and graze rangelands without an approved permit;
- (c) The grazing of livestock upon rangelands within an area closed to grazing of that class of livestock;
- (d) The grazing of livestock upon an area of rangeland withdrawn from use for grazing purposes to protect it from damage, after the receipt of notice from the Director or his designee of such withdrawal, or refusal to remove livestock upon instructions from the Director when an injury is being done to the rangeland by the improper handling of livestock;
- (e) The grazing of livestock in violation of any provision of this Chapter or any other resolution or Chapter of the Colville Business Council.

4-11-141 Notice and Order to Remove

- (a) When it has been determined that a violation under this subchapter exists and the owner of the unauthorized livestock or violator is known, the Director shall serve written notice upon the alleged violator or his agent by certified mail return receipt requested, or personal delivery and a copy of the notice shall be sent to any known lien holder. The notice shall set forth the act constituting the violation, the legal description of the land where the livestock were observed, the verification of brands in the Washington State Brand Book, and the law or regulation alleged to have been violated. The notice shall also instruct the alleged violator to remove the livestock or take other action necessary to terminate the violation within a specified time, allow a specific time from receipt of the notice to show that there has been no violations, or pay a penalty and damages as determined under this subchapter. If the alleged violator fails to comply with the notice, the Director may impound the livestock involved as provided in this subchapter. The Director may notify the alleged violator orally in addition to written notice as it deems necessary.
- (b) When neither the owner of the unauthorized livestock nor his representative is known, the Director may impound the livestock as provided in this subchapter upon the posting of notice in two public places on the reservation.

4-11-142 Penalties and Damages

- (a) The amount due the landowner and/or the Tribes for a violation of this subchapter shall be determined as follows:
 - (1) The Range Department is authorized to assess fees and penalties according to the Range Department schedule;

(2) Fees and Penalties may include:

(A) Violation Step Process

- i. Violation 1-written warning with signed documentation requiring a corrective action plan to address violation issues
- ii. Violation 2- a fine in the amount of \$75 will be issued
- iii. Violation 3- a fine in the amount of \$150 will be issued
- iv. Violation 4- a fine in the amount of \$250 will be issued, and permittee will be placed on probation
- v. Violation 5-cancellation of the permit requiring immediate removal of all associated livestock

(B) If livestock are deemed a threat to public safety, animals may be impounded at any step in the process and associated penalties will be the responsibility of the permittee

(C) Permittee's will start each new calendar year three (3) steps below their finishing status from the prior year (ex. 6 violations in 2009, so permittee will start 2010 at step 3)
(Amended 03/17/11, Resolution 2011-170)
(Certified 04/01/11)

- i. (D) If applicable, a reasonable value of forage consumed, payable to the landowner or the Tribes as appropriate, based upon the following schedule for Fair Market Value rates (FMV):

Animals left on range less than two (2) weeks after the closing date- 2 X FMV/AUM

Animals left on range from two (2) to four (4) weeks after the closing date- 4 X FMV/AUM

Animals left on range from four (4) to six (6) weeks after the closing date- 8 X FMV/AUM

Animals left on range more than six (6) weeks after the closing date- 16 X FMV/AUM
Ex. An animal left out 7 weeks after the closing date would be charged-

7 weeks=49 days 49/30 days=1.63 months
1.63x (16x\$8.50= \$136.00)=\$221.68

(Amended 03/17/11, Resolution 2011-170)
(Certified 04/01/11)

(B) Any damages to private or tribal property injured or destroyed; and

(C) All expenses to the Tribes, incurred in gathering, impounding, caring for, and disposing of livestock in cases which necessitate impoundment under this subchapter.

(b) Neither the imposition of any civil penalty nor any action under this section shall preclude either any civil actions by the Tribes or a private land owner for damages caused by trespassing livestock or prosecution for any offense involved with such trespass.

(c) The Director shall take action to collect all such penalties and damages, reimbursement for expenses incurred in impoundment and disposal, and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the landowners where the trespass occurs except that the value of

forage or crops consumed or destroyed may be paid to the lessee of the lands not to exceed the rental paid, and reimbursement for expenses incurred in impoundment and disposal shall be credited as appropriate.

(Amended 12/16/04, Resolution 2004-776)
(Certified 12/28/04)

4-11-143 Demand for Payment

Where the livestock have been removed or the violation otherwise terminated, but satisfactory settlement has not been made within the time prescribed under this section the Director shall send by certified letter, return receipt requested or personally deliver to the livestock owner or his agent, and a copy of the letter shall be sent to any known lien holder. The letter shall demand immediate settlement and advise the violator that unless settlement is received within five (5) working days from the date of receipt, the case may be referred to the tribal prosecutor for appropriate action.

4-11-144 Impoundment

(a) Range Department: The Range Department assumes livestock control and compliance issues within range unit boundaries. Livestock trespassing from range units to other properties shall be the responsibility of the Range Department to notify permittee. Any livestock issues concerning trespass, neglect or abandonment that occurs on private, lease or other tribal properties other than range units will be the responsibility of the Range Department.

(Amended 03/17/11, Resolution 2011-170)
(Certified 04/01/11)

(b) Livestock that trespass from private onto range, the Range Department will assume responsibility to mitigate those instances, issue citations and impound livestock if the owner does not comply.

(c) Livestock which may be impounded as provided by this subchapter, may be impounded at any convenient place on the reservation by the employees of the Department(s). Within twenty four (24) hours after impoundment, the person impounding the livestock shall register the same with the Tribal Court.

(d) Upon registration with the Tribal Court, the judge shall set a date and time for a hearing to be held concerning the impoundment. The hearing shall be held not less than five (5) days after service or mailing of the notice as provided herein, whichever is later, if the owner is known, unless the owner requests and is granted an earlier date, and not less than fourteen (14) days after posting of the notice as provided herein, if the owner is unknown. If the owner of the livestock is known, the notice of hearing may be personally served or sent by certified mail. If the owner of the livestock is unknown, the notice shall be served by posting notice in two public places on the reservation.

(e) The notice of hearing shall state that the livestock have been impounded, the name of the person impounding them, and the reason therefor, the brand if any, a general description of the place where the trespass or other violation occurred, and the present location of the livestock impounded and the keeper thereof, and the time, date and place of the hearing.

(f) The tribal prosecutor shall represent the Tribes in a hearing under this section. If the Court determines by a preponderance of the evidence that the impounded livestock were grazing in violation of this Chapter, the Court shall enter judgment for penalties and damages as provided by this subchapter. In addition, the Court shall order the impounded livestock sold, in a commercially-reasonable manner, fourteen (14) days from the date of the hearing to pay the amount of judgment and the fine, unless the owner shall pay such amount, in addition to the charges accrued up to the date of payment and costs of the hearing.

(Chapter 4-11 Adopted 10/1/97, Resolution 1997-536)
(Amended 9/16/66, Resolution 1966-287)
(Amended 3/11/55, Resolution 1955-29)
(Livestock Ordinance Adopted 1/15/44)