

# AGRICULTURAL AND RANGELAND MANAGEMENT HANDBOOK

54 IAM 1-H



Department of the Interior  
Bureau of Indian Affairs  
Division of Natural Resources  
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## FOREWORD

This handbook establishes the standards, requirements, and procedures required to implement the Bureau of Indian Affairs' (BIA) policy on the Agricultural and Rangeland (Ag & Range) Management program as documented in the Indian Affairs Manual (IAM); specifically 54 IAM 1: Agricultural and Rangeland Overview, and in other Part 54 policy chapters. This handbook also reflects procedural changes related to 25 CFR 166 regarding grazing permit regulations and portions of 25 CFR 162 regarding agricultural leases, which have been revised to implement the American Indian Agricultural Resources Management Act (AIARMA) and National Environmental Policy Act (NEPA) requirements. The AIARMA and other regulations seek to balance BIA's responsibility as a trustee of Indian land and resources with the need for Indian Tribes and individual Indian landowners to lease and permit their agricultural and range trust lands.

This handbook supersedes any supplements or policy previously created, distributed, and/or published throughout Indian Affairs (IA) regarding the Ag & Range Management program.

**Darryl LaCounte** Digitally signed by Darryl  
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Date

## Table of Contents

Chapter 1: Introduction .....	1
1.1 <i>Purpose</i> .....	1
1.2 <i>Oversight of Natural Resources by BIA</i> .....	1
1.3 <i>Relationship with Tribally Contracted/Compacted Programs</i> .....	3
1.4 <i>Relationship with the U.S. Department of Agriculture (USDA) Programs</i> .....	4
Chapter 2: Overview of Land Management Responsibilities and Procedures .....	5
2.1 <i>Land Management Responsibilities</i> .....	5
2.2 <i>Land Management General Actions</i> .....	7
Chapter 3: Agricultural Resource Management Plan (ARMP) Development.....	11
3.1 <i>ARMP Purpose and Development Considerations</i> .....	11
3.2 <i>Preparing and Finalizing an ARMP</i> .....	18
3.3 <i>ARMP Format Guidance</i> .....	20
3.4 <i>Plan Implementation and Monitoring</i> .....	22
Chapter 4: Range Management.....	23
4.1 <i>Range Units</i> .....	23
4.2 <i>Grazing Permit Requirements</i> .....	24
4.3 <i>Tribal Allocation of Grazing Privileges</i> .....	29
4.4 <i>Competitive and Negotiated Sale of Grazing Privileges</i> .....	31
4.5 <i>Issue a Grazing Permit</i> .....	34
4.6 <i>Administer Grazing Permits</i> .....	38
4.7 <i>Conduct Grazing Permit Compliance</i> .....	41
4.8 <i>Respond to Potential Trespass</i> .....	45

Chapter 5: Agriculture .....56

    5.1      *Agricultural Conservation Plan Development* .....56

    5.2      *On-site Agricultural Land Inspection for Lease Compliance*.....58

    5.3      *Noxious Weed Program*.....62

DEFINITIONS.....65

## ***Chapter 1: Introduction***

### **1.1 Purpose**

This handbook provides operating requirements and procedures for BIA employees that manage and protect trust agricultural resources. Entities carrying out agricultural and range activities on behalf of IA under contracts or other agreements such as compacts may choose to use this handbook as guidance as well. Additional information on Tribally contracted/compact programs is found in section 1.3 below.

In order to protect, conserve, utilize, and manage Indian agricultural and grazing lands, BIA performs the following functions:

- inventory and monitoring of agricultural resources;
- development of agricultural resources management and conservation plans for trust Indian assets; and
- conducting lease and permit administration, compliance, and enforcement.

BIA utilizes the AIARMA and its regulations to balance its responsibility as a trustee of Indian land and resources with the needs of Indian Tribes, and to approve leases and allow permits for individual Indian landowners' agricultural and range trust lands.

All references to "agency" and "region" within this handbook are to the applicable BIA agency and/or region, unless otherwise noted.

### **1.2 Oversight of Natural Resources by BIA**

BIA is responsible for protecting and preserving trust resources on behalf of Indian landowners, which includes conservation, best management practices, and preventing misuse of trust land. BIA uses the best scientific information available as well as reasonable and prudent conservation practices to manage trust and restricted Indian lands. Conservation practices must also reflect Tribal land management goals and objectives.

BIA's regional Natural Resources staff may assist in the development of management plans covering the following issues:

- drought management;
- noxious weed management;
- watershed management;
- game and fish management;
- outdoor recreation;
- wildfire prevention and control;

- emergency stabilization and rehabilitation;
- prescribed fire;
- land and livestock law enforcement; and
- regulation, enforcement and litigation.

Additionally, BIA staff may be asked to function as advisors and instructors. Decisions relative to agriculture disciplines and functions are affected by science, laws, regulations, and policies. Decisions may also be influenced by social, cultural, and traditional differences within and among Tribal groups.

Key program practices followed by BIA include:

- Ensuring compliance with the AIARMA, as amended. The AIARMA defines:
  - Indian landowner participation in land management activities; and
  - the relationship between Indian landowners and the Secretary of the Department of the Interior (DOI) with regard to Indian land management activities, Tribal laws, and ordinances.
- Ensuring compliance with applicable environmental and cultural resources laws.
- Ensuring compliance with Tribal laws regulating activities on Indian agricultural land, including Tribal laws relating to land use, environmental protection, and historic and/or cultural preservation, unless prohibited by federal law.
- Assisting Tribes in the management of Indian agricultural lands either directly or through contracts, compacts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended.
- Administering land use in conformance with 25 CFR 162 - Leasing and Permitting and 25 CFR 166 - Grazing Permits.
- Seeking Tribal participation in BIA agricultural and rangeland management decision-making.
- Integrating environmental considerations into the initial stage of planning for all activities with a potential impact on the quality of the land, air, water, or biological resources.
- Investigating accidental, willful, and/or incidental trespass on Indian agricultural land.
- Providing leadership, training, and technical assistance to Indian landowners and permittees/lessees.
- Keeping records that document the organization, functions, business practices, decisions, procedures, operations, and other activities undertaken in the

performance of federal trust functions.

- Restricting the number of livestock grazed on Indian range units to the estimated grazing capacity of such ranges; and developing other rules and regulations as may be necessary to protect the range from deterioration and soil erosion, and assuring full utilization of the range and like purposes.
- Ensuring farming and grazing operations are conducted in accordance with recognized principles of: (1) sustained yield management, (2) integrated resource management planning, and (3) sound conservation practices.

### **1.3 Relationship with Tribally Contracted/Compacted Programs**

The ISDEAA provides for Tribes to contract BIA programs (and portions thereof) or services. BIA retains authority to approve leases, permits, grazing capacities, environmental documents, and other actions.

The level of services provided by the Tribe to BIA, and vice versa, is specified in the contract's Scope of Work. Agency and regional office Line Officers and agriculture staff are included in the Scope of Work negotiations to ensure proper staffing and workload analysis. The BIA Agency Superintendent or Regional Director (RD) retains "residual" staff and/or funding to cover the cost of any work or services not provided for in the contract's Scope of Work. Residual funding also covers the cost of trust reviews, program evaluations, and monitoring of the technical aspects of the Scope of Work.

If a Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) between the Tribe, BIA, and another federal agency (such as the Natural Resource Conservation Service (NRCS)) exists, it may need revision to define each party's roles, responsibilities, and commitments. Neither BIA nor the Tribe should assume that any federal agency or other organization performs functions (inventories, monitoring, planning) without their acknowledgement.

By provisions of the ISDEAA, compact Tribes deal directly with the IA Office of Self-Governance (OSG) and the Office of Indian Services' Division of Self-Determination (SD). Agency and/or regional offices contact OSG when pending actions require BIA approval, such as:

- leases, permits, grazing capacities;
- Finding of No Significant Impact (FONSI); or
- Record of Decision (ROD).

Contact with OSG ensures that BIA staff/workload can be factored into annual funding agreements.

Agency and/or regional offices contact SD on the pending OSG and BIA actions.

#### **1.4 Relationship with the U.S. Department of Agriculture (USDA) Programs**

BIA strives to communicate, coordinate, and cooperate with federal, Tribal, state, and local organizations on conservation and land management issues. AIARMA requires the Secretary to work with all appropriate federal departments and agencies to avoid duplication of programs and services currently available to Indian Tribes and landowners. A national MOU between BIA and USDA, relative to planning and implementation of USDA conservation programs on Indian lands, was drafted and approved in 2019. This MOU provides for better coordination of services to Indian landowners and improved working relationship between BIA and USDA.

USDA's Animal and Plant Health Inspection Service (APHIS) may have existing MOUs to deal with Foreign Animal Disease Control and Pest Management Control. These MOUs may exist between local agencies and Tribes. Currently a National MOU between BIA and USDA for grasshopper control is in effect.

Conservation funding is available through the USDA. The USDA's NRCS administers programs such as the Environmental Quality Improvement Program (EQIP), the Wildlife Habitat Improvement Program (WHIP), and the Grasslands Reserve Program (GRP).

The Farm Services Agency (FSA) administers programs such as the Conservation Reserve Program (CRP), and other emergency programs associated with drought, other natural disasters, and crop subsidy programs. Involvement in these programs is voluntary.



## ***Chapter 2: Overview of Land Management Responsibilities and Procedures***

### **2.1 Land Management Responsibilities**

Ag & Range responsibilities and authorities are documented in detail in each of the Part 54 policy chapters in the IAM. However, the following section provides an overview of land management responsibilities by function.

#### **A. Inventory**

Soil and vegetation inventories, land classifications, and monitoring data provide the basis for land use planning and resource allocation decisions by BIA and the Indian landowner. In conducting rangeland inventories, BIA follows National Cooperative Soil Survey Standards for soil surveys and ecological site descriptions. At some locations, BIA-developed range site guides are utilized.

When using existing soil surveys and rangeland inventories, consider these factors: (1) type and size of map unit delineations; (2) scale of data collection; (3) sampling protocols; and (4) date the last inventory was completed. On-site inspections or sampling must verify that survey information is accurate and useful. Alternatively, it may determine whether more detailed or site-specific data is needed.

#### **B. Monitoring**

BIA conducts qualitative and quantitative monitoring to:

- ensure protection of trust natural resources;
- assess resource health, condition, utilization, and trends;
- detect and respond to noxious weeds, drought, insect, rodent, and disease outbreaks and other natural disasters;
- address environmental problems and issues;
- evaluate the Agricultural Resource Management Plan (ARMP) and the conservation plan objectives;
- comply with lease or permit provisions; and
- identify trespass.

Qualitative monitoring is based on observation and usually involves comparing current soil, hydrologic, and vegetation attributes as a means to reference current conditions. Quantitative monitoring is based on repeated measurements compared over time to indicate change or trend.

BIA regional or agency/field offices establish the frequency of monitoring (e.g., annually, every five years, when conditions warrant), and the methods used to conduct periodic vegetative monitoring studies. These studies are required to support management of rangeland soil and resources. Studies may include one or more of the following: (1) range utilization; (2) trend

assessment; (3) condition (similarity index) rating; and/or (4) rangeland health evaluation.

Range utilization studies provide information on livestock and wildlife use and distribution patterns. These types of studies may be used in conjunction with other monitoring data for adjusting grazing capacity or management practices. Trend assessments measure changes in soil and plant attributes that have an effect on site protection and production. Condition ratings compare the existing plant community to a reference or desired plant community. Resulting similarities or differences are used to evaluate the current state of the plant community and direction of change. Rangeland health evaluations examine the integrity of rangeland ecosystem processes. These evaluations are used to determine if the rangeland is functioning properly.

### **C. Improvements**

BIA works with the permittee/lessee and Tribe to construct and/or maintain land improvements specified in conservation plans, such as fencing or water developments. BIA may assist in obtaining cost sharing from other state, federal, and private entities. Once the improvement is constructed or repaired, the permittee/lessee may be responsible for maintenance. The improvement becomes real property unless otherwise specified in the permit or lease.

### **D. Compliance**

BIA monitors permittee/lessee compliance with the provisions of agriculture leases and permits. These inspections serve to:

- verify and document that the Indian trust land is being used according to the provisions of the applicable permit/lease and conservation plan;
- assess the condition of the resources; and
- prevent unauthorized use.

### **E. Permit/Lease File Maintenance**

All documents pertaining to a permit/lease issued on behalf of Indian landowners is an official record of the US Government and must be maintained in accordance with the Indian Affairs Records Management Manual (IARMM). The IARMM may be accessed at [https://www.doi.gov/ost/records\\_mgmt/about-the-office-of-trust-records](https://www.doi.gov/ost/records_mgmt/about-the-office-of-trust-records).

### **F. Reporting**

Each BIA regional and agency office is required to prepare an annual Natural Resources Report and annual Crop Report; the Trust Asset and Accounting Management System (TAAMS) is IA's system of record for agriculture land use, and is used to generate these reports. These reports document the organization, functions, policies, decisions, procedures, operations, and activities undertaken in executing the Ag & Range program. In addition, the Ag & Range program may develop an annual work plan, schedule periodic program reviews, or prepare a brief annual report that highlights accomplishments and results.

## **2.2 Land Management General Actions**

The following sections provide an outline of general actionable items in consideration of land management.

### **A. Administrative Appeals for Cancelled Permits and the Administrative Record**

If a permit is cancelled for cause, the permittee is notified by the Line Officer (i.e., BIA Agency Superintendent) of the right to appeal under 25 CFR 162.253. The amount of any appeal bond that must be posted with an appeal of the cancellation decision is included in the notification of cancellation. The permittee is ordered to vacate the property within 30 days of the date of receipt of the written notice of cancellation.

The RD or other designated reviewing official will address the initial appeal. In order to review a decision and decide an appeal, an administrative record must be compiled. The detailed requirements for an administrative record for appeals before the Interior Board of Indian Appeals (IBIA) can be reviewed in *BIA Administrative Appeals and Decision Writing, Board of Indian Appeals, February 1989*. These requirements, while specifically addressed to appeals before IBIA, may also serve as guidelines for preparing administrative records for appeals conducted within BIA (by the RD or other reviewing official).

Copies of written communications concerning BIA actions should be kept in locations that are easily accessible. Documentation concerning these communications may become necessary to compile an administrative record at a later date. Memoranda to the file or other written records of oral communications should be prepared as they occur. If necessary, affidavits of BIA employees should be included as part of the administrative record to explain factual matters not otherwise reflected in routinely preserved documentation. An administrative record should contain:

- A copy of the decision being appealed.
- All documents that were presented to the BIA initial decision maker.
- All documents referred to in the initial decision.
- All background documents necessary to have a complete understanding of the initial decision. For example: If an appeal involves interpretation of a Tribal constitution, a copy of the constitution is an essential part of the record.
- Documents (in their entirety) should be included in the record, if possible, even though only certain portions of the documents are directly involved in the appeal. If, due to volume or other reason, it is not feasible to include an entire document, excerpts should be clearly identified as such.
- Documents that are published and readily available to the public need not be included. (i.e., federal statutes and regulations). BIA memorandums and other internal documents

should be included since these documents are not readily available to the Board or to the parties to the appeal.

- Documents should appear in chronological order unless some other order is more appropriate to the particular case.
- A Table of Contents.
- Documentation that supports a rational basis for the initial decision.

BIA is required by 43 CFR 4.335 to assemble and transmit the administrative record within 20 calendar days after receipt of a notice of appeal, or upon notice from IBIA. The administrative record generally consists of all supporting documents used in making the initial decision, as well as correspondence and information filed by the Appellant.

## **B. Investigate and Resolve Trespass Claims**

BIA's Agricultural Trespass policy (54 IAM 6) provides for investigation and resolution of trespass matters as quickly as possible. These policy provisions are consistent with BIA's trust obligation to protect and conserve Indian agricultural lands as well as with DOI's fiduciary obligations. Accordingly, BIA is required to enforce the terms of all leases, permits, and other agreements that provide for the use of trust assets. Enforcement includes taking appropriate steps to remedy trespass on trust or restricted lands.

Use of Indian trust land may be granted by BIA. However, penalties may be assessed on a variety of actions that may occur on agricultural lands if the actions are initiated without appropriate approvals. The most common agricultural trespass is livestock trespass. The definition of trespass is broad and covers a wide range of other activities. These include:

- unauthorized human occupancy;
- construction of roads;
- pipelines and/or other facilities;
- other land modifications; or
- other use without a valid permit.

Tribes may adopt BIA trespass regulations. Doing so affords Tribes concurrent jurisdiction to enforce these regulations. Additionally, Tribes can develop their own trespass regulations under a Tribal ordinance and enforce their ordinances on Tribal lands. At the Tribe's request, BIA may assist in enforcing Tribal laws pertaining to Indian agricultural lands. Upon Tribal request, BIA will defer prosecution of Indian agricultural land trespass cases to Tribal governments/courts.

Pursuant to 25 CFR 166, Subpart I, trespass is an unauthorized occupancy of, use of, or action on Indian agricultural lands. The provisions of this subpart also apply to Indian agricultural land managed under an agricultural lease or permit per 25 CFR Part 162. Trespass can be accidental

or willful. In either case, trespass deprives the landowner of revenue and may cause resource damage.

In order to determine if trespass has occurred, it is necessary to review what land was contracted by the lease or permit. In many cases, the leased premises are described by not only the legal description, but by the tract or allotment number as well. Real estate can be described in several ways: by aliquot parts of the section; range and township; by metes and bounds; or by reference to plat, lot number, or map.

BIA's Division of Land Titles and Records (DLTR) and its offices (LTROs) are the official federal offices-of-record for all documents affecting title to Indian lands. LTROs also provide for the determination, maintenance, and certified reporting of land title ownership and encumbrances on Indian trust and restricted lands.

For purposes of this handbook, livestock trespass is the example used. However, the procedures are essentially the same for evaluating/assessing all trespass actions that occur on agricultural trust lands. Before notice is provided to the livestock owner and deadlines are established for livestock removal, the trespass is evaluated to determine:

- the location of livestock;
- the seriousness of the trespass; and
- whether any damage has occurred or may occur that requires immediate removal.

BIA policy (54 IAM 6) enables BIA to:

- investigate all accidental, incidental, and/or willful trespass on Indian agricultural land;
- respond to all alleged trespass in a prompt, efficient manner;
- determine whether trespass occurred and, as applicable, determine whether trespass is likely civil or criminal;
- notify the appropriate law enforcement agency if criminal trespass is suspected;
- assess trespass penalties for the value of products used or removed, cost of damage to the Indian agricultural land, and enforcement or other costs incurred as a consequence of the trespass; and
- assess damage costs for rehabilitating and restoring Indian agricultural lands.

### **C. Unrestricted Fee Interests in Grazing Permits**

Grazing permits may be issued for allotted land where ownership interests include unrestricted (fee) interests and undivided, restricted interests.

Since the unrestricted interest cannot be partitioned, it is inseparably mingled with the restricted interest. Therefore, both interests (fee and restricted) must be managed equitably. When applicable, multiple tracts of land (varying interests) may be combined into a unit. Under these

circumstances the revenue generated will be distributed based upon each landowner's interest (often expressed as a percentage or a decimal interest). The actual distribution of funds to landowners is determined by multiplying each landowner's decimal interest by the rental amount received.

When a restriction on an undivided interest in an allotment is removed, a fee patent is issued to the owner. BIA's LTRO keeps a record showing the individual to whom the original patent was issued. However, records are not maintained for subsequent transfers of the fee patent title. The fee patent or unrestricted interest holder is supposed to record the patent at the local recorder of deeds (county recording office). However, this does not always occur.

It is the responsibility of the owner of the unrestricted interest to prove his title for the purposes of receiving revenues from the permit. Evidence of ownership may be shown in several ways:

- A common method is to obtain a title insurance policy from a title insurance company.
- An attorney's opinion on the ownership is also commonly accepted.
- The owner may also present documents (e.g., affidavit, probate) relating to title to BIA to obtain a legal opinion.

Payments are made to the owner of record until such time as other legal transfers of title are received and proof of new ownership is established. If the owner of the unrestricted (fee patent) interest is unknown or the owner is unable to supply evidence of ownership, proceeds for the respective unrestricted interest will be held in a Special Deposit "X" account by the Bureau of Trust Funds Administration (BTFA). The funds remain in the Special Deposit account until ownership is determined, or until BTFA disposes of the funds in accordance with its procedures.

## ***Chapter 3: Agricultural Resource Management Plan (ARMP) Development***

### **3.1 ARMP Purpose and Development Considerations**

The AIARMA Section 101 requires a Tribe (or BIA's Ag & Range program in close coordination with a Tribe) to develop an ARMP. The purpose of an ARMP is to define specific Tribal goals and objectives for agricultural and range resources, and can cover all significant agricultural resources for the reservation. An ARMP provides guidance, and in some cases specific permit or lease requirements or provisions, to meet ARMP goals. The typical planning horizon is usually ten years. An ARMP should be developed in accordance with the provisions of 25 CFR 162.201 and 166.311, and must comply with NEPA mandates contained in 40 CFR Chapter V.

In order to develop an ARMP, pertinent information about resource conditions, environmental factors, and landowner agricultural resource goals should be gathered. This information will assist in determining a long-term plan. Specifically, an ARMP:

- 1) identifies available agricultural resources;
- 2) defines critical values of the Tribe and its members;
- 3) establishes holistic management objectives for the resources;
- 4) is developed through public meetings;
- 5) makes use of the public meeting records, existing survey documents, reports, and other research from federal agencies, Tribal community colleges, and land grant universities;
- 6) completes the development phase within three years after plan initiation;
- 7) defines monitoring needs on Indian agricultural lands;
- 8) protects, conserves, and maintains sustainable productive potential of Indian agricultural lands;
- 9) promotes the diversity and availability of Indian agricultural products;
- 10) manages agricultural resources consistent with Integrated Resource Management Plans (IRMPs); and
- 11) defines prudent management and conservation practices.

## **A. Critical Tribal Values, Goals, and Objectives**

The AIARMA requires ARMPs to identify the "critical values" for Tribes. The list of values below provides an example of critical values for Tribes (the example is specific to the Salish and Kootenai Tribes). These were arrived at in a series of community meetings, technical team meetings, and Tribal Council sessions. This particular list of values includes:

- 1) Learn to live in harmony. Live in harmony with each other and with the land.
- 2) Our ancestors left this land and we are only borrowing it from our children. As we make decisions that affect the land, we must consider the consequences those decisions will have, at least for the next seven generations.
- 3) Respect the land. Replace what you take; take only what you need. By respecting the land, we respect ourselves.
- 4) Preserve spirituality and culture. Act on a spiritual basis when dealing with the environment; always be aware of and appreciate what we have. Turn to the Creator when in need. Perpetuate the value of Indian culture.
- 5) Protect mother earth. Repay the land for its gifts. Mother earth was here before humans and has provided us with the needs of life.
- 6) Preserve an abundance of animals, plants, and fish.
- 7) Maintain hunting and fishing based on need and traditional use.

## **B. Resources for Planning Development: Professional Subject Matter Experts**

The following list shows professional subject matter resources that may be suggested to Tribes in their consideration and development of a Tribal ARMP:

Archeologist

Landscape Architect

Cultural Advisor or Tribal Elder

Forester - Manager, Forest Development, Reforestation, Inventory, Fire Environmental Scientist

Geologist

Soil Conservationist

Soil Scientist

Rangeland Management Specialist

Wildlife Biologist

Fisheries Biologist



Recreation Director  
Hydrologist  
Irrigation Engineer  
Natural Resources Officer  
Geographic Information Systems (GIS) Specialist  
Highway Engineer  
Civil or Agricultural Engineer and/or Technician  
Realty Officer and/or Specialist  
Tribal Council Member Planner  
Housing Director  
Human Resources Specialist  
Economic Development Director  
Secretary and/or Clerk/Typist

### **C. Additional Items to Consider when Developing an ARMP**

#### **1. General**

- Access – roads, trails, gates, bridges, water fords, right-of-way (ROW)
- Aesthetics, view shed
- Agricultural lands – amount and demand for farmland, hay land, pastureland, rangeland
- Agricultural leases and permits – granting and approving authority, administration, compliance, and enforcement
- Agricultural products storage – hay, grain, silage
- Agricultural values, goals, and objectives
- Air quality – standards, Best Management Practices (BMPs), Particulate Matter (PM)-10, spray drift, feedlot odor
- Best management practices and technical specifications
- Bio-solids land applications
- Bison or other species of management concern (e.g., wolves, grizzly bears, prairie dogs, black-footed ferrets)
- Conservation Districts – representation at local, state, and national levels, NRCS program delivery
- Conservation easements
- Construction, future – schools, roads, housing, waste systems, public facilities

- Cultural sites, including culturally significant areas or resources – surveys, protection, and management
- Drought – monitoring and response
- Dredge or sediment disposal or land applications
- Economic development plans
- Ecotourism – guided tours, nature trails, special events
- Environmental issues
- Equipment needs – trucks, trailers, radios, cell phones, computers, Global Positioning System (GPS) units
- Equipment, fuel, and chemical storage
- Farm or ranch headquarters – location, maintenance
- Farmland or rangeland improvements – plans, maps
- Fences
- Feral and wild animals (cattle, horses, burros, dogs, etc.)
- Financial assistance and credit availability
- Fish and aquatic species – protection
- Floodplain management – flood preparedness and response
- Forest management – grazing opportunities and forest products (posts, poles)
- Funding for Agriculture program
- Genetically Modified Organisms (GMOs) – Tribal policies
- GIS and GPS mapping technology, internet, and e-mail access
- Growing season, growing degree days, hardiness zone, evapotranspiration, soil moisture, and temperature
- Historical use – stocking rates, cropping history, traditional use areas
- Human resource development – education, training, workshops
- Hunting – seasons, farm, or livestock issues
- IRMP or Comprehensive Resources Plan
- Interdisciplinary Teams (IDTs) – roles, protocols
- Land acquisitions
- Land ownership status – Tribal, allotted, government, fee, state
- Land use conversion
- Land use/management priorities

- Land use zoning
- Land users' capabilities or limitations – management level, skills, time commitment, financial constraints
- Laws and regulations – federal, Tribal
- Marketing practices, facilities, and opportunities
- Memorandums of Understanding/Agreement related to agriculture
- Minerals – coal, oil, and gas exploration
- Noxious weeds, invasive species, poisonous plants – prevention, detection, and control
- Off-road vehicle use – All Terrain Vehicles (ATVs), etc.
- Operating units – economically viable minimum farm or range unit size, maximum size limit
- Pesticide use – Tribal acceptance, pesticide use proposals, daily logs, spray drift, environmental concerns/impacts
- Photographic documentation
- Plants – cultural, ceremonial, medicinal, threatened and endangered
- Pollution – non-point source
- Prescribed fire – planning, approval, implementation, monitoring
- Programmatic Environmental Impact Statement/Environmental Assessment (EIS/EA) Categorical Exclusions (CE)
- Public safety
- Quarantine policy and enforcement for livestock or agricultural products entering or leaving Indian lands
- Rangers – workforce and workload
- Record-keeping and accountability
- Recreation – uses, conflicts
- Resource data needs – inventories, surveys, condition and trend assessments, basic and applied research
- Riparian and wetland areas – use and management
- Roads – construction, closures, maintenance
- Rodent, insect, and predator prevention, detection, and control
- Season of use
- Seeding – native, introduced species
- Sensitive species – threatened and endangered, culturally significant

- Software programs for management decision support and recordkeeping
- Socio-economic factors
- Soil quality assessments (qualitative monitoring)
- Soil testing
- Soils – use and management (suitability, classifications, limitations, potentials, hazards)
- Solid waste
- Specialty products and markets
- Storage tanks and underground storage tanks (USTs) - policies
- Technical assistance – other Tribes, Tribal organizations, non-governmental organizations, private vendors, Conservation Districts, colleges and universities, BIA, NRCS, Bureau of Reclamation (BOR), Bureau of Land Management (BLM), others
- Temperature, precipitation, wind, and other climatic characteristics
- Temporary and permanent closures – resource protection, species protection, hunting season, celebrations/festivals
- Trade organizations – affiliation, participation (e.g., Intertribal Agriculture Council, United Native Agricultural Producers, Intertribal Bison Cooperative)
- Trespass
- Tribal farmland and rangeland policies and customs
- Tribal or landowner interest and involvement in agriculture
- Utility ROW – electric, gas, water, sewer, communications
- Water developments – existing and needs
- Water quality – standards, BMPs
- Water spreading
- Water supplies – available surface water and groundwater
- Watershed size, elevation, topography, relief, elevation, hydrologic characteristics
- Wildfire threats and preparedness
- Wind and water erosion – soil surface protection
- Windbreaks

## 2. **Rangeland**

- Degree of use – range utilization studies and mapping, livestock and wildlife census

- Ecological site conversion/transition – natural or human caused
- Wildland fire emergency stabilization and restoration
- Forage quality and nutritional value
- On-and-off grazing
- Plant community composition, indicator species, key forage species
- Plant diseases – prevention, detection, and control
- Plant palatability and grazing value
- Prescribed grazing system
- Range units
- Accelerated rangeland treatments – chaining, seeding, spraying, etc.
- Rangeland health and condition assessments (qualitative monitoring)
- Rangeland trend transects (quantitative monitoring)
- Stocking rates/capacity
- Wildlife – habitat needs and grazing allowances

### 3. **Farming**

- Base acres (required by FSA)
- Carbon credits
- Certified hay and other farm products
- Crop diseases –prevention, detection, and control
- Crop rotation
- Crop salt tolerance and leaching requirement
- Crop yields and quality
- Degree of use – farmed or fallowed vs. idle lands
- Fertilizer and manure use and management
- Irrigation Operations and Maintenance (O&M)
- Irrigation project management
- Irrigation water measurements
- Planting and tillage operations, dates or windows
- Seasonal high-water tables
- Waterways, ditches, terraces, and drains construction and maintenance

#### 4. Livestock

- Branding, castrating, dehorning, docking, dipping, vaccinating
- Breeding program – genetics, cow/bull ratio, timing, calf-crop yield and birth weights, weaning, culling, and replacement
- Certified herds
- Feedlots – animal manure management
- Hay lands
- Herding, trailing, and riding
- Holding pastures
- Kind of stock – type, grade, class, age, sex
- Livestock counts and egress/ingress onto reservation
- Livestock disease prevention, detection, and control
- Livestock handling facilities – corrals, pens, traps, chutes, weight scales
- Livestock nutritional needs throughout the year
- Spring/fall pastures
- Supplemental feed, salt, and minerals
- Transporting stock
- Veterinary Services
- Wrangling

#### 3.2 Preparing and Finalizing an ARMP

The following activities describe the steps necessary to prepare and finalize an ARMP. During this process, specific natural resource management goals are identified through public and landowner scoping sessions. Physical, cultural, and biological assets are also identified.

Interactions with all responsible planning parties is essential in the development of the ARMP. The development process is as follows:

- 1) Complete pre-planning activities.
  - Prepare a project scoping document.
  - Obtain a Tribal resolution to support the planning activity.
  - Consider an MOU with the Tribe of respective responsibilities.
  - Establish an IDT.
  - Develop a schedule for completing the plan.

- Develop a workload analysis and budget for the plan.
  - Define member roles and assignments.
- 2) Initiate ARMP development.
- Determine the topics to be addressed in the plan.
  - List available agriculture resources (i.e., prepare resource profiles – acres of rangeland, farmland, etc.); collect baseline data and information on current and historic land uses and resource conditions.
  - Arrange for specialists to prepare any required NEPA section(s) of the plan.
- 3) Involve the public in plan development.
- Publicly announce the planning process and planning schedule through public meetings, newspapers, and other media.
  - Conduct a public meeting(s) to identify critical values, vision, issues, concerns, interests, opportunities, and limitations.
  - Identify specific Tribal agricultural resource goals and holistic management objectives.
- 4) Develop management strategies.
- Analyze input from public meetings and resource specialists.
  - Compile information to define a management strategy, or alternatives if incorporating the NEPA process.
  - Develop environmental consequences section and related documents for NEPA, if required.
- 5) Complete the plan.
- Responsible BIA official selects an alternative (if incorporating the NEPA process) or approves the plan and proposed budgets.
  - Responsible BIA official issues FONSI or ROD, as applicable.
  - Modify preliminary planning if changes are necessary to support selection of alternative and/or issue of FONSI/ROD.
  - The final ARMP should contain the following:
    - Cover page with signatures
    - Tribal resolution
    - Executive Summary
    - Purpose and Need
    - Agricultural Resources (Affected Environment)
    - Tribal Agricultural Goals and Management Objectives (Alternatives)

- Environmental Consequences and Selection of Preferred Alternative
- Adoption of the plan by the Tribe and BIA
- Implementation Schedule

### **3.3 ARMP Format Guidance**

The following provides a suggested outline for formatting an ARMP. However, it is at the discretion of the Tribe to determine the extent to which this information is included and the manner in which it is presented.

- 1) Identify the Project Name/Number, proponent, and the responsible official (if the two are different).
- 2) Summarize the proposal.
  - Who proposes to do what, where, and when.
  - Need for the action (why).
  - Objectives of the proposal (purpose). Objectives include project outputs and any known environmental resource objectives.
- 3) Specify the scope of the decision to be made.
  - What actions and decisions are to be considered and which ones are excluded.
  - As appropriate, reference higher-level planning procedures, such as forest plans or resource management plans.
- 4) Profile the scope of the environmental analysis.
  - Actions (connected, cumulative, similar) included in the analysis of all resources.
  - Possible mitigation measures already anticipated to be necessary.
  - Alternative actions, insofar as known.
  - Anticipated environmental issues (projected resource impacts that will assist the decision maker and the public to choose between the alternatives).
  - Probable outside land holdings (federal, Tribal, state, local, or private) of importance to a discussion of cumulative impacts.
- 5) Identify the anticipated level of documentation, along with a short rationale.
  - EIS
  - EA
  - CE



- 6) List any known consultation requirements or permits.
  - Air quality
  - Water quality, wetlands, floodplains, etc.
  - Threatened, endangered, and sensitive animals, plants, or fish
  - Cultural sites
  - Others?
- 7) Profile the current management direction in and near the project area. This often is a summary profile of the existing environment, with reference to high-level planning documents (see item 3) above). This profile also sets the baseline conditions in nearby areas that have had, are having, or will have impacts on the project area.
- 8) Summarize projected public involvement.
  - List other federal, Tribal, state, local, private individuals, or private groups known to be interested or potentially affected by the proposed project (see item 6 above).
  - List proposed strategies for contacting and involving the parties listed.
- 9) Summarize the schedules for the analysis and the documentation.
  - Analysis steps: baseline surveys, review of the literature, team meetings on alternatives, interaction of actions and resources (synergy between resource impacts), mitigations, revised alternatives, etc.
  - Documentation checkpoints: draft of purpose and need/ issues (Chapter 1); preliminary description of alternatives (Chapter 2); organizational structure of chapters 3 and 4; initial drafts of impact sections (Chapter 4), etc.
  - Checkpoints (dates) when the responsible official will review the IDT's evolving work.
  - Publication dates for internal drafts and then publishable versions of the Departmental Environmental Impact Statement (DEIS), Federal Environmental Impact Statement (FEIS), ROD, EA, FONSI, or CE.
- 10) Summarize documentation expectations (quality standards).
  - Estimated length (page count)
  - Page layout and expectations as to graphic (baseline maps, etc.)
  - Headings and associated numbering conventions
  - Tracking between chapters, including previews, repetition (design decisions)
  - Record keeping standards for the administrative record/analysis file

11) List all IDT members.

- Team leader
- Core team members
- Outside contributors
- Document writer/editor (if different from above)
- Managers responsible for members' time and funding

12) Review and reaffirm, as necessary, how the team will make decisions. Will the team use a voting process or work toward consensus? Such decisions are especially important if a team member has a viewpoint that the leader or other members don't agree with. Remind members that IDT does not choose an alternative, nor do members sign the FONSI.

13) Request signatures from the responsible official, the IDT leader, and all team members.

### **3.4 Plan Implementation and Monitoring**

The purpose and intent of an ARMP is carried out by:

- distribution of the ARMP to all entities identified in the plan.
- aligning BIA and Tribal policies and programs with the ARMP; and
- developing conservation plans or other plans (e.g., a grazing management plan) to support the ARMP.

Each ARMP includes a broad framework for conducting agricultural activities. These activities are reflected in lease and permit provisions and may include use of agricultural pesticides and herbicides as well as restrictions to land use for specialized, culturally, or environmentally significant areas.

Program staff must monitor, assess, and document plan effectiveness and compliance. This is done by:

- developing and implementing a monitoring plan;
- monitoring vegetation and other resources; and
- adapting the monitoring plan and/or the ARMP as needed.

## ***Chapter 4: Range Management***

### **4.1 Range Units**

Range units are land management units into which the rangeland area has been divided for conservation, development, and effective utilization purposes. Although there is no regulatory requirement for grazing permits, permits are a recommended tool the BIA uses to comply with its responsibilities under 25 U.S.C 466. These provisions include, among other requirements, protecting the range from deterioration and soil erosion while assuring full utilization of the range.

This chapter provides technical instruction to administrative line officers and their professional staff who are charged with execution of the general grazing regulations contained in 25 CFR 166. The Navajo Grazing Regulations (Part 167) and Grazing Regulations for the Hopi Partitioned Lands Area (Part 168) of Title 25 are not included in this handbook.

Available rangelands should be reviewed for inclusion into range units depending on their location, use history, suitability for inclusion into range units, conservation needs of the tracts, and landowners' use intentions. BIA will identify Tribal and individual Indian landowner needs and goals through consultation with Tribal governing bodies, Indian organizations, and other individuals. Considering the goals, wishes, and needs of these representatives, BIA will define geographic boundaries of range units to achieve the best balance among all factors relevant to proper land use and management. BIA's Ag & Range program offices develop or obtain a map of sufficient scale to show the exterior boundary of the range unit established by the Tribe (25 CFR 166), and indicate locations of all improvements and the location of lands excluded from the unit.

Specifically, the BIA Ag & Range program office takes the following steps when considering rangelands for inclusion into range units:

- 1) Perform initial consultation with the Tribe and allotted landowner(s) for the establishment of new range units.
  - During such meetings the landowners may indicate their preferences for land use goals and permitting approaches. These landowners' intentions are incorporated into how range unit boundaries are set, the season of use, types of livestock to be grazed, and how grazing management plans are developed.
- 2) Determine appropriate range unit boundaries.
  - In the determination of the appropriate range unit boundaries, consider the following:
    - The location of livestock water, existing fences and range improvements.
    - The best opportunities for proper range utilization.
    - The individual landowner interests and goals (including economic return).
    - The utility to potential permittees.

- The overall reservation land use management policies set by Tribal governing bodies.
- 3) Prepare a land schedule of each range unit and associated information.
- A land schedule identifying the lands covered is included in a grazing permit.
  - The schedule headings should be:
    - Allotment number;
    - Range unit name or number;
    - Allottee name, or indication of tract ownership status;
    - Legal description;
    - Acreage;
    - Grazing rental (amount for each land status category); and
    - Grazing capacity.
  - The description may be limited to location by section, township and range; or by a map, if specifics are not essential to proper identification.
  - The acreage included in the land schedule is subtotaled for each type of land status (i.e., allotted, Tribal, and government-owned). Fractions of acres need not be shown.
- 4) Prepare a range unit map.
- A grazing permit includes a map of sufficient scale to show the exterior boundary of the permitted range unit(s) and the location and status of lands in the range unit.

## **4.2 Grazing Permit Requirements**

A grazing permit is a written contract/agreement between the Indian landowner(s) and a permittee. The permittee is granted a revocable privilege to use Indian trust land for the harvesting of forage by livestock. Permits approved by the BIA Ag & Range program must provide for resource management and conservation requirements. The permitting process ensures the rental rate is established at market value and in accordance with applicable policies and regulations.

Grazing permits specify the essential requirements for use of the land, such as the kind of livestock that can be grazed, the grazing capacity, season of use, annual rental, and conservation measures. A conservation plan is required and is made part of the permit (see 25 CFR 166.312). Prospective permittees are encouraged to include proposed conservation or grazing management plans with their bid packages.

Any type or number of trust or restricted tracts may be designated in a grazing permit. The permit indicates the land status of each tract and its location within a range unit. More than one grazing permit for each range unit may be approved. Examples of conditions that require multiple permits include: multiple permittees graze their animals in common on a range unit; and grazing privileges for the range unit are granted under a combination of allocation, competitive

bid, and/or negotiation.

Before a grazing permit can be issued, however, landowners' consent is required to allow their land to be included in the range unit. Tribal governing bodies normally use resolutions as a means of authorizing BIA to include Tribal land in grazing permits.

The duration of a grazing permit must be reasonable, usually not to exceed 10 years. In some cases, where substantial investment is required, permit duration not to exceed 25 years may be authorized pursuant to 25 U.S.C. § 3715 (a). A Tribe may enact a Tribal resolution that determines the duration of permits on Tribal lands or on Tribal lands in combination with government land.

The BIA Ag & Range program office performs the following permitting process steps:

- 1) Review lands to be included in the range permitting program.
  - Review existing land schedules for each of the existing range units to determine if the tracts of lands are still suitable for inclusion in the range unit. For example, a tract may have been withdrawn from the unit during the previous permit term by the landowner for the landowner's use.
  - Include any new lands into range units that have become available for inclusion if landowners have provided their consent.
- 2) Secure consent from the allotted landowner(s) by sending the necessary consent form. See Form 5-5525: Authority to Grant Grazing Privileges on Allotted Lands. This form is found here: <https://www.bia.gov/policy-forms/online-forms> (select the tab under the heading of "IA Paperwork Reduction Act (PRA) Forms").
  - The form(s) should be sent 180 calendar days before the expiration of the currently applicable grazing permit. The individual Indian landowner(s) has 90 calendar days in which to complete and return the form to the BIA Agency Superintendent.
  - The BIA Agency Superintendent may sign on a landowner's behalf in cases of non-response to such notices, or for the following individuals:
    - orphaned minors;
    - persons who are non-compos mentis and without legal guardians;
    - undetermined heirs or devisees of a deceased Indian owner;
    - adults whose whereabouts are unknown;
    - 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 3-month period, and after notice from the BIA Agency Superintendent given by posting a general notice in all post offices on the reservation and with the Tribal governing body;
    - those Indian landowners who give the BIA Agency Superintendent written authority to grant grazing privileges; and

- any other Indian minor or person who is non compos mentis or otherwise under legal disability, if that person's guardian, conservator, or other fiduciary, appointed by a state court or by a Tribal court or court of Indian offenses operating under an approved constitution or law and order code, gives the BIA Agency Superintendent written authority to grant grazing privileges.
  - Allotted lands may be included in a range unit after written authority to grant grazing privileges is signed by the majority of the landowners.
  - The authority to grant grazing privileges remains in effect until revoked.
- 3) Obtain a Tribal resolution detailing Tribal lands to be included in grazing permits.
- Tribal governing bodies normally use resolutions as a means of authorizing BIA to include Tribal land in grazing permits. The lead-time needed to obtain this authority is approximately 240 calendar days. This time period is far enough in advance of a permit period beginning date to allow the orderly accomplishment of all actions necessary to grant grazing privileges on range units.

*Note:* Proceed to the next instruction **ONLY after landowner consent is given.**

- 4) Establish the permit grazing capacity.
- Grazing capacity of rangelands is established in terms of “animal units” and “animal unit months.”
    - Grazing capacity for any type of livestock is established in accordance with factors that affect stocking rates and the grazing and herding habits of the livestock.
    - Proper ratios are established between cattle and other kinds of livestock, and, when useful, between a cow unit and a different cattle age group, such as yearlings (see the Definitions section for “Animal Unit Equivalent Guide”.)
  - Determine or adjust the grazing capacity by range unit. Determination of the grazing capacity considers site and area adjustment factors for each ecological site delineation in the management unit. Determination is based upon the best scientific and technical information available for the type or types of rangeland concerned. Ecological inventories and surveys, historic grazing capacity, climatic data, utilization data, and actual use records are fully considered. Acceptable technical procedures and methods that have already been tried can be obtained from local experiment stations, colleges, and other agencies doing related research work. These grazing capacity determinations consider restricted Indian-owned lands and government-owned rangelands under BIA jurisdiction.
    - Site adjustment factors take into account plant composition or production differences between the ecological site guide and the actual site situation.
    - Area adjustment factors include site association, access, and water availability. Site association is based on livestock preference to use one site over an adjacent site because of vegetation choice or other patterns of use. One site should not be over-utilized to attain proper use on an adjacent site. Access factors include steep

slopes and other restrictions (escarpments, etc.) that limit or prevent grazing use. Availability and distance to water are limiting factors that may require adjustment to AUM determinations.

- o Allowances must be made also for wildlife dependent upon the forage resource and habitat. Wildlife management plans or wildlife numbers need to be considered in establishing grazing capacities for domestic livestock. In addition, grazing by feral horses and burros should be taken into account. Grazing permit grazing capacity based on such allowances should be adjusted, and the permit modified, if the feral animals are removed or wildlife numbers are decreased from the range unit.
  - Recommend the permit grazing capacity to the BIA Agency Superintendent.
    - o Subject to approval by the RD, the BIA Agency Superintendent recommends the maximum number of livestock that may be grazed on range units.
    - o Each grazing capacity is evaluated and adjusted, if necessary, before permit renewal and/or as needed, to review changes in climatic and vegetative conditions. Adjustments in the stocking of individual range units may also be based on utilization surveys or ecological site and condition studies and inventories.
  - The RD must approve any increase in a prescribed grazing capacity.
- 6) Determine the kind of livestock to be permitted and the season of use.
- The Tribe determines the kind, type, and class of livestock and livestock ownership requirements within their jurisdiction.
  - The BIA Agency Superintendent determines if one kind of livestock is better suited for a particular range unit, and furnishes the Tribe and BIA Agency Superintendent all available technical data and advice.
  - For allotted land used in combination with Tribal and/or government land, BIA may withhold permit approval when livestock different from that preferred by the Tribe is essential to proper land management or more efficient for permit administration.
  - The number of animals and/or “season of use” designated for permitted land may be modified if grazing occurs on adjacent trust or non-trust rangelands. Permits for trust/non-trust rangelands require an “On and Off” Grazing Permit. In these instances, a conservation plan must support grazing on the adjacent trust or non-trust lands. In these situations, Form 5-5521: Certificate and Application for On- and-Off Grazing Permit applies. BIA approval and the permittee's certificate of land ownership, tenure, or control for the on and off grazing are required. This form can be found here: <https://www.bia.gov/policy-forms/online-forms> (select the tab under the heading of “IA Paperwork Reduction Act (PRA) Forms”).
    - o The permittee may be allowed a stocking rate credit for adjacent rangelands not covered by the permit, if the permittee owns or controls and uses the adjacent rangelands as an integral part of the permitted range unit.

- o Determine allowable AUM credit for the on and off lands. Determination of “off” land AUMs considers how the lands are used in management of the permitted range unit.
- o On and off AUM credit is for AUMs attributable to the permittee who has control of other lands, and those lands are considered to be part of the unit. Credit may also apply when the permittee has control of lands (owned in fee) which may occur in common in the unit.
- o The total AUMS is the capacity authorized for the unit. This figure is adjusted to indicate season of use and class of livestock.

7) Determine applicable grazing rental rates.

- Obtain rental rate information.
  - o Request rental market survey/appraisals to determine a basis for recommending new rental rates to the RD. Market surveys should be requested no later than 12 months prior to the expiration of the current grazing permits.
- Review grazing rental value information.
- Provide the Tribe with grazing rental market surveys no less than 120 calendar days prior to the expiration of the grazing permit. This information can be used by the Tribal governing body to establish a minimum grazing rental rate for Tribal lands. Individual Indian landowners can use the information for the same purpose in relation to individually owned land.
- In the following instances, establish a reservation grazing rental rate:
  - o On individually owned Indian lands, Indian landowners may give BIA written authority to grant grazing privileges at: (a) a lower rate, subject to BIA approval, when the permittee is a member of the landowner’s immediate family or is a co-owner; or (b) at a rate that is equal or above the rental rate set by BIA.
  - o For Tribal land, when the governing body fails to establish a rate for the permitted use of Tribal land.
  - o BIA may grant or approve a permit at less than fair annual rental if: (a) it is in the best interest of individual Indian landowner(s), (b) the permit is for an Indian landowner’s immediate family or co-owner, or (c) the Tribe’s reservation rate is less than the reservation minimum established by BIA.
- Determine which rental rate applies for grazing based upon specific land categories.
- If a range unit consists of Tribal and individually owned Indian lands, the grazing rental rate for Tribal land is set by the Tribe and the grazing rental rate for individually owned Indian land is the grazing rental rate set by BIA.
- Adjust grazing rental rates periodically. The permit should include specific language regarding review of the rental rate to be done before the anniversary date of the permit.
- Document rental rate changes. Adjustments in grazing rentals are based upon an



appropriate valuation method conducted periodically or as specified in the permit.

- Any adjustments to the grazing rental rates requires notification to the permittee 60 calendar days prior to the anniversary billing date. The adjustment must be entered into the automated billing system (see 25 CFR 166.408 (a)(2)).

8) Determine total rental cost for the range unit allocation after establishing individual rates for allotted and Tribal lands.

- Construct an allocated range unit rental worksheet of the various rental rates for Tribal and allotted lands within the unit. The AUMs for each tract are multiplied by the determined rental rate. The subtotals for each tract are combined to arrive at a total range unit billing amount.

9) Develop a conservation plan for the grazing permit.

- A conservation plan is developed as part of a grazing permit. The purpose of a conservation plan is to identify goals and objectives and to prescribe specific management actions and conservation practices that address current resource concerns, and ensure sustainable and renewable forage production. Conservation plans must be consistent with the Tribe's ARMP and/or IRMP if they exist (25 CFR 166.311).
- The permittee is involved in the plan development whenever possible.
- Work with the permittee and landowner, and NRCS/FSA as applicable, to develop feasible management options that yield acceptable economic returns and conservation benefits.
- The permittee should concur with management objectives and the goals of the conservation plan.

#### **4.3 Tribal Allocation of Grazing Privileges**

The Tribe will determine allocation criteria in the preparation of new grazing privileges. Permits may be allocated by either the Tribe or BIA. In the determination of a Tribal allocation of a permit, the permit will be processed by agency staff for permit issuance. BIA processes allocations on those reservations where the Tribe has a policy to allocate range units and has provided the criteria through a Tribal resolution.

The Tribe normally designates a committee to review allocation applications. The committee determines eligible applicants and recommends selected applicants to the RD to receive a grazing permit. Grazing permits are allocated non-competitively to Tribal members. The specific method of allocation is provided for in Tribal land use policies, as prescribed in the appropriate Tribal resolution.

Grazing rules and requirements prescribed by Tribal governments for Tribal lands may be applied to individually allotted lands as well. However, landowners may exempt their lands from

such Tribal policies, as outlined in 25 CFR 166.101. In order to do so, they must provide written authority to the BIA Agency Superintendent.

A Tribal governing body may determine eligibility requirements for Tribal allocations so that Tribal land use is improved, and member stockmen can be better served by limited allocation or elimination of allocated grazing privileges. The Tribe may also establish rules for competitive bidding restricted to Tribal members. The Tribe should clearly define any kind of bid preference for concurrence in writing by the RD before acting on the preference. Criteria established by a governing body regarding allocated or competitive award of grazing privileges must not violate the rights of equal protection afforded Tribal members under Section 202 of the Civil Rights Act of April 11, 1968 (P.L. 90-284, 82 Stat. 77).

*Note:* BIA employees who are Indian landowners and are members of the resident Tribe served by his/her employing agency, may be eligible to receive allocations of grazing privileges only when certain requirements have been met. Specifically, Indian employees must contact their BIA Administrative Officer concerning these specific procedural requirements before submitting their request for allocation of grazing privileges.

The BIA Ag & Range program office performs the following steps regarding the grazing allocation process:

- 1) Notify the Tribe 120 calendar days prior to the expiration of the current grazing permits that a new allocation process will begin, and that the Tribe must establish allocation eligibility criteria within 60 calendar days.
  - The BIA Agency Superintendent may prescribe allocation requirements if the Tribe does not prescribe the requirements within the timeframe specified.

*Note:* Steps 2 and 3 may be performed by the Tribe.

- 2) Provide constructive notice that grazing allocation applications are available along with eligibility criteria and application requirements.
  - Additional information by prospective applicants concerning range units is made available by agency staff such as range unit locations, maps, stocking rates, and other requirements.
- 3) Prepare applications for allocation; determine if the applications meet allocation eligibility.
- 4) Forward applications to the Tribe to make a final determination of eligibility and recommendation for awards of allocations.
- 5) Process grazing permit allocation awards by preparing grazing permits and notify applicants of any other requirements or issues prior to permit approval.

#### **4.4 Competitive and Negotiated Sale of Grazing Privileges**

This section explains the process for sales of grazing privileges, review of bids received, and awards to successful bidders. In the event no acceptable bids are received, the BIA Agency Superintendent may negotiate unsold grazing privileges to prospective permittees.

Unless otherwise specified by Tribal resolution, where there is a surplus of grazing permits that were unallocated or where there were no non-competitive allocations processed, a sale of grazing privileges is performed to secure permittees for available grazing units. Notice of unallocated grazing is made available by posting in local newspapers, Tribal community and administration buildings, post offices, local BIA offices, and other appropriate public locations. The RD may authorize the issuance of grazing permits by negotiation when no useful purpose would be served by advertisement. Negotiated permits are subject to the grazing capacity and season of use established pursuant to 25 CFR 166.305.

Prospective applicants for use of trust or restricted lands may obtain additional pertinent information upon written request to a local BIA or Tribal office. Information provided may identify: (1) names and mailing addresses of the Indian owners of potentially available trust or restricted lands, (2) information on the location of parcels, and (3) the percentage of undivided interest owned by each individual.

This process describes activities performed to advertise a sale of grazing privileges for range units or negotiate terms for use of range units not allocated. The BIA Ag & Range program office performs the following steps in coordination with the Agency Superintendent and RD as appropriate:

- 1) Determine range units available for advertisement. This is generally a result of an allocation process that fails to allocate all available units, or the result of a previous advertisement with no acceptable bidders for some of the units for sale.
- 2) The BIA Agency Superintendent prepares a proposed advertisement and forwards it to the RD for approval unless approval authority is delegated to the Superintendent. Material that should also be included in the proposed advertisement package consists of:
  - Copies of meeting minutes and resolutions showing Tribal actions taken.
  - A map identifying all range units scheduled for allocation and advertisement.
  - A schedule of the range units authorized for advertisement, which should indicate for each range unit:
    - range unit number or name;
    - acreage and location;
    - maximum stocking and kinds of livestock allowed;
    - grazing seasons; and
    - minimum annual rental.

*Note:* If the Tribal governing body does not want to include Tribal land in an advertisement of grazing privileges, they must enact a resolution instructing the BIA Agency Superintendent not to advertise.

3) Determine award criteria and bid preferences, if any.

- In order to sustain the grazing permit processes and protect the grazing resources. The applied selection process must specify permit obligations in ensuing permits; whenever sustained permitted privileges are contingent upon them.
- 25 CFR 166 provides for tribal lead of management under self-determination. In the case of the allocation of grazing privileges to Tribal members on Tribal land without competitive bidding, it is the Tribal governing body's responsibility to prescribe applicable scope and limitations. The Tribe should also include the eligibility requirements that must be met to qualify, and the procedure for obtaining such grazing privileges. These Tribal determinations may elect to include the written concurrence of the BIA Agency Superintendent before implementation.
- Refer to the appropriate Tribal constitutions, by-laws, and/or corporate charters.
- Bid preferences can apply for limited allocations or for any combination of allocations. They can apply for bidding that involves:
  - all Tribal member bidders;
  - Tribal members bidding competitively; and
  - both Tribal member and non-member bidders.

4) Prepare and publish the advertisement.

- The advertisement should make prospective bidders aware of any preference declaration statements that may be required.
- If there is an option of oral bid, include any special circumstances in the advertisement.
- Circulate the advertisement to all known prospective bidders, post it in public places (e.g., Tribal offices), and when broader coverage is in the best interest of the Tribe and Indian individuals, place it in paid news media.
- Furnish copies of the advertisement promptly to the RD.
- Any necessary changes or corrections must be made in writing, and made available to all parties involved as well as recipients of the original advertisement.
- Information used when advertising should include some of the requirements necessary to the granting of grazing privileges, such as:
  - Leasing criterion of Grazing Privileges
  - Grazing Permit identifying facts; i.e. location, acreage, use period, term, permit I.D. etc.
  - Range Control Stipulations of permit land use by permittee.

*Note:* This information is located in the TAAMS range platform.

- When the prepared advertisement satisfies the requirements indicated in Form 5- 5513 and this handbook, the RD authorizes the BIA Agency Superintendent to issue the advertisement.

5) Conduct bid opening and prepare bid abstract.

- Bid proposals must be submitted on the approved form. (See Bid for Grazing Privileges Form 5-5514 located at <https://www.bia.gov/policy-forms/online-forms>.)
- Bids received after the advertised bid closing time are returned to the bidder unopened.
- Proposals must address any special requirements relative to bid preference declarations and/or proof of eligibility that were designed locally and advertised. This is a submittal requirement as part of Form 5-5514.
- Acceptable forms of bid deposit are, (1) cashier's check, (2) certified check, (3) bank draft, (4) money order, or (5) personal check.
- To be acceptable, proposals must be in accordance with terms of the advertisement; however, technical defects in the advertisement or bid proposals may be waived by the BIA Agency Superintendent, or by the Field Representative pursuant to authority reserved in the Sale of Grazing Privileges.
- The BIA Agency Superintendent rejects bids that do not conform to the terms of the advertisement, other than waived technical defects. In these instances the deposit of the bidder is returned promptly.
- Conduct an oral bid session, if required.
- High bid need not be automatically selected. If it is determined that a second bid is better for the resource, it may be selected. In this case, develop a ranking schedule for evaluating each bid to support the selection.
- Promptly notify all bidders on a given range unit of the name of the successful bidder by certified mail return receipt requested.
- If the advertisement allows for certain bidders to meet the high bid, then written notice from the BIA Agency Superintendent informs such bidders of the opportunity to meet the high bid within 10 calendar days from the date of receipt of the notice. In such cases, the BIA Agency Superintendent's notice of award also informs all bidders of the possibility that the high bid may be met by a preference-eligible applicant who has the right to meet the high bid within a Tribally specified time frame.
- Prepare an abstract of bids received and furnish two copies to the RD. A memorandum covering awards and explanations of non-awarded grazing privileges accompanies the abstract of bids received.

6) Negotiate a grazing permit, if required.

- When advertisement results in no bids or when bids received are less than the

predetermined minimum, the BIA Agency Superintendent has authority to negotiate the permit after obtaining written approval from the RD.

- When negotiating a permit because bidding was below the established minimum, BIA may grant a permit at less than fair annual rental on individually owned Indian land if it is determined to be in the best interest of the individual Indian landowners.
- BIA may approve a permit for grazing on Tribal land at less than fair annual rental if the Tribe sets the rate. When the land would benefit from no use (conservation, stabilization, rehabilitation, restoration, etc.) the decision may be to forego permit negotiations.

#### **4.5 Issue a Grazing Permit**

A grazing permit is a written agreement between the Indian landowner(s) and a permittee, whereby the permittee is granted a revocable privilege to use Indian land for the harvesting of forage by livestock.

The procedure to issue a grazing permit includes the final reviews prior to permit approval. This generally includes securing permittee signature, bonding if required, receipt of first year payments, and the review of the permit for complete terms and provisions.

Although there is no regulatory requirement for grazing permits, permits are a recommended tool BIA uses to comply with its trust responsibility under 25 USC 466. The Secretary of the Interior is directed to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges. This restriction serves to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.

The BIA Ag & Range program office staff perform the following steps to issue grazing permits:

- 1) Prepare permits based on allocation, bid awards, or negotiations.
  - Draft the permit with the following standards:
    - Make no erasures or notes, and prepare in triplicate.
    - Manually sign the original.
    - The original must be filed where BIA maintains billing and collection related to the permit; and it must be available to Government Accountability Office and Inspector General Office site auditors.
    - Of the three permit copies, three copies are furnished to the: (1) permittee, (2) agency grazing permit file, and (3) Tribe or individual landowner as appropriate.
  - Use the applicable form. See Form 5-5515: [Grazing Permit Form](#), Form 5-5516: [Grazing Permit For Organized Tribes](#), and Form 5-5517: [Free Grazing Permit](#). These forms are located at <https://www.bia.gov/policy-forms/online-forms>.
    - If fees, assessments, and/or taxes are paid for grazing privileges but the forage is at no cost, use either Form 5-5515 or Form 5-5516 and specify the no cost privileges. Form 5-5515 or Form 5-5516 is also used in

- permitting no cost privileges to Indian livestock associations when payment of fees, assessments, and/or taxes are not required.
- Form 5-5516: Grazing Permit for Organized Tribes is used when qualified Tribes are equipped to bill and collect fees and issue permits on range units. Such range units comprise Tribal land entirely or in combination with other government land.
  - Form 5-5517: Free Grazing Permit is used to substantiate that a Tribal governing body has authorized an individual Tribal member for grazing on Tribal land without charge. Form 5-5517 is used exclusively in situations where an individual pays no fees, assessments, and/or taxes for grazing privileges.
  - Permits that require payment of revenue into the Treasury of the United States are given contract numbers.
  - Permit numbers are used for permits that require no payment, or when payments are to be made directly to Tribes or individual landowners.
  - Include a map of sufficient scale to show the exterior boundary of the permitted range unit(s) and the location of lands not included in the permit, as well as a land schedule with the permit. Use the following schedule headings:
    - Allotment Number
    - Range Unit Name or Number
    - Allottee Name, or indication of tract ownership status
    - Legal Description
    - Acreage
    - Grazing Rental (amount for each land status category)

*Note:* The description may be limited to location by section, township and range; or by a map, if specifics are not essential to proper identification. The land schedule acreage is subtotaled for each type of land status; i.e., allotted, Tribal, and government-owned.

- BIA may allow a stocking rate credit for other adjacent rangelands owned or controlled by the permittee(s) but not covered by the grazing permit.
  - Determine any applicable credit in terms of animal units supported by the adjacent on/off rangeland.
  - Application for such credit should be made on the Form 5-5521: Certificate and Application for On and Off Grazing Permit. The approved Form 5-5521, as well as the calculations supporting the stocking rate credit, become part of the primary grazing permit.
  - The recommended stocking rate credit is sent to the RD for approval.
  - To receive credit on a BIA permit for on/off rangeland, the on/off rangeland must be included in the conservation plan and managed as a part of the whole permit (see 25 CFR 166.308).

- Each copy of the permit must contain a completed copy of Range Control Provisions.
    - Include a stipulation indicating that if the land trust status is terminated, parties to the permit are notified in writing within 30 calendar days of a change in trust status. Removal is effective immediately if all sureties, Indian landowners, and the permittee agree. Otherwise, removal is effective on the next anniversary date of the permit. If the written notice is within 180 calendar days of the next anniversary date of the permit, removal is effective 180 calendar days after the written notice.
    - Include a stipulation that all improvements are to be constructed during the first year of the permit.
  - A conservation plan is required and is made part of the permit. Prospective permittees are encouraged to include proposed conservation plans with their bid packages.
- 2) Review proposed permit for completeness (in accordance with the permit checklist), which includes the following items:
- Authorized user(s)
  - Conservation plan requirements
  - Prohibition against creating a nuisance, any illegal activity, and negligent use or waste of resources
  - Numbers and types of livestock allowed
  - Season(s) of use
  - Grazing rental amount, payment schedule, and late payment interest and penalties
  - Administrative fees
  - Tribal fees, if applicable
  - Payment method
  - Range unit number or name
  - Animal identification requirements
  - A description (preferably a legal description) of the permitted area
  - Term of the permit (including beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate)
  - Conditions for making improvements, if any
  - A right of entry by BIA for purposes of inspection or enforcement
  - A provision concerning the applicability of Tribal jurisdiction
  - A provision stating how trespass proceeds are to be distributed
  - A provision for a late payment penalty as prescribed by 25 CFR 166.419. Such provision requires the permittee to indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment,



removal, storage, transportation, or disposal of hazardous materials, or to the release or discharge of any hazardous material from the permitted premises that occur during the permit term, regardless of fault.

- No permit is issued without full review of the stocking rate and grazing season(s) defined for it.
- Each copy of the permit contains a completed copy of Range Control Stipulations Form 5-5518.) Whenever special terms or conditions apply, they are specified on the reverse side of the permit form or in attached documents. A copy of the Tribal grazing resolutions are also attached if any apply for the permit.

3) Obtain bonding from the permittee, if required.

- Obtain a performance bond when protection of trust resources requires corporate or individual surety. See Form 5-5243: Performance Bond .This form is located here: <https://www.bia.gov/policy-forms/online-forms>.
- A cash penal bond or negotiable United States Treasury bond may be executed in lieu of a surety bond.
- When government securities are pledged in lieu of a surety, the securities so pledged must be disposed of in accordance with appropriate accounting procedures.
- Nontransferable bonds, such as Series E bonds, may not be pledged. Attorneys in fact for corporate surety bonds must furnish satisfactory evidence of authority to execute bonds on behalf of the surety company.

4) If the permittee proposes a request to install a temporary improvement, consider the following:

- Does the improvement facilitate sound grazing management practices?
- Are there significant ground disturbance activities that may cause environmental impacts? If so, then appropriate environmental review and assessments may need to be conducted prior to installation or approval of the practice.

5) Determine the actions necessary to ensure compliance with NEPA.

- NEPA requires that BIA evaluate, via a public process, the impacts of proposed federal actions on the quality of the human environment.
- In most cases, grazing permits do not trigger extensive NEPA processes.
- If a reservation-wide EA for existing grazing permitting activity has been completed, an environmental tiering document can be processed to satisfy NEPA requirements for grazing permits. This facilitates the issuing of grazing permits where there is no change in land use. The BIA Agency Superintendent can approve FONSI documents and such decision documents may be included in the permit review and approval process.
- A CE document may be prepared for each permit where there is no environmental assessment that will cover the proposed action. For detailed instructions on the use

and application of the CE exemption, contact the local environmental staff for guidance.

- If there is no environmental field staff or NEPA document to cover BIA the proposed permitting action at the local agency office, contact the next highest-level office. For example: If a Tribal/agency office does not have an environmental staff person, contact the designated BIA regional office's Branch of Environmental and Cultural Resource Management (BECRM) for assistance.
- 6) Deliver the permit with relevant documents to the approving official for his/her signature.
- Prepare a recommendation in writing for approval or denial of the permit if required by the line official.
  - The decision to approve or deny a permit is appealable.
    - If the decision is appealed, no further action can be taken, and BIA must wait until the administrative appeal process has been exhausted.
  - Receive the permit back from the approving official and, if approved, go to the next Step.
    - If the permit was disapproved or returned for further action, determine the available remedy to be taken and reprocess the permit.
  - Forward the approved permit to the designated LTRO for recordation.
  - After the permit is approved, if the land is not yet used for grazing, the permittee may enter the land for maintenance and construction of approved range improvements in accordance with the terms and conditions of the permit. However, the permittee's livestock may not enter or occupy the lands covered by the permit except according to dates specified on the permit.
- 7) Agency Realty staff encode permit information in the agency leasing/permitting system.
- 8) Agency Realty staff distribute permit copies to the permittee. Landowners are provided copies upon request.
- All written notifications must be either mailed certified with return receipt or hand delivered with signature receipt.
- 9) Agency Realty staff prepare income allocation.
- LTRO reviews income distribution from ownership information reported on a Title Status Report (TSR) or from automated systems that store ownership information. This review may require an adjustment for life estates, assignments, direct payments, owner's use, Tribal interests, "Youpee" court case interests, or claims against estate accounts, etc.

#### **4.6 Administer Grazing Permits**

Administration of grazing permits includes actions taken that cause a modification to the grazing permit. There are several situations that necessitate the modification of the permit, such as changes in the tracts of lands that are included in the permit (as in those cases where the

landowner requests a withdrawal of their land from the unit), changes in grazing rental rates during the permit period, and termination of trust status of the permitted lands.

The BIA Agency Superintendent approves permittee requests to modify or cancel a grazing permit for reasons other than removal. Modifications may only be considered when the requested action is not contrary to the interest of the Indian landowner(s). All parties must consent in writing and, if the action is cancellation, the surety (if any) is notified promptly.

The permittee may request authorization to install range improvements that assist in grazing management. If the grazing practice is funded by USDA or required by the permit, then the improvement is permanent. The permittee may request approval to install a temporary range improvement, and may subsequently be permitted to remove the improvement. This action must be performed in accordance to the agreed upon request.

The date BIA approves the modification is the effective date of a modified permit.

This process includes actions that may occur during the term of the permit and may include permit modification or subleasing. There are several different modification scenarios that may occur:

**A. Modify a grazing permit to accommodate a change in lands that are included in the grazing permit**

- A land status change that affects permitted lands may also affect the permit term and management of the range unit, and, if so, the permit is modified. See Form 5-5522: Modification of Grazing Permit. This form is found here: <https://www.bia.gov/policy-forms/online-forms>.
- For fractionated tract lands, the consent of a 100 percent of ownership interests is needed to be considered eligible for removal of the unit.
  - These types of land withdrawals from a range unit may further require that the owners pursue a lease of such land in order to pay other ownership interests (see 25 CFR 166.227).
  - The landowner(s) are required to have a lease to ensure payment of ownership interests unless 100 percent of the owners agree to waive the requirement for a lease or permit.
- Once trust land is withdrawn from a grazing permit, the permittee is notified that he is liable for reasonable damages if his livestock return to graze on such unpermitted lands. The landowner whose land is withdrawn from the grazing permit is not required to fence the “withdrawn” trust land.
- If the landowner chooses not to fence the withdrawn land, the permittee must deposit as liquidated damages an amount not less than the annual rental amount that would accrue to the land if it remained under the permit. If the withdrawn land is not fenced and is grazed

by the permittee's livestock, the deposit for liquidated damages is credited to the landowner's Individual Indian Monies (IIM) account at the end of the annual permit period.

- The permittee must be notified of changes to the land schedule effective at the next anniversary date. Otherwise, if written notice is within 180 calendar days of the anniversary date of the permit, the removal of Indian land will be effective 180 calendar days after the written notice.

#### **B. Modify permit for a change in rental rates**

- In the notice of sale of grazing privileges, and at the time the permit is issued, it must be clarified and documented that the grazing rental rate is reviewed annually. Typically, this process is accomplished with a market study or other appropriate valuation of the AUM rates.
- If there is to be a change to the rental rates, the RD authorizes the change, and permits are modified no less than 60 calendar days prior to the next anniversary billing date. This time period allows for notification to the permittees, and for the opportunity to enter these rental rate changes into the leasing system.

#### **C. Modify permit for other situations**

- If the land's trust status is terminated, notify parties to the permit in writing within 30 calendar days of the change in trust status.
- Removal trust status is effective on the next anniversary date of the permit.
- If the permittee requests removal, and if removal is appropriate and not contrary to the interest of the landowner(s), notify parties to the permit in writing within 30 calendar days of such request.
- Removal is effective immediately if all sureties, Indian landowners, and the permittee agree. Otherwise, removal is effective on the next anniversary date of the permit.
  - o If a Tribe allocates under 25 CFR 166.218 during the permit period defined for a competitive bid permit or a negotiated permit, notify parties to the permit in writing within 30 calendar days of such request.
  - o If the written notice is within 180 calendar days of the next anniversary date of the permit, removal is effective 180 calendar days after the written notice.
- A grazing permit may be assigned with consent of surety (if any) and the original contracting parties. Assignment does not confer any future preference rights to the assignee. Preference matters are fully clarified with the interested parties before an assignment is approved.

Regardless of the modification scenario that occurs, Ag & Range program staff must review and approve requests for removal of range improvements, if required. If improvements are to be constructed on Indian land, the permit must contain a provision that improvements will either:

- Remain on the land upon termination of the permit in a condition that is in compliance with applicable codes, and to become the property of the Indian landowner; or
- Be removed and the land restored within a time period specified in the permit. The land must be restored as close as possible to the original condition prior to construction of such improvements. At the request of the permittee, BIA may, at BIA discretion, grant an extension of time for the removal of improvements and restoration of the land for circumstances beyond the control of the permittee.

#### **4.7 Conduct Grazing Permit Compliance**

This section describes the actions necessary to review permittee use of range units, and to ensure compliance with the terms and conditions of a permit, lease, or conservation plan. Compliance is determined by on-site inspections and conducting livestock counts. Additionally, this section explains actions taken to cancel a permit for non-payment.

Monitoring compliance with grazing permit stipulations accomplishes two major objectives: (1) that rental payments due are made timely and accurately; and (2) that the permittee's use of the land is executed in accordance with the terms of the permit. Permit violations may result in permit cancellation.

The permittee must comply with all provisions of a permit including applicable Tribal ordinances and conservation plans. The applicable conservation plan is prepared with permittee input and concurrence, when appropriate. In either case, the plan is binding as part of the lease or permit.

An annual livestock census by range unit is performed by agency Ag & Range staff to determine compliance with the authorized stocking rate specified in the grazing permit. At a minimum, livestock is usually counted when they enter and leave a range unit or pasture through stock counting corral ramp chutes.

The following actions represent common violations of a permit:

- Overstocking
- Subleasing/permitting without BIA approval
- Non-payment
- Late payment
- Failure to construct or maintain specified improvements
- Failure to follow the conservation plan
- Livestock misbranding

- Unauthorized fencing
- Non-compliance with the Tribal grazing ordinance and/or the ARMP
- Tribal allocation requirements
- Unauthorized hay cutting
- Non-adherence to herd health requirements (see 25 CFR 166.300)

A permit gives the holder authority to graze livestock, but does not give the permittee exclusive use of the land. Often, gates are left open or unlocked by individuals entering or exiting a management unit. When livestock exit the range unit because a gate was not closed properly, the livestock owner is held responsible no matter who left the gate open. Thus, each permittee wants to limit access into their range unit. However, access cannot be denied unless expressly stated in a Tribal ordinance.

BIA has authority to enter the management unit at any time, without notice, to:

- conduct plant and animal inventories or studies;
- monitor compliance with lease or permit operating requirements; or
- otherwise protect the interests of the Indian landowners or the associated trust resources (see 25 CFR 162.108, 25 CFR 162.250, and 25 CFR 166.701).

BIA must investigate and document each alleged permit violation to determine whether permit/lease cancellation and/or legal actions are necessary. BIA sets reasonable timelines when investigating a violation and negotiating the remedy, if any. Timelines are practical to support requisite processes while precluding artificial delay, such as stalling by the violator. Procedures outlined in the permit/lease are followed to effect remedy of the violation; or formal cancellation and/or assessment of penalties (see [25 CFR 162.252](#) and [25 CFR 166.705](#)).

The BIA Ag & Range program staff will take the following steps to assess compliance and investigate alleged violations:

1) **Step A.** Monitor rental collections.

- Review schedule of collections, accounts receivable in the TAAMS, or other agency records to determine timely payment for grazing permits.
- Go to step 3) for further cancellation actions required in default situations.

**Step B.** Review range unit files for scheduled inspection or to determine the need for an initial inspection in response to a report of a possible violation.

- Investigate within five business days after receiving a report of alleged lease or permit violation. If it is determined that a violation has occurred, send written notice to the violator within five business days of that determination. The violator has no longer than 10 calendar days after receipt of written notice to respond.
- Regulations provide for negotiated remedies when violations have occurred (see 25 CFR

162.612 and 166.702). However, it is not advisable to negotiate away arrangements previously agreed upon in the permit/lease or conservation plan. Permittees may not be held accountable for permit/lease requirements not met because of factors outside their control (e.g. seedling establishment during drought conditions). Negotiating such issues is encouraged.

2) Respond to a potential land use violation.

- Review individual permit files to determine:
  - individual and unique requirements;
  - authorized stocking rate;
  - conservation plan;
  - season of use; and
  - authorized livestock brands.
- After report of a possible violation is received, attempt personal contact with the alleged violator. Whether or not an offense is willful, discussion of the violation may resolve the problem and may provide other information that will be valuable in the future.
- Conduct an on-site inspection of the unit.
- Secure necessary resources to record and document a field inspection. These may include:
  - range unit map
  - aerial photos
  - stock counting
  - binoculars
  - GPS equipment
  - digital camera
  - 2-way radios
  - brand book
- A routine inspection can be conducted by one person, either Realty or Range staff. However, if a potential non-compliance is noted, the follow-up inspection must be conducted by two or more persons. At least one of the inspectors must be a government employee who will certify the violation and make a record of the violation in the field notes.
- Record necessary information that relates to livestock use, including the number, class, and brands.
- Note any potential problems revealed by the inspection in field notes, including time, location, witnesses, and other facts of the situation.
- Inspect any physical improvements, such as fences and water developments, that

may need the attention of the permittee. It is the permittee who must maintain physical improvements and other attributes.

- Record field notes and make the notes part of the permit file.
- 3) If it is determined that a violation has occurred, give notice to the permittee or violator (e.g., livestock owner or trespasser).
- State the basis for the alleged violation, identify the permit/lease stipulations or conservation plan elements that apply, and, if the violation is location-specific, cite the location.
  - If the violation involves animals, they must be described by kind, class, number, and ownership marks.
  - Even when the violator has been contacted personally, send or deliver written notice. Include any previous contact made in the written notice.
  - In the notice, state that, within 10 calendar days after receiving the notice, the violator must:
    - cure the violation and notify BIA that it has been corrected;
    - dispute the violation with explanation; and/or
    - request additional time to cure the violation.
  - Send a copy of the notice to the landowner(s) and any known lien holder and bonding agent, as appropriate.
  - Send the notice by certified mail with return receipt requested, or hand deliver with acceptance or refusal documented. Attach return receipts to the file copy of the notice to make them a part of the official record.
    - Law enforcement officers and other Officers of the Court can deliver notices and verify delivery or refusal of the notice.
- 4) If a violation is not remedied within the allotted time period, notify the violator, bonding agent, and known lien holders.
- Re-inspect the property following step 3), if needed, to determine compliance with the 10 day show cause letter.
  - If additional time is granted, document the reason for the time limit extension, and have all parties agree on the timeline for completing the corrective actions and subsequent inspections.
    - All extensions must be requested and granted in writing.
    - When the extension expires, verify that the violation has been corrected.
    - If corrections are not made according to the agreed deadline, make the violator aware, in writing, of potential punitive actions.
  - If construction of improvements was a factor in the bid price, consider the price



difference between the permit price and the true market price when calculating the violation penalty.

- If a bond is collected to cover the cost of correcting the violation, any funds left over are refundable to the violator.

5) Cancel the permit, if appropriate.

- Determine whether the permit is to be cancelled.
- If the decision is to cancel, send the permittee and appropriate sureties a written notice of cancellation of the decision immediately. Provide an actual or copy of written notice of cancellation of the decision to the Indian landowners, as appropriate.
- In the written notice of cancellation:
  - Explain the grounds for cancellation.
  - Notify the permittee of the amount of any unpaid rent, interest charges, or late payment penalties due.
  - Notify the permittee of the right to appeal under 25 CFR Part 2, as modified by 25 CFR 162.253 and 166.705. Indicate the amount of any appeal bond that must be posted in the event the permittee files an appeal of the cancellation decision (see 25 CFR 166.706).
  - Order the permittee to vacate the property within 30 calendar days of the date of receipt of the written notice of cancellation. If an appeal is not filed by that time, proceed according to 25 CFR 162.252 and 166.705.
- If an appeal is not filed, a cancellation decision is effective 31 calendar days after the permittee receives the written cancellation notice by certified mail or hand delivery.
  - The RD may make a BIA Agency Superintendent's decision effective immediately to protect the trust resource; in that case, the cancellation decision is in effect even if an appeal is filed.
  - Unless the cancellation decision is made effective immediately, it is delayed if the permittee files an appeal. While a cancellation decision is appealed, the permittee must continue to pay rent and comply with the other terms of the permit.
  - An individual who elects to appeal can be required to post an appeal bond to cover the amount of revenue that the landowner may lose as a result of the appeal process.
- Submit the cancellation decision to the LTRO once it becomes final.

#### **4.8 Respond to Potential Trespass**

BIA's Ag & Range trespass policy (54 IAM 6) is to investigate alleged trespass complaints and to take all appropriate actions to remedy trespass on trust or restricted lands in order to protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion.

Trespass on restricted Indian trust property may form the basis for pursuing one or more of the civil remedies provided in P.L.103-177. In these instances, the United States may pursue legal claims on behalf of the owner of restricted trust property. The United States' interest is derived from its fiduciary relationship with the trust or restricted property owners. This fiduciary relationship has been further recognized by Congressional enactments, administrative regulations, and court decisions.

The owner or party with a legal right to possession may bring a civil suit against the trespasser. The relief sought in these lawsuits includes: (1) seeking a court order to eject such person/trespasser, or (2) an injunction against future reentry, or (3) a declaration of the lawful possessor's exclusive right of possession, or (4) an award of money damages if some harm or injury has been caused by the trespasser's actions to the plaintiffs' property interests. Unauthorized use includes:

- Placing a structure or improvement on the trust property. These structures may be permanent or temporary. The structures may be buildings, garages, agricultural production and fueling facilities, mobile homes, barns, trailers, granaries, silos, fences, corrals, water-holding or delivery systems, or any other type of residency or agricultural production facility.
- Grazing livestock on the trust property.
- Raising crops on the trust property.
- Harvesting natural growth (includes timber, firewood, honey production, vegetation, mushrooms, or other naturally occurring plants) on the trust property.
- Removing natural resources (may be sand, gravel, stone, coal, semi-precious stones, artifacts, or paleontological fossils) from the trust property.
- Using ROW (includes roads, utilities, pipelines, or irrigation delivery systems) on the trust property.
- Hunting, fishing, or trapping on the trust property.
- Dumping or burying refuse, waste, or trash on the trust property.
- Damage to real or personal property caused by trespassers. This may include:
  - fires;
  - flooding;
  - excavating, dredging, or filling; or
  - any damage to the real or personal property located or attached to the agricultural trust or restricted Indian lands.

The BIA and/or Tribe plays a crucial fact-gathering role in trespass actions since accurate and thorough investigations provide the evidence for any warranted action. Depending on the circumstances, a wide range of outcomes may be appropriate, including:

- criminal prosecution

- civil prosecution
  - negotiation and granting of a permit, lease, or grant of easement for ROW on the condition that the trespasser pay compensation based in part on past trespass;
  - the assessment and collection of monetary damages for loss of use, or removal, damages, or destruction of agricultural resources, or of existing improvements; and/or
  - eviction of the unauthorized user.

The trespass may be resolved administratively through BIA and/or Tribal efforts. Or, it may require referral to the Office of the Field Solicitor, U.S. Attorney, or the Tribal judicial system for resolution. If federal or Tribal authorities decline to file a lawsuit on the restricted property owner's behalf, the owner may pursue a claim in any court of competent jurisdiction.

This section explains the actions taken by the Ag & Range program office staff to determine trespass, how to document findings, and how to take appropriate actions to prevent the unauthorized use of trust land.

- 1) Receive report of/or discover potential trespass incident.
  - Document actions taken to investigate and resolve the alleged trespass. This is an administrative record and may be used for an administrative appeal and/or a court case.
  
- 2) Prepare for initial trespass investigation.
  - Determine area of potential trespass and land ownership.
  - Prepare map of the area where the alleged trespass is occurring/occurred.
  - Obtain copy of approved lease or permit.
  - Obtain a trespass form.
  - Obtain a copy the brand ownership book of the local area.
  - Prepare field investigation kit, which includes:
    - binoculars
    - GPS unit
    - digital camera
    - map of potential trespass area, which should indicate:
      - ✓ Public land survey
      - ✓ Ownership
      - ✓ Fences, water developments, roads, and waterways
  
- 3) Conduct initial investigation.
  - Use GPS unit or topographic map to determine location of the alleged trespass to determine property ownership.

- Take pictures of trespass animals, structures, improvements, or other unauthorized uses, activities, or agricultural products.
  - Include prominent physical or topographical features.
  - Make livestock counts by class and kind of animals and brands, include:
    - o animal brands;
    - o ear tags, earmarks, or other distinguishing physical features; and
    - o any suspected damages to improvements or natural resources.
  - Document statements of herders, farmhands, laborers, and any others that may have witnessed the trespass to obtain any known facts to include:
    - o any potential witnesses that may have observed the alleged trespass; and
    - o names, addresses, and phone numbers necessary to contact potential witnesses.
  - Document trespass.
  - Print photos and location identified on a GIS map of trespass animals, structures, and unauthorized uses discovered in initial investigation.
- 4) Determine the next appropriate steps to be taken.
- Contact the alleged trespasser within 2 business days to determine whether the trespass is accidental, incidental, or intentional.
  - Log and file all contacts or attempted contacts.
  - If the trespass is occurring on Tribally-owned land and the alleged trespasser is a Tribal member, it may be necessary to file the trespass action in Tribal Court. Consider the Tribal trespass ordinance for guidance.
  - If the trespass is occurring on a combination of Tribal and individually owned land, proceed with the trespass action.
- 5) If warranted, issue a Notice of Trespass within five business days after determining that an unauthorized use was or is occurring on trust or restricted Indian lands.
- The notice must:
    - o specify the unauthorized use;
    - o provide the legal description where the unauthorized use occurred, or a description of the lease or range unit;
    - o provide verification of ownership of unauthorized property (e.g., brands in the State Brand Book for cases of livestock trespass, if applicable);
    - o specify the remedy to correct the alleged unauthorized use; and
    - o specify the time frame to make the corrective action unless an explanation is received that confirms the trespass determination was not accurate.

- The written notice must be mailed or delivered to the alleged trespasser within 5 business days. Delivery may be completed by:
    - o hand delivery by agency personnel or BIA/Tribal law enforcement; or
    - o mail delivery; sent by certified mail with return receipt requested.
  - Delivery receipts or notes regarding hand delivery should be filed and preserved in the administrative record.
  - Verify delivery or refusal of delivery by the alleged trespasser of the trespass notice.
  - Copies of the written notice must be sent to the possessor of the trespass property, any known lien holder, surety, and the Indian landowner, as appropriate. Document in the administrative record all copies of notices that are distributed.
  - File and preserve all chronological copies of the trespass notice in the working file.
- 6) Calculate penalties, damages, and costs.
- Trespassers on Indian agricultural land must pay penalties, damages, and costs as follows:
    - o value of agricultural commodities used, destroyed, or illegally removed from the real property;
    - o value of AUMs should be based on grazing rental rate or published data;
    - o value of agricultural commodity should be based on regional data;
    - o value of other trust property should be based on public data if possible; and
    - o a penalty of double the value of the agricultural commodities at issue.
  - Damages to property are based on costs to return property to pre-trespass condition.
  - The amount assessed should be based on the cost of repair or replacement, and the method of determining damage amounts should be incorporated in a report.
  - In determining damages, BIA considers rehabilitation and re-vegetation costs. Other factors considered by BIA include damage to other resources and potential losses in future revenue, profits, productivity, and market value.
  - BIA does not have the authority to waive impoundment or damage costs.
  - Justifiable and reasonable costs may include:
    - o investigation, impoundment, and sale of the agricultural commodity;
    - o field examination and survey;
    - o damage assessments and appraisals;
    - o letter and report preparation;
    - o court costs as determined by the U.S. Attorney's Office;
    - o costs of subject-matter professionals, such as:

- ✓ archaeologists;
- ✓ wildlife biologists; and
- ✓ other environmental specialists

7) Make a compliance inspection to determine whether trespass remedy was completed (see FR 166.705).

**Step A. If corrective actions were completed, send trespasser a letter stating that the trespass remedy was completed.**

- The letter should state that any trespass activity within a 12 month period may result in further trespass actions.
- If corrective actions were completed but assessments for penalties accrued, send a letter that trespass was remedied but damages have been levied.
- If an assessment is made, include an explanation of the right to appeal in the letter.
- Communicate with the IA Office of Budget and Performance Management (OBPM) and Financial and Business Management System (FBMS) collectors to determine the posting of the assessment.
- Include an invoice for the money due.
- Copies of the letter should be sent to any known lien holder, surety, and the Indian landowner, as appropriate.
- Copies of all documentation gathered in the trespass incident must be filed and preserved in the administrative record.

OR

**Step B. If corrective actions were not completed, a BIA employee and another witness must conduct a follow-up investigation.**

- Map the trespass location, (i.e., hay cutting delineation, or other trespass occurrence).
- Take digital camera pictures of trespass location and damage to the trust lands affected by the trespass occurrence.
- Complete trespass record forms and file, and preserve each form in the administrative record.
- Certify the trespass record by having each witness sign a certification to confirm that the follow-up trespass investigation was completed.

8) Issue alleged trespasser a letter of trespass.

- The letter should contain:
  - o Notification to the trespasser that corrective actions were not completed.

- o Description of the assessment calculation, including each of the following assessable items, as appropriate:
  - ✓ The value of unauthorized use.
  - ✓ Penalty equal to double the value of the unauthorized use to date.
  - ✓ Investigative costs associated with the trespass to date.
  - ✓ Damages to the trust resource or property to date.
- Assessments will continue to accrue until trespass or unauthorized activity is resolved.
- Provide notice to the trespasser that unpaid assessments may result in forfeiture of any future agriculture leases and permits and referral of debt to the Treasury.
- Include the “right to appeal” language in the letter.
- Include an invoice for monies due to date.
- Send by certified mail or hand delivery. File all chrono letters and receipt activity or contact in the administrative file.
- Copies of the written notice must be sent to the possessor of the trespass property, which includes any known lien holder, surety, and the Indian landowner, as appropriate.
- Document in the administrative record all copies of correspondence that are distributed in the trespass investigation and its follow-up.

9) Determine if impoundment is appropriate.

- Unauthorized livestock or agricultural commodities will be impounded under the following conditions:
  - o where there is imminent danger of severe injury to growing or harvestable crops, or destruction of range forage;

*Note:* If the BIA Agency Superintendent authorizes a resource-damage impoundment, the trespasser may be given verbal notice to remove the livestock within a few hours or face impoundment.

- o when the owner of the unauthorized livestock or other property, or the owner’s representative, refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice; and

*Note:* For BIA purposes described here, when notice is sent to a party’s last address by registered or certified mail (return receipt requested), constructive service has been accomplished even though delivery is unsuccessful.

- o any time after five calendar days of providing notice of impoundment if the trespass is not corrected.

*Note:* It may not be necessary to impound the entire agricultural commodity to pay for

trespass assessments and damages. If impoundment action results in the owner or mortgage holder removing the remaining livestock, the corrective action objective is accomplished. The impounded agricultural commodities are redeemed or sold to satisfy assessed penalties and damages.

**10) Step A. Issue Impoundment Notice when ownership cannot be established.**

- Contact the regional office's Natural Resources staff to facilitate any impoundment action.
- Consider impounding agriculture commodities, livestock, or other assets.
- Constructive notice is completed when potential impoundment is posted in Tribal government buildings, government buildings, local newspaper, and local post offices nearest the Indian land where the trespass occurred.
- Constructive notices should include an invoice for monies due to date
- Send all notices by certified mail or hand delivery.
- File all chrono letters and receipt activity and contact confirmation, if any, in the trespass file.
- Copies of the written notice must be sent to the possessor of the trespass property, any known lien holder, surety, and the Indian landowner, as appropriate.
- Document in the administrative record all copies of correspondence that are distributed in the trespass investigation and its follow-up.

**Step B. In cases of trespass by a known livestock owner, issue an impoundment letter by certified mail to the owner's address.**

- Proceed with impoundment, if required.
- Prior to the impoundment of any livestock or property, arrangements must be made for the 24-hour care of the livestock or property. If a local sales facility is used, BIA should ensure that the facility knows when the livestock are arriving, their expected number and kinds, and to whom the livestock can be released and under what conditions.
- Arrange for the following:
  - o public safety
  - o contracted services
    - ✓ Impoundment crew
    - ✓ Equipment
    - ✓ Horses
    - ✓ Transportation of horses and equipment
    - ✓ Transportation of impounded commodities
    - ✓ Veterinarian



- o holding facility that is bonded and insured
- o feedlot
- o public auction market
- o federal or Tribal law enforcement
- o Tribal or state brand inspector
- Record class and age of trespass animals.
- Impoundment action can be taken five calendar days after trespasser receives notice.

11) Provide a written notice to the owner or the owner's representative, and any known lien holder, regarding the intended sale of the livestock impounded, once they are secure.

- The written notice must include:
  - o a breakdown of penalties and costs assessed;
  - o the value of agricultural commodities used, destroyed, or illegally removed from the real property;
  - o the value of AUMs (should be based on grazing rental rate or published data);
  - o the amount of the penalty, which is double the value of the agricultural commodities;
  - o the procedures by which the impounded property may be redeemed prior to sale;
  - o the hours during which the livestock can be redeemed; and
  - o the acceptable types of proof of ownership that is required for return of impounded livestock.

*Note:* If the owner or the owner's representative does not immediately indicate intent to redeem the livestock, preparations for a public sale should proceed.

12) Dispose of impounded agricultural commodities.

- Establish minimum bid requirements for the public sale based on the USDA's current Agricultural Statistics Report for the state or region.
- Post public notice regarding the sale of the impounded property at:
  - o U.S. post office
  - o Tribal community building
  - o other public facilities
  - o local newspaper nearest to the Indian agricultural lands where the trespass occurred
  - o The public notice should include:
    - ✓ Impounded property description
    - ✓ The date, time, and place of the public sale. The sale date must be at least five calendar days after the publication and posting of notice.

- ✓ Proof of ownership required for redemption prior to sale, if owner of the impounded property is unknown
- ✓ Minimum bid requirements
- Conduct the sale. If a satisfactory bid is not received, the livestock or property may be re-offered for sale, sent to a public action for sale, condemned and destroyed, or otherwise disposed of.
- The purchaser must be provided a bill of sale or other written receipt to document the sale of the impounded livestock or property.
- If enough money is not collected to satisfy the Bill of Collection, send written notice to the trespasser demanding immediate settlement.

*Note:* The notice advises the trespasser that unless settlement is received within five business days from the date notice is received, BIA will forward the case for appropriate legal action.

- Send a copy of such notice to the Indian landowner, permittee, and any known lien holders.

### 13) Distribute trespass and sale proceeds.

- Treat and distribute amounts recovered from trespass as proceeds from the sale of property from the Indian agricultural land upon which the trespass occurred.
- Proceeds collected may be distributed for the following:
  - o Repair of any damages to the Indian agricultural land and property.
  - o Reimbursement to affected parties, including the permittee, for loss due to the trespass, as negotiated and provided in the permit.
  - o Costs associated with enforcement of the trespass.
- Return money from the sale, left after distribution of the proceeds, to the owner of the impounded property. If that owner cannot be identified within 180 calendar days of distribution, the remaining funds are deposited in the account(s) of the landowner(s) where the trespass occurred.
- Proceeds from trespass are deposited into the FBMS and/or into the appropriate account(s). The funds collected as trespass proceeds (identified by category) may be deposited in accordance with the following guidance:
  - o Value of agricultural commodity consumed or destroyed that would have been used by permittee or lessee should be deposited to the Federal Finance System (FFS).
  - o Penalties, which belong to the owners of trust land, should be deposited to IIM accounts. The only exception is if one of the landowners is the trespasser. The trespasser does not receive a distribution.
  - o Enforcement costs should be deposited into FFS.
  - o Expenses incurred in gathering, impounding, caring for, and disposal of trespass

- property should be deposited into FFS.
- o Damages for resource rehabilitation should be deposited to FFS.
- 14) Complete summary trespass report of case and submit it to the RD.
- The report should include the following:
    - o affidavits, including the name and position of the person making it; and
    - o the trespass details, including:
      - ✓ agricultural commodity description;
      - ✓ ownership determination;
      - ✓ legal description of the land trespassed;
      - ✓ administrative contract number;
      - ✓ record (transcript) of any witness' statements, including the name and address of witness;
      - ✓ record (transcript) of any owner's statements and incident witness statements and their contact information on administrative file;
      - ✓ an affidavit showing legal ownership of the land and an explanation of how it was acquired;
      - ✓ the determination of damages, value of agricultural commodity, cost of investigations, and trespass penalties; and
      - ✓ copies of pertinent correspondence with the livestock owner, including copies of delivery receipts.
- 15) The RD may submit the case to the Solicitor's Office. The Solicitor's Office assesses the case and prepares a referral to the Department of Justice, if appropriate.

## ***Chapter 5: Agriculture***

### **5.1 Agricultural Conservation Plan Development**

A conservation plan is part of an agricultural lease or permit which is acknowledged by the lessee. The purpose of a conservation plan is to identify and prescribe specific management actions and conservation practices. The plan addresses current resource concerns that may ensure sustainable agricultural production. Conservation plans are also developed for agricultural lands not currently leased or permitted (idle lands) and not covered by another management plan (e.g., a forest plan).

Conservation plans must be consistent with the Tribe's ARMP and/or IRMP if one exists. If an ARMP has been written for a management unit, it may contain enough detail to meet the requirements for a conservation plan. A conservation plan must consider the landowner's and permittee's management objectives, goals, and capabilities, if known, as well as prevailing economic conditions (commodity prices, production costs, etc.). BIA Agriculture Specialists work with the landowner and NRCS/FSA, as appropriate, to develop feasible management options that yield acceptable economic returns and conservation benefits. The potential permittee/lessee may also be involved in the planning process if the lease or permit is negotiated.

BIA encourages the use of GIS and GPS for data collection, analysis, and map production for conservation plans. Photos are taken to document plan conditions and progress. New information and changes to existing information is entered into the BIA natural resources database.

NEPA compliance is required for activity covered by an agricultural lease or permit in those instances where no relevant ARMP addresses compliance planning.

By regulation, all leases for agricultural lands are required to have conservation plans to ensure the sustained use of renewable natural agricultural resources. Determination of these conservation requirements is the responsibility of the Agency Superintendent who may designate the agency soil conservationists and technicians, range conservationists, and agriculture technicians to assist with development of a plan, and who may also be involved with the development of other provisions such as grazing capacities for pasture/grazing leases.

The BIA Ag & Range program office staff perform the following steps to develop a conservation plan:

- 1) Receives notification from BIA Division of Real Estate Services staff that a conservation plan needs to be developed for an agricultural lease.
  - Notification should be made a year in advance of a proposed agricultural lease.
  - The proposed lease(s) may include an expiring agricultural lease, or a new lease proposed for lands currently not leased.

- BIA encourages landowners/permittees to use USDA programs to promote conservation and maintain crop bases on Indian land. BIA approval is required when trust land is encumbered for conservation practices, whether prescribed by NRCS, BIA, a Tribe, or others (see 25 CFR 166.314).

*Note:* The NRCS and other agencies may be unaware of this requirement because their review/approval process may include only the Conservation District Board, and not BIA. A MOU can be helpful in establishing local processes for dealing with the requirement for BIA approval.

2) Gather information necessary to complete the plan.

- Conservation plans are specific to the land use, management unit, and term/duration covered by a lease.
- Assemble or collect baseline natural resources information and relevant historical data for the lease area. This includes a review of previous conservation plans, compliance inspections, and on-site assessments to determine current resource conditions and needs.
- If a lease contains more than one tract, calculate and assign grazing capacity for each tract. This step is necessary when income must be assigned to specific allotments/tracts.
- Provide an opportunity for the lessee to discuss the management goals and objectives with agriculture management staff.

3) Draft the conservation plan based on soil, ecological, cultural, and environmental information that considers past usage, topography, adjacent land use, and proposed use.

- Develop a draft plan that is aligned with the Tribe's ARMP, if available, and within the capabilities of the permittee/lessee.
- Identify resource protection and management needs with input from resource specialists.
- The plan should include or reference:
  - management goals and objectives;
  - land description for the management unit;
  - aerial photos or maps showing soil types, ecological sites, habitat types, and grazing capacity;
  - inventory of existing improvements that indicates condition, value, and improvement plans with cost estimates;
  - description of prescribed management and conservation practices and stipulations, if any;
  - grazing capacity and season of use for pasture leases; and
  - conservation stipulations that are pertinent to the site-specific conservation needs, and the conditions pertinent to the lessee's use activities.

- 4) Finalize the conservation plan and conservation stipulations/provisions.
  - Ensure that the potential lessee acknowledges the terms of the conservation plan.
- 5) Forward the conservation plan to the appropriate BIA Division of Real Estate Services office to have the plan included as a required part of the lease.
  - The lease approval process is the responsibility of the Real Estate Services program. The Real Estate Specialist ensures that conservation plans are incorporated into all agricultural leases.
  - The lease must make specific reference to the conservation plan and state that all provisions require lessee compliance.
  - Copies are retained in the BIA regional Natural Resources Office.
  - Copies of the conservation plan are provided to the landowners, if requested.
- 6) Agriculture Specialists monitor land use for conformance with the plan.
  - Monitor resource conditions.
  - Keep records of contacts with the lessees.
- 7) BIA conservation plan developers assist BIA Agriculture Specialists with amending the conservation plan as needed.
  - The lessee or landowner may have management goals they need conservation plan developers to have incorporated in a revised conservation plan.
  - Refer proposed amendments to the BIA Division of Real Estate Services office to secure consent from the lessee. The Line Officer reviews and approves the lease amendment. The amendment must contain the revised conservation plan.

## **5.2 On-site Agricultural Land Inspection for Lease Compliance**

This process involves the annual on-site inspection of agricultural and pasture leases. The purpose of these inspections is to determine actual land use and determine findings regarding compliance with the agricultural terms of the lease. Inspections also address compliance with the terms of the conservation plan included in the lease. Compliance observations are documented in the administrative file in TAAMS.

Adherence to conservation provisions is an essential element of the leasing term. Its purpose is to ensure the sustained and productive use of trust renewable resources. Subsequent determinations of lessee non-compliance may be made upon review of data collected. If a determination of non-compliance is made, corrective actions are taken to resolve or correct the issue. This process also involves conducting necessary follow-up actions to correct permittee actions when the lessee is found to be in non-compliance.

BIA follows Tribal agricultural ordinances as long as they do not conflict with federal law. The lessee must comply with all provisions of the lease including applicable Tribal ordinances and

conservation plans. The applicable conservation plan can be prepared with lessee input and concurrence; but it is binding in any case as part of the lease.

The annual on-site inspection process is initiated by the BIA Agency Superintendent's Ag & Range program office when any of the following events occurs: 1) a report of a possible violation is received, 2) a routine inspection is scheduled, or 3) an initial inspection is required. Regardless of the event that initiates the inspection, Ag & Range program office staff perform the following steps:

- 1) If a report of a possible lease violation is received, it should be investigated within five business days after receipt. If a violation is confirmed, written notice should be sent to the violator within five business days of that determination. The violator has 10 calendar days to respond. More information on violations is also discussed below (beginning with step 5).
  - Regulations provide for negotiated remedies when a violation has occurred (see 25 CFR 162.612 and 25 CFR 166.702). However, it is not advisable to negotiate away arrangements previously agreed to in the permit/lease or conservation plan.

*Note:* Permittees/lessees may not be held accountable for permit/lease requirements not met because of factors outside of their control (e.g., seedling establishment during drought conditions). Negotiating such issues is encouraged.

- 2) For all events, individual lease files should be reviewed prior to field inspection of the unit in order to determine individual and unique requirements, such as: (1) authorized stocking rate for pasture leases, (2) conservation plan, (3) season of use, (4) summer fallow requirements, (5) contour farming, (6) maintaining grass waterways, (7) weed control, and (8) other conservation practices.
- 3) Collect the necessary recording and documentation items for the field inspection. This may include: (1) conservation plan and map, (2) aerial photos, (3) stock counting form, (4) binoculars, (5) GPS equipment, (6) 35mm camera (a digital camera is not allowable because the image can be easily modified), (7) 2-way radios, and (8) contract stipulations.
- 4) Perform on-site inspection of the unit and record necessary information that relates to its use.
  - Document any potential problems in field notes, recording time, location, witnesses, and other facts pertinent to the situation.
  - Inspect any physical improvements such as fences, ditches, and water developments that may need the attention of the permittee to maintain.
  - Record and maintain the field notes in lease or permit file.
- 5) If it is determined that a violation has occurred, determine the need for follow-up actions, which may include inspections or informal contact with the permittee or other parties to resolve minor issues.
  - BIA Agency Superintendent staff, which may include Agriculture Specialists at the

agency or Real Estate Services staff as appropriate, will attempt personal contact with the alleged violator and document their actions to contact the alleged violator in the lease file. Whether or not an offense is willful, discussion of the violation may resolve the problem and may provide other information that will be valuable in the future.

- In cases of potential trespass, take follow-up action to prevent unauthorized use (see 25 CFR Part 166.801).

6) Formally notify the lessee/violator of the violation.

- Close internal coordination is required between the designated BIA Agency Superintendent and the Ag & Range program office staff to determine who must perform notification since this responsibility may vary from location to location.
- When communicating with the violator about the violation:
  - o state the basis for alleging the violation and identify the permit/lease stipulations or conservation plan elements that apply; and
  - o if the violation is location-specific, cite the location. If the violation involves animals, describe them by kind, class, number, and ownership marks.
- State in the notice that, within 10 calendar days after receiving the notice, the violator must:
  - o cure the violation and notify BIA that it has been corrected;
  - o dispute the violation with explanation; and/or
  - o request additional time to cure the violation.
- Send notices of violation by certified mail with return receipt requested, or hand deliver with acceptance or refusal documented. Attach return receipts to the file copy of the notice as a part of the official record.

*Note:* Law enforcement officers and other Officers of the Court can deliver notices and verify delivery or refusal of the notice.

7) Notify the regional office of any notice refusal, lack of correction, or other negative response to a notice of violation.

8) Verify that the violation has been corrected; or, if corrections are not made according to the agreed deadline, notify the violator of potential punitive actions.

- If additional time to correct the violation is granted, document the reason for the extension, and have all parties agree on the timeline for completing the corrective actions and subsequent inspections.
- Send copies of the letter to the landowner(s) and any known lien holder and bonding agent, as appropriate.
- If construction of improvements was a factor in the bid price, consider the difference between the lease price and the true market price in determining a



penalty for violation.

- If a bond is collected to cover the cost of correcting the violation, any funds left over are refundable to the violator.

9) Determine if the lease is to be cancelled.

- Close internal coordination is required between the designated Agency Superintendent and the Ag & Range program office staff to determine who must perform the cancellation actions since this responsibility may vary from location to location.
- Ultimately, the lease can be cancelled if correction of the violation is not timely or if the violation correction is not adequate.

10) If the decision is to cancel, send the lessee and appropriate sureties a written notice of cancellation within five business days of the decision. Provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. This step may be performed by the BIA Real Estate Services staff at various locations.

- Written notice of cancellation must:
  - o explain the grounds for cancellation;
  - o notify the lessee of the amount of any unpaid rent or late payment penalties due;
  - o notify the lessee of the right to appeal under 25 CFR Part 2, as modified by 25 CFR 162.253;
  - o indicate the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and
  - o order the lessee to vacate the property within 30 calendar days of the date of receipt of the written notice of cancellation, if an appeal is not filed by that time (see 25 CFR 162.252).
- If an appeal is not filed, a cancellation decision is effective 31 calendar days after the lessee receives the written cancellation notice by certified mail or hand delivery. However, the BIA Agency Superintendent has discretion to make the decision effective immediately.
- Unless the cancellation decision is made effective immediately, and if the lessee files an appeal, the lessee may be granted additional time to cure the violation. The lessee must complete corrective actions within a reasonable or specified time period from the date on which the extension is granted. While a cancellation decision awaits an appeal decision, the lessee must continue to pay rent and comply with the other terms of the lease.
- An individual who elects to appeal can be required to post an appeal bond to cover the amount of revenue that the landowner may lose as a result of the appeal process.

### 5.3 Noxious Weed Program

The Noxious Weed program is funded through a distinct budget functional area that is separate from the budget functional area of Agriculture and Rangeland Management. Specifically, noxious weed funding is for solely carrying out noxious weed management on trust lands. On many reservations, noxious weeds have a detrimental impact on the natural resources, especially grazing lands. BIA agency locations with significant noxious weed problems conduct weed inventories and develop control projects that are submitted for possible funding if budget allocations are provided. These weed control projects are funded annually, and funds are then made available to the program.

Noxious weed projects are assessed for infestation spatial presence and density occurrence by BIA regional Noxious Weed Coordinators. Once assessed, noxious weed project proposals are evaluated by BIA and Tribal managers in order to develop successful projects that result in good weed management.

The Noxious Weed program standards involve nine rating categories, each indicating a range of point values to be assigned. The maximum total score is 125 points. Below is a brief explanation of the rationale for the criteria. The BIA regional Noxious Weed Coordinator can provide assistance in explaining the criteria and developing a proposal. Rating categories are comprised of the following:

#### 1) **Cooperative Projects**

Long-term weed control will be most effective if adjacent landowners/users are involved and committed to addressing the problem. This criterion credits projects that plan cooperative involvement to control the source and spread of noxious weeds. Cooperative projects can involve federal, state, county, and private organizations. Tribal associations and Indian individuals may also develop cooperative projects.

#### 2) **Cost-Share**

A basic premise of the program is to leverage BIA limited funds with matching funds. The minimum cost-share required for all projects is 50 percent (with one dollar of matching funds for every one dollar of BIA noxious weed funding). The more a project can leverage its funding, the more points it can be assigned.

Cost-share money can come from any other funding source or combination of sources (i.e., individual operators, Tribes, BIA funding other than BIA weed control funding, county or state organizations or agencies, other federal agencies, and private entities including utility companies) as long as it meets the following criteria:

- BIA noxious weed funding is for *on-the-ground* treatment of noxious weeds. Matching contributions count if they are directly applied to project-level *implementation*, including equipment and fieldwork. Examples include providing livestock and/or management for weed grazing; sharing in the purchase of herbicide or spray mix additives; or sharing the expense of the control method application (applying herbicide, pulling or chopping, or

mowing weeds), collection and release of biocontrol agents, mapping weeds, or day-to-day operation of the noxious weed control program. A maximum of 10 percent of the total project funds can be used to support project administration. The following items are not cost-shareable expenses:

- o Planning: Strategic natural resource program planning and noxious weed project-level planning are activities inherent to any natural resource program, whether administered by BIA or a Tribe. Other funding sources may be available for planning purposes, including the BIA IRMP program and U.S. Department of Environmental Protection Agency (EPA) grants.
- o Education: The Cooperative Extension Service, NRCS EQIP Education Assistance, and many other entities are available to provide educational materials, presentations, workshops, etc.
- o Training: Training is the responsibility of the employer and employee. Technical knowledge and safety awareness are required to implement the projects.
- All cost-share contributions should be identified by source and itemized in the project proposal. If the cost-share amount is based on in-kind services, the specific service to be provided and the method of determining the value of that service should be explained.

### **3) Priority Noxious Weeds**

Three categories of weeds were established to guide prioritization of control efforts. The primary focus of this program is: (1) non-native; (2) non-aquatic; and (3) hard-to-control biennial or perennial species.

### **4) Project Area Delineation**

Accurate acreage calculations are necessary for developing project work plans, chemical amounts, cost estimates, etc. The descending order of preference as the basis for such calculations is: (1) GPS, as the most accurate method of determining infestation size and location; (2) delineations on base maps or aerial photos; and (3) sketches on paper with no control points.

### **5) Method of Control**

Integrated pest management (IPM) is a holistic approach that considers all acceptable methods of control. The integrated approach results in more effective long-term weed control. All methods may not be applicable for every project, but the IPM Plan should address each for the maximum scores possible in this category. The top category also emphasizes grazing management, which is critical for effective, long-term weed control.

### **6) New Invaders vs. Established Noxious Weeds**

Treatment cost and ecological damages are minimized if noxious weeds are detected and treated before they spread to large areas. A weed can be considered a new invader if it shows up in a different management unit and is not related to a source in any

nearby area covered by the weed program.

#### **7) Location/Land Use**

The primary focus of the BIA noxious weed program has always been rangeland/pasture lands, primarily because economic returns from these lands are insufficient to allow the permittee to pay for the total cost of weed control. Riparian/wetlands are given the second highest score because of their ecological significance. Weed control on leased lands is the responsibility of the land user.

#### **8) Quality Assurance**

Seven factors are identified as quality assurance measures for existing projects. New projects score zero (meaning no points are deducted from the total score) if properly planned with environmental documentation in place. If all seven factors are satisfied, no points are deducted. The fewer quality factors satisfied, the more points are deducted for that project's rating.

#### **9) Project Ownership Support**

Tribal or landowner awareness, support, and regulation of activities and products concerning noxious weeds is critical for program success. This criterion credits Tribes that have passed resolutions, ordinances, or contractor requirements to regulate and enforce noxious weed infestation and treatment.

## ***DEFINITIONS***

**Agricultural land** means Indian land or Federal Government land suited or used for the production of crops, livestock, or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.

**Agricultural lease** means a lease of agricultural land for farming and/or grazing purposes.

**Agricultural product** means: (1) crops grown under cultivation whether used for personal consumption, subsistence, or sold for commercial benefit; (2) domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden; (3) forage, hay, fodder, food grains, crop residues, and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and (4) other marketable or traditionally used for materials authorized for removal from Indian agricultural lands.

**Agricultural resource** means: (1) all primary means of production, including the land, soil, water, air, plant communities, watersheds, human resources, natural and physical attributes, and man-made developments, which together comprise the agricultural community; and (2) all the benefits derived from Indian agricultural lands and enterprises, including cultivated and gathered food products, fibers, horticultural products, dyes, cultural or religious condiments, medicines, water, aesthetics, and other traditional values of agriculture.

**Agricultural Resource Management Plan (ARMP)** is a 10 year plan developed through the public review process specifying the Tribal management goals and objectives developed for Tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and Indian Tribal governments.

**Allotment number** means the number assigned by the BIA to a tract of land held in trust by the Federal Government for and on behalf of one or more individual Indians.

**Allotted heirship** refers to undivided interest land.

**Allocation** is the apportionment of grazing privileges without competition to Tribal members or Tribal entities, including the Tribal designation of permittees and the number and kind of livestock to be grazed.

**American Indian Agricultural Resources Management Act (AIARMA)** of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 et seq.), and as amended on November 2, 1994 (108 Stat. 4572). Sometimes referred to as the “Indian Ag Act”.

**Animal identification** means BIA or Tribally accepted methods for identifying animal ownership such as brands, ear marks, tattoos, freeze brands, etc.

**Animal Unit (AU)** is the standard used in establishing and expressing the relative grazing impact and forage consumption of different kinds and classes of livestock and wildlife. The unit is considered to be one mature (1000 lb.) cow or the equivalent based on an average daily forage consumption of 26 lbs. dry forage per day.

**Animal Unit Equivalent Guide**

Cattle:

Cow, with or without calf	1.0
Bull, mature	1.5
Yearling	0.7

Horses:

Mature	1.5
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Sheep/Goats:

Mature	0.2
Yearling	.15

Wildlife:

Bison Bull	1.5
Bison Cow	1.0
Bison yearling	0.6
Elk	0.7
Deer	0.2
Antelope	0.2

**Animal Unit Month (AUM)** is the amount of forage required to sustain one cow or cow with calf for one month.

**Assign/assignment** is an agreement between a permittee (tenant) and an assignee, whereby the assignee acquires all of the permittee's (tenant's) rights, and assumes all of the permittee's (tenant's) obligations under a permit (lease).

**Assignee** means the person to whom the permit rights for use of Indian land are assigned.

**Bond** is security for the performance of certain permit (lease) obligations, as furnished by the permittee (tenant), or a guaranty of such performance as furnished by a third-party surety.

**Categorical Exclusion (CE)** is a class of actions that a Federal Government agency has determined, after review by the Council on Environmental Quality (CEQ), do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is normally required.

**Conservation plan** is a statement of management objectives for grazing, farming, or other agriculture management including contract stipulations defining required uses, operations, and improvements.

**Conservation practice** is a management action to protect, conserve, utilize, and maintain the sustained yield productivity of Indian agricultural land.

**Constructive notice** means notice is: 1) posted at the Tribal government office, Tribal community building, and/or the United States Post Office; and 2) published in the local newspaper(s) nearest to the affected land and/or announced on a local radio station(s).

**Council on Environmental Quality (CEQ)** was established through the NEPA within the Executive Office of the President to ensure that Federal Government agencies meet their obligations under NEPA. CEQ oversees NEPA implementation, principally through issuing guidance and interpreting regulations that implement NEPA's procedural requirements.

**Critical values** are values that are unique to a given Indian Tribe and/or its members and cannot be ignored.

**Encumbrance** means a mortgage, deed of trust, or other instrument which secures a debt owed by a permittee to a lender or other holder of a leasehold mortgage on the permit interest.

**Environmental consequences** are the results of an action upon the environment impacted by that action.

**Fair annual rental** means the amount of rental income that a permitted parcel (leased tract) of Indian land would most probably command in an open and competitive market.

**Farmland** means Indian land, excluding Indian forest land that is used for the production of food, feed, fiber, forage, seed, oil crops, or other agricultural products, and may be either dry land, irrigated land, or irrigated pasture.

**Government land** means any tract or interest therein, in which the surface estate is owned by the United States and administered by the BIA, not including Tribal land which has been reserved for administrative purposes.

**Grant/granting** is the process of the BIA or the Indian landowner agreeing or consenting to a permit.

**Grazing capacity** means the maximum sustainable number of livestock that may be grazed on a defined area and within a defined period, usually expressed in AUM.

**Grazing rental payment** is the total of the grazing rental rate multiplied by the number of AUMs or acres in the permit.

**Holistic management objectives** are management objectives that encompass all aspects of decision-making or problem-solving including economic, social, natural, cultural, spiritual, etc.

**Indian** means an individual who is a member of an Indian Tribe (25 CFR Chapter 1, section 162.003 and 25 U.S.C. 479). Generally, an Indian must be a member of a Tribe recognized by the Federal Government and must, for some purposes, be of one-fourth or more Indian ancestry. However, Federal Government agencies use differing criteria to determine who is eligible to participate in their programs, and Tribes have varying eligibility criteria for membership.

**Indian agricultural land** means Indian land, including farmland and rangeland, excluding Indian forest land, that is used for production of agricultural products; and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

**Indian forest land** is forest land as defined in Section 304(3) of the National Indian Forest Resources Management Act (25 U.S.C. 3103(3)).

**Indian land** is land that is held in trust by the United States for an Indian Tribe, or any tract in which any interest in the surface estate is owned by a Tribe or individual Indian in trust or restricted status.

**Indian landowner** is a Tribe or individual Indian who owns an interest in Indian land in trust or restricted status, or is the beneficiary of the trust under which such Indian land is held by the United States.

**Individually owned Indian land** is any tract or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

**Indian Tribe** means any Indian Tribe, band, nation, pueblo, or organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Integrated Resource Management Plan (IRMP)** is a plan developed pursuant to the process used by Tribal governments to assess available resources and to provide identified holistic management objectives that include quality of life, production goals, and landscape descriptions of all designated resources that may include (but not be limited to) water, fish, wildlife, forestry, agriculture, minerals, and recreation, as well as community and municipal resources, and may include any previously adopted Tribal codes and plans related to such resources.

**Interest** means (when used in reference to Indian land) an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

**Land management activity** means all activities accomplished in support of the management of Indian agricultural lands, including (but not limited to): 1) preparation of soil and range inventories, farmland and rangeland management plans, and monitoring programs to evaluate



management plans; 2) agricultural lands and on-farm irrigation delivery system development, and the application of state of the art, soil and range conservation management techniques to restore and ensure the productive potential of Indian lands; 3) protection against agricultural pests, including development, implementation, and evaluation of integrated pest management programs to control noxious weeds, undesirable vegetation, and vertebrate or invertebrate agricultural pests; 4) administration and supervision of agricultural leasing and permitting activities, including determination of proper land use, carrying capacities, and proper stocking rates of livestock, appraisal, advertisement, negotiation, contract preparation, collecting, recording, and distributing lease rental receipts; 5) technical assistance to individuals and Tribes engaged in agricultural production or agribusiness; and 6) educational assistance in agriculture, natural resources, land management, and related fields of study, including direct assistance to Tribally-controlled community colleges in developing and implementing curriculum for vocational, technical, and professional course work.

**Land schedule** is a set schedule of use established by a Tribal Land Committee to guide permit and lease activities consistent with best agriculture management practices.

**Lease** is a written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land for a specified purpose and duration. Unless otherwise provided, the use of this term will also include permits, as appropriate.

**Lessee** means a tenant, as defined in this section.

**Life estate** is an interest in Indian land which is limited in duration to the life of the permittor holding the interest, or the life of some other person.

**Line official** refers to delegated authority from the Department of the Interior Secretary to: Assistant Secretary of Indian Affairs; Director, Bureau of Indian Affairs; Regional Director; BIA Agency Superintendent; or BIA Agency Superintendent management staff.

**Majority interest** means the ownership interest(s) that is (are) greater than 50 percent of the trust or restricted ownership interest(s) in a tract of Indian land.

**Monitoring plan** is a plan developed to measure the success (or failure) of a project or activity. A photo point or vegetative transect could assist in monitoring noxious weed control treatments. Compliance inspections can monitor leasing or permitting activities.

**Mortgage** is a mortgage, deed of trust, or other instrument which pledges a permittee's permit (leasehold) interest as security for a debt or other obligation owed by the permittee to a lender or other mortgage.

**On-and-off grazing permit** is a written agreement with a permittee for additional grazing capacity for other rangeland not covered by the permit.

**Owner's(') use** means the use of land by an individual who owns 100 percent of a tract of land, or by a minority interest with the written consent of the majority owners.

**Permit** is a written agreement between Indian landowners and a permittee, whereby the permittee is granted a revocable privilege to use Indian land or government land, for a specified purpose.

**Permittee** is a person or entity who has acquired a legal right of possession to Indian land by a permit for grazing purposes.

**Permittee request removal** means the permittee requests removal of the Indian land, the owners of the majority interest of the Indian land provides written approval of the removal of the Indian land, and BIA determines that the removal is warranted.

**Public notice** means that per 25 CFR 166.104(2), a notice will be posted at the Tribal community building, U.S. post office, and/or published in the local newspaper nearest to the Indian lands where activities are occurring.

**Public scoping meeting** is an advertised meeting to gather the comments of the interested public of a defined area regarding a proposed activity or management plan.

**Range unit** means rangelands consolidated to form a unit of land for the management and administration of grazing under a permit. A range unit may consist of a combination of Tribal, individually owned Indian, and/or Federal Government land.

**Rangeland** means Indian land, excluding Indian forest land, on which native vegetation is predominantly grasses, grass-like plants, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands re-vegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

**Remainder** is an interest in Indian land that is created at the same time as a life estate, for the use and enjoyment of its owner after the life estate terminates.

**Restricted land or restricted status** means land, the title to which is held by an individual Indian or a Tribe, and which can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior because of limitations contained in the conveyance instrument pursuant to federal law.

**Season of use** means land use is based on production of plant resource availability.

**Sublease** is a written agreement by which the tenant grants to an individual or entity a right to possession no greater than that held by the tenant under the lease.

**Sub-permit** is a written agreement, whereby the permittee grants to an individual or entity a right to possession (i.e., pasturing authorization) no greater than that held by the permittee under the permit.

**Surety** means one who guarantees the performance of another.

**Sustained yield** means the yield of agricultural products that a unit of land can produce continuously at a given level of use.

**Tenant** is a person or entity who has acquired a legal right of possession to Indian land by a lease or permit under 25 CFR Part 162.

**Trespass** means any unauthorized occupancy, use of, or action on Indian lands.

**Tribal land** means the surface estate of land or any interest therein held by the United States in trust for a Tribe, band, community, group, or pueblo of Indians, and land that is held by a Tribe, band, community, group, or pueblo of Indians, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476).

**Tribal law(s)** means the body of law that governs land and activities under the jurisdiction of a Tribe, including ordinances and/or other enactments by the Tribe, Tribal court rulings, and Tribal common law.

**Trust land** means any tract or interest therein that the United States holds in trust status for the benefit of a Tribe or individual Indian.

**Undivided interest** is a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

**Written notice** means a written letter mailed by way of United States mail, certified return receipt requested, postage paid, or hand-delivered letter.