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# FORT PECK TRIBES

## LAND USE POLICY



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## Fort Peck Tribes Indian Land Use Policy

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## I. INTRODUCTION

### A. Administration

1. Administrative Power. The Program shall be administered under the direction of the Executive Board, with technical advice and assistance from the Bureau of Indian Affairs.
2. Committee Duties. The Committee shall be responsible for the initial review of all land transactions under the Program and shall submit its recommendations in writing to the Executive Board. The Committee will adhere to the rules and policies established by the Fort Peck Land Management Policy and will make no exception from these policies for any individual or individuals.

### B. Authority

1. The Fort Peck Tribes derive the authority to supersede Federal regulations as outlined in the American Indian Agriculture Resource Management Act - 25 U.S.C. § 3702 & 3712.
2. All areas of Tribal Policy not explicitly covered in this Land Use Policy will be governed by the appropriate sections of the CFR.

### C. Definitions

1. As used in this Land Management Program
  - (a) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.
  - (b) "Executive Board" means the governing body of the Tribes.
  - (c) "Committee" means the Land/Natural Resources Committee, or such other body, or delegate, as the Executive Board may designate.
  - (d) "Secretary" means the Secretary of the Interior or his authorized delegate.

- (e) “Superintendent” means the Superintendent of the Fort Peck Indian Agency, or his/her authorized representative.
- (f) “Agency” means the Fort Peck Indian Agency.
- (g) “NRCS” means the United States Department of Agriculture’s Natural Resource Conservation Service.
- (h) “Immediate Family” means the spouse, brothers, sisters, lineal ancestor, lineal descendant, or member of the household of an individual Indian landowner.  
(See 25 CFR 162.101)
- (i) “Enrolled Members” Enrolled members of the Fort Peck Indian Reservation, which also includes all Tribal enrolled members employed by the Federal Government.
- (j) “Cropland” means land suitable for crop production.
- (k) “Program” means the Land Management Program.
- (l) “Tribal Land” means the surface estate of land or any interest therein held by the United States in trust for the Fort Peck Tribes.
- (m) “Trust Land” means any tract, or interest therein, that the United States holds in trust for the benefit of a tribe or individual Indian.
- (n) “Allotted Land” means lands owned by an individual(s) Indians.
- (o) “Fee Land” generally means lands owned by non-enrolled tribal members or non-Indians within the reservation boundary. Fee land can be owned by the Tribe within the Reservation.
- (p) “Allocation” the appointment of grazing privileges without competitive bidding to qualified livestock operators, including the determination of the place such livestock will be grazed.

- (q) “Qualified Operators” enrolled members of the Assiniboine and Sioux Tribes who are (I) at least eighteen (18) year old; (II) residing on or maintaining the bulk of their livelihood on the reservation; (III) who are assuming the financial risk in its entirety; (IV) are an Indian-owned economic enterprise; or (V) are the Fort Peck Tribes.
- (r) “Indian-Owned Economic Enterprises” means any Indian-owned (as determined by the Executive Board) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.
- (s) “Timber Harvest” means the cutting, hauling, and use of timber deadfall or dead standing trees.
- (t) “Range Unit” a block of lands containing allotted and/or tribal lands, consolidated for the purpose of administrating grazing privileges.
- (u) “On-and-Off Grazing” fee patent, allotted, or tribal rangeland owned or legally leased by the permittee and grazed in common during the same season of use as lands permitted by the Fort Peck Agency.
- (v) “Animal Unit Month (AUM)” the amount of forage required to support one mature cow, with or without calf, under 6 months of age, for one month.
- (w) “Animal Unit (AU)” the conversion factor relating forage requirements by kind and class of livestock: *(Revised 11/1/2013, as per Resolution No. 26-2154-2013-03)*

Mature Cow, w/Calf	1.00	AU
Yearling cattle	0.75	AU
Bulls	1.30	AU
Horse	1.50	AU
Buffalo	1.00	AU
Sheep	0.20	AU

#### D. Policy Updates

1. The Policy will be updated by the Tribal Natural Resource Department following passage of Resolutions modifying the Policy.
  - (a) The Policy will be held, updated, and maintained electronically by the Tribal Natural Resources Department.
  - (b) New hard copies of the Policy will be printed and disbursed to the Executive Board and any other Agency or Department requesting a copy on November 1 of every odd number calendar year.

## II. AGRICULTURAL LEASING AND PERMITTING

### A. General Provisions

1. Applicability of this section. This section is not applicable to leases acquired by competitive bidding. Competitive bid information is found in Section II.A.16 of this document.
2. Regulations. Leases of agricultural lands and assignment of permits shall be governed by the regulations in 25 CFR Part 162 and 166 except in cases of conflict with this policy, in which case the provisions of this policy shall apply.
3. Eligibility for preference right to lease. An applicant eligible for a preference right to lease agricultural land (a) must be an adult member of the Tribes who meets the definition of a Qualified Operator; (b) satisfy the Committee that the applicant is an experienced, bona fide farmer, or rancher, with the ability, financing and equipment necessary to operate the land covered by the application, or (c) in the alternative, an applicant that is just entering the farming and ranching business, must satisfy the Committee that he/she has the qualification, financing and equipment to ensure a reasonable prospect of success. All eligible lessees must ensure (1) that with the land covered by the application the applicant, together with all other persons signatory on the application, will not hold under lease more than 2,560 acres of tribal agricultural lands under preference rights provisions. For all Tribal leases obtained over the preference right provision quota of 2,560 acres a fair rental price

obtained through the competitive bid process will be assessed; (2) that the applicant personally, or through his immediate family and employees, will actively operate the leased land and (3) that no other person in the same household is an applicant for, or holds a non-competitive agricultural lease of Tribal lands.

4. Time for filing applications. Where the land is not covered by a lease, an application for a lease may be filed at any time. Where the land is covered by a lease, the application for a lease must be filed on or before April 1 of the year that the lease would expire.
5. Application preference. Preference shall be given to the person submitting the first application.
6. Preference to current lessee. Preference shall be given to the eligible tribal member who is the current lessee and has fulfilled the terms and conditions of his/her lease, permit or contract. Said lessees or permittees should be notified of this regulation prior to the expiration date of their leases, permits or contracts.
7. Conflict of preference rights. Where more than one tribal member applies for a lease to the same land, and the land is not covered by an existing lease, the award of the lease shall be made by the Executive Board on recommendation of the Committee. In making the award, consideration may be given to all factors arising from the Tribes' past experience with the competing applicants as lessees, and to the location of the applicant whose operations are closest to the land for which a lease is sought.
8. Delinquent debtors barred. No lease shall be issued to an applicant who is delinquent on any debts, penalties, or damages to the Tribes or the federal government.
9. Terms of lease. Leases for agricultural lands shall not exceed five years. Upon a showing to the satisfaction of the Committee that the land requires substantial capital investment before it can be successfully used and that five (5) years is inadequate to recover the investment, the lease may be for a term sufficient to recover the investment, but not to exceed ten years, provided that at the end of five years the rent shall be renegotiated.

10. Assignment of the lease. No leases or permits shall be assigned without approval of the Executive Board.

11. Conditions of the lease. In addition to such conditions as may be required by the Secretary that are not inconsistent with this Program, each lease of agricultural land shall be subject to the following conditions whether or not set forth in the lease instrument:

(a) All leases and/or permits will be made to a Qualified Operator.

(b) All lessees holding leases, permits and contracts shall comply with NRCS Stipulations.

(c) For Tribal members only, lease payments are due and payable each calendar year on November 15. A thirty (30) day extension period may be granted beyond November 15 with Executive Board approval. The Bureau of Indian Affairs policy will be enforced upon completion of the thirty (30) day extension period provided leases are not paid.

(d) Lessee must operate lease. The lessee or permittee personally, or through his immediate family, must actively operate the lease for agricultural purposes.

(e) Bonding Requirement

(1) Tribal operators who are a member of the Fort Peck Tribes, and are presently without an approved lease shall allow full participation in the cash bond procedure by any tribal operator upon renewal of tribal leases or as permitted by the Bureau of Indian Affairs.

(a) *The fee for the cash bond is \$0.45 per acre on farm land and \$0.30 per acre on grazing land; which is a 3 year advance on the affected leases, with fees to be set-aside and earmarked for conservation purposes.*

(b) *Bonding fee for water charges is at the rate of \$0.25 per acre.*

- (f) Sole use for agricultural purposes. The leasehold shall be used for agricultural purposes and for no other purposes.
- (g) Modification due to homesites. All agricultural leases and permits are subject to modification to allow for homesites for enrolled members. The current lease/permit holder shall be notified 30 calendar days prior to any preparatory work to accommodate a new homesite.
- (h) Shooting of buffalo. Any attempt to shoot any buffalo within the exterior boundaries of the Fort Peck Reservation by any lessee will result in rescinding all leases and right-of-ways of Tribal lands by the perpetrator. *(Revised 11/1/2013, as per Resolution No. 26-2013-2013-02)*
12. Treaty Rights. Enrolled members of the Fort Peck Tribes will adhere to the Bureau of Indian Affairs leasing stipulations to protect hunting and fishing rights and privileges.
13. Violation of subsidized tribal permits and leases. Any lessee of a tribal lease, or any permittee of a tribal permit who subleases, assigns, or otherwise transfers, or attempts to sublease or assign, or otherwise transfer, directly or indirectly, any of the lessee's or permittee's rights or benefits under the lease or permit, shall be guilty of a Class A offense.
14. Cancellation. A lease may be cancelled for violation of any of the conditions of this Program all of which are made a part of each lease, or of any of the material conditions of the lease, or of the regulations of the Department of the Interior relating to the use of the land, or of any law of the Tribes, or of the United States, relating to the use of the land.
15. Idle agricultural lands. The Bureau of Indian Affairs is requested to advertise all idle Tribal and Allotted farm and pasture tracts for lease rental.
16. Leasing of Land Through Competitive Bid
- (a) Conditions. The Superintendent of the Fort Peck Agency, with authorization of the Executive Board, shall advertise for lease Tribal land on the following conditions:

- (1) Any Tribal leases or permits cancelled as a result of violation.
- (2) Any incomplete or idle tracts of Tribal or Trust land.
- (3) All Tribal members will be granted the preference of meeting the high bid, provided they submit a token bid.
- (4) Any Tribal member securing farm acreage as a result of this advertisement shall not deny their right of obtaining the allowable acreage permitted under this Land Use Policy.

(b) All lands purchased by the Tribes with FHA loan funds will be advertised and leased to the highest bidder.

(c) Lands purchased through Rural Development Funds. Any tribal member can meet the high bid on any bids submitted on lands purchased by the Tribes through Rural Development Funds.

(d) Tribal preference. Lands purchased by the Tribes shall be awarded to the highest bidder with Tribal preference granted.

(e) Tribes' Land Purchase Program. All newly acquired land, purchased under the Tribes' Land Purchase Program, will be immediately let for bid to provide financial return on the land. *(Revised 11/1/2013, as per Resolution No. 26-2156-2013-03)*

17. Change of Use. Lessee may not change the land use of a leased Tribal or Trust tract without prior approval from the Natural Resources Department. Applications submitted to the Natural Resource Department must include an approved Conservation Management Plan, developed in coordination with the NRCS, and a signed affidavit from the landowner agreeing to the proposed change in use. Applications submitted without the required material will be denied. The Natural Resource Department has the authority to approve or deny all applications to preserve the Tribal natural resource base.

B. Cropland and CRP

1. Rental. The minimum annual rental per acre for agricultural land leases shall be as follows:

(a) Dryland farm acreage. The relative productivity of the soils system, as computed using the USDA Soil Rental Rate will be used to determine the soil value. All Tribal land lease rates will be determined from the soil value assigned to the tract. The average Tribal member lease rate is 47% of the soil value and the non-Tribal lease rate is 80% of the value.

(b) Irrigable farm acreage. Lease rates will be based on soil classification for Tribally owned irrigated land based on soil classification. The relative productivity of the soils system will be used to determine Tribal land lease rates. The average Tribal member lease rate is 47% of the soil value and the non-Tribal lease rate is 80% of the value. All operation and maintenance charges associated with the tract shall be paid by the lessee.

(1) All funds derived from the difference between the rate of \$8.00 per acre and the soil classification rate be deposited in the Irrigation Improvement Fund and those funds will be used for purchase of irrigated Tribal land improvements and potentially irrigable land.

(c) CRP. The Fort Peck Tribes lease out tribal land enrolling in the Conservation Reserve Program (CRP). The Tribes will received fifty percent (50%) of the accepted bid offer of all tribal acreage enrolled in the CRP Program, in lieu of the standard lease payment. This 50% will be collected as a direct payment or in the case where the lessee exceeds the \$50,000 payment limitation, the Tribes shall sign the contract as a 50% share-holder. When the Tribes are a share-holder in the CRP contract, the Fort Peck Tribes will require a performance bond from the lessee. The lessee will be fully responsible for all costs with the establishment, maintenance, and penalty, should any violation occur. *(Revised 11/1/2013, as per Resolution No. 26-2845-2013-08)*

2. Pesticide Regulations:

- (a) The Office of Environmental Protection has the authority to implement a pesticide regulatory program modeled off the EPA current pesticide program.
- (b) Pesticide Code, implemented by the Tribal Office of Environmental Protection, must be adhered to on all tribal and trust lands within the exterior boundary of the Fort Peck Indian Reservation.

3. Beginning Farmer Program:

- (a) Definition. An individual or entity, which is tribally enrolled, who has not operated a farm operation for more than 3 years.
- (b) Requirements. A beginning farmer will be required to work with the Tribal Natural Resources Department, local NRCS, and/or the local County Extension agent to develop a profitable cropping system that protects the Tribes natural resources. The farmer will not be eligible for the Beginning Farmer Program until a final business plan is approved by the Tribal Natural Resource Department and local NRCS.
- (c) Leases. A beginning farmer is eligible for reduced lease rates on Tribal cropland leases. The reduced rates apply only for the first three (3) years of the lease agreement. The fourth (4<sup>th</sup>) and subsequent years' lease rates will be based on the soil rental rates which apply to all lessees.
  - (1) Beginning farmers shall have preference in the leasing of all idle Tribal tracts.
  - (2) All leases to beginning farmers will start at \$8.00 per acre plus the operation and maintenance cost of the tract for the first 3 years of the lease agreement.

C. Range

1. Grazing Fees

- (a) Reservation Minimum. Excluding Tribal lands reserved for allocation, the minimum grazing rental shall be \$18.40 per AUM. Tribal lands permitted under allocation shall be charged \$16.00 per AUM with \$3.00/AUM being set aside for

range improvements and \$3.00/AUM being set aside for range land purchase. *(Revised 11/1/2013, as per Resolution No. 26-1892-2013-01)* Rates will be reassessed following the completion of a new appraisal every five years. All fees shall be established and approved by the Executive Board.

(b) Minimum Rental on Allocated Lands. With majority ownership approval, owners of allotted lands held in trust may stipulate a rate above the reservation minimum, if justified by above average value. They may also stipulate a lower rate if the permittee is a member of their immediate family. Owners will be given the opportunity to set rates during the scheduled reappraisal period. These rates must be specified in writing.

## 2. Grazing Season

(a) Grazing permits shall be issued for a 5.5 month season beginning either May 1 and ending October 15 or beginning May 15 and ending October 31. Grazing prior to the general turnout date of May 1 or May 15 will be permitted only by written authorization from the Natural Resources Department, where management is sufficient to insure conservation of the range. Stipulations regulating grazing use for early turnouts will be made in writing and attached to the permit. Any and all adjustments in seasonal grazing or stocking rate must meet or exceed all NRCS recommendations and be approved by the Natural Resources Department in writing in advance of the proposed adjustment as specified below.

(b) A grazing variance allowing grazing outside the traditional grazing permit time frame will be reviewed and approved on a case by case basis by the Natural Resources Department. The variance request must be supported by a conservation management plan and/or resource management system, developed in coordination with the NRCS and Natural Resource Department, for the lessee's operation and the Range Unit affected by the change. Applications for variance for the following practices will be accepted by the Natural Resources Department:

(1) Deferment

- (2) Early turn-in
- (3) Late turn-out
- (4) Winter feeding areas
- (5) Calving areas

3. Term of Permit

- (a) Grazing privileges are granted for a ten year duration.

4. Allocation

- (a) Filing Deadline. Application for Allocation must be filed prior to the issuance of grazing permits.

- (b) Joint Permittees. No more than (3) qualified operators may share an allocation. Additional operators may be approved at the discretion of the Tribes. Associations of enrolled Indian operators may be given allocations, provided that all members meet the qualification requirements defined in Section I, above. Bylaws of the associations shall include membership provisions, agreements on maintenance of improvement and service to livestock, and other stipulations as required by the Tribes to insure proper use of the range and cooperation among association members.

- (c) Ownership. The permittee(s) having an allocation must own at least seventy-five (75) percent of the livestock allowed under allocation. Exceptions may be allowed at the discretion of the Tribes. Pasturing authorization for non-Indian livestock less than twenty-five (25%) percent of the total herd shall be set at a minimum of \$20.00 per AUM and any pasturing authorization beyond the twenty-five (25) percent for the non-Indian cattle shall pay a minimum \$30.00 per AUM, which is subject to renegotiation by the Tribes and Agency. *(Revised 11/1/2013, as per Resolution No. 26-2264-2013-04)* Charges for care of non-Indian livestock will be a matter of agreement between the cattle owners, but may not include compensation for use of the land, water, or forage. Non-Indian cattle must be approved in writing, via Pasturing Authorization.

- (d) Non-qualified Interests. Allocations will not be permitted to corporate interests, partnerships, or for cattle run on shares with non-qualified operators, except as specified in Section II.C.4.c.
  - (e) Proof of Ownership. Applications for allocation must certify that they own or will own cattle sufficient to fill their allocations. Proof of ownership may consist of an IRS Form 1040 accompanied by Schedule F, bank statements, and other proof of ownership required by the Natural Resource Department. A “Bill of Sale” will not constitute proof of ownership. The cattle must be branded with the applicant’s registered Montana brand before they are permitted on the Range Unit, and each individual granted an allocation shall have his or her own brand.
  - (f) Preference Rights. Where one or more qualified operators seek allocation for the same Unit, the Range Unit will be allocated by the Land Use Policy of the Tribes. Previous use of the Unit, the location of Unit in relation to the applicant’s operation, and past experience with the applicants will be considered in awarding the allocation. Exceptions may be approved at the discretion of the Tribes and Agency.
  - (g) Final Determination. It is the intent of this Policy that allocation privileges be limited to individual enrolled tribal members of the Fort Peck Tribes. The Committee shall make the final determination concerning all disputes arising from the qualifications of applicants for allocation.
5. Competitive Bids
- (a) General Provisions. Grazing privileges not reserved for allocation in adherence to the Fort Peck Tribal Land Use Policy will be auctioned using sealed bids. Auctions will be advertised for thirty (30) days prior to the date of bid opening.
  - (b) Deposits. Bids submitted shall not require a bid deposit.
  - (c) Responsible Bidders. Responsible bidders must own at least fifty percent of the livestock under a competitive bid permit.
  - (d) Preference Rights for Qualified Operators. Qualified operators may meet the highest acceptable bid by non-qualified operators on range units where each has

submitted a bid. Qualified operators seeking to exercise preference rights must notify the Superintendent in writing within ten (10) days following the bid opening. Where two (2) or more qualified operators having equal preference exercise this option, an oral auction will be arranged by the Superintendent. Preferences are as follows:

- (1) First preference shall be given for qualified operators who have maintained a permit and fulfilled their obligations on the Unit over the past permit period.
- (2) Second preference shall be given for qualified operators who do not have an allocation.
- (3) Third preference shall be given for qualified operators who have an allocation on another Unit.

(e) Oral Auction. Where no preference rights are applicable, and where acceptable bids or equal value are submitted by two or more non-qualified operators, an oral auction will be held immediately following the conclusion of the regular bid opening.

(f) Preference Rights for Non-qualified Operators. Where acceptable bids are received by two or more non-qualified operators for a unit, and where the previous permittee has submitted the lowest bid, and where the total difference between the bids is less than five (5) percent of the low bid, the bids will be declared of equal value. The Unit will then be awarded by oral auction.

(g) Tribal Representative. A representative of the Tribes shall be invited to be present at all bid openings.

#### 6. Modification of Permits

(a) Transfer. Transfer or assignment of permits will be allowed only by written agreement, subject to approval of the Tribes and Superintendent.

(b) Cancellation. Livestock operators who voluntarily cancel their permits must relinquish their privileges before February 1<sup>st</sup> for the grazing season beginning

the following spring. Cancellation after the bills are mailed will be subject to interest penalty. Cancellation must be approved by the Tribes and Agency.

(c) Non-use and Deferment. The grazing capacity of a permit may be reduced only where land is withdrawn from the Unit, or as required by the Superintendent to conserve the range. Livestock operators who desire to reduce their permitted numbers must relinquish their permits. These grazing privileges will then be auctioned by competitive bid.

(d) Allocation During the Permit Period. Qualified operators who obtain an allocation during the permit period for a Range Unit permitted to a non-qualified operator must pay the existing bid rate on tribal and allotted lands. All grazing rental for qualified operators in excess of their quota shall be at least at the reservation minimum on all tribal lands.

7. Payment on Rental

(a) Schedule. Payment of grazing rentals will be due by March 1<sup>st</sup> of the billing year. If payment is not received by March 1<sup>st</sup> of the billing year, the permit will be cancelled as outlined in 25 CFR 166 Subpart H. Livestock will not be permitted to enter the units before the bills are paid in full.

(b) Delinquencies. Livestock owners who are delinquent in payment of past rentals, penalties, or damages will not be apportioned grazing privileges through either allocation or competitive bidding.

8. Entry to Range Units

(a) Entry Permits. Livestock will not be permitted to enter the Range Units until an entry permit has been filed with the Natural Resources Department. This permit will specify the date of entry, the number, kind, and class of livestock to be grazed, and at the request of the Department, the brand and ownership of all livestock placed on the Unit.

(b) Crossing Permits. Crossing permits will be required to trail livestock across allotted and tribal lands in the Range Units. No permits are required for trailing across the reservation on established Rights-of-Way where the entire crossing

takes less than one day. Where trailing occurs over more than one day, the livestock operator must notify the Superintendent and secure a crossing permit specifying an approved route of passage. The route will provide for over-night pasture on deeded lands outside the Range Units.

(c) Non-Indian Cattle Pasturing. A \$10.00 administration fee will be required to process pasturing authorization for the non-Indian cattle, to cover costs associated with the performance of these administrative duties. Fees will be paid to the Tribal Natural Resources Department.

9. Withdrawals and Inholdings

(a) Withdrawal. Lands withdrawn from the Range Units must be fenced separately, unless the owner of the land enters into an agreement, approved by the Executive Board and Superintendent, governing common use of the land. The Tribes reserve the right to withdraw Tribal lands for public purposes. The permittee will be assisted in obtaining access to grazing capacity equal to that of the land withdrawn from the Unit.

(b) Fencing Requirements. It is the responsibility of the persons withdrawing the lands from the Range Units for their own use, or for the leasing to operators other than the permittee, to have them fenced. Fencing specifications must meet NRCS standards for three-strand barbed wire fence unless other livestock are proposed for grazing in the affected Unit in which case NRCS standards for that species of livestock will be required.

(c) Deadline for Withdrawals. Requests for withdrawals must be made in writing not less than 180 days before the anniversary date of the permit.

(d) Inholdings. Owners of all unfenced lands within the Units who graze cattle or lease grazing rights on these lands must enter into written agreements approved by the permittee and the Superintendent regulating common use. These agreements must include stocking rates, seasons of use, and responsibilities of the landowner regarding service to cattle, fences, and improvements within the unit. All unfenced lands within the Units including On-Off grazing and deeded lands, will be regulated by permit.

- (e) Removal of Trust. The consensus of the Tribes is that no allotted lands should be removed from trust status if such removal endangers the rights of the Tribes or owners of other allotted lands within the Units.

10. Range Improvements

- (a) Funding of Improvements. Permittee(s) may apply to use Range Improvement Funds, managed by the Natural Resources Department, to implement range improvements or provide for matching funds on EQIP projects within the Unit. All applications will be reviewed by the Natural Resources Department for approval or denial. The application must include an approved Conservation Management Plan and/or a Resource Management System, developed in coordination with the NRCS, for the permittee's operation and the Range Unit affected. Any application submitted without all pertinent information will be denied. The Natural Resources Department has the authority to approve or deny all applications for use of Range Improvement Funds by permittees. All decisions will be made based on the proposed improvement's overall benefit to the Tribal natural resource.
- (b) Depreciation of Improvements. Permittee(s) wishing to improve their Units may have the value of the improvement appraised, with depreciation in equal annual amounts over the life of the improvement as specified by NRCS or Farm Service Agency (FSA) projected life expectancies for improvements/practices. Depreciation will be deducted annually on December 31<sup>st</sup>. Following termination of the permit, the next permittee will be required to reimburse the previous permittee, in full, for the remaining value of the improvement. Valuation of the improvements and calculation of the expected project life must be registered with the permit in advance.
- (c) Permanence of Improvements. All improvements placed on the range units will be considered fixed to the land and property of the landowner, except where the right for removal is approved in writing. Written approval to remove improvements will be recorded with the grazing permit. No improvements may be removed without the approval of the Superintendent.

(d) Fence Maintenance. It is the responsibility of the permittee to maintain boundary and cross fences and to prevent livestock trespass on adjacent lands. Where two or more range units share a common boundary, each permittee will assume the responsibility of maintaining the right half of the fence, as viewed facing the other unit. Where two or more operators share a unit, each will assume a share of the fencing responsibility proportionate with their permitted AUMs, assigned alphabetically running clockwise from the northwest corner of the unit. Fencing assignments will be shown on maps attached to the permits.

#### 11. Other Regulations

- (a) Cemeteries. All permittees shall restrict livestock from grazing in cemeteries, graveyards or cemetery plots within the Units.
- (b) Hunting, Fishing, Wildcrafting, and Firewood. Tribal members may not be restrained from hunting or fishing, wildcrafting, or from collecting firewood on Tribal lands within the Units unless otherwise regulated within special management areas. Where these activities interfere unreasonably with the livestock operation, or where carelessness or wanton disregard for property result from these activities, the permittee shall direct his/her grievance to the Committee, Superintendent, or other appropriate authority.
- (c) Modification of the Resolution. This resolution may be amended by the Executive Board to meet the needs brought about by natural disasters such as drought, fire, flood, etc. Range Units may be closed to public access during periods of extreme fire danger, and if necessary, livestock will be removed from the units as needed to protect the range.
- (d) Conservation Plan. 25 CFR 166.312 requires the completion of individual conservation plans for each Range Unit, prior to issuance of a permit. The conservation plan must be consistent with the Tribe's Agricultural Resource Management Plan and must address the permittee's management objectives regarding animal husbandry and resource conservation. The conservation plan must cover the entire permit period and must be reviewed by the Natural Resources Department on an annual basis.

## 12. Beginning Rancher Program

- (a) Definition. An individual or entity, which is tribally enrolled, who has not operated a ranch or livestock operation for more than 3 years.
- (b) Requirements. A beginning rancher will be required to work with the Tribal Natural Resources Office, local NRCS, and/or the local County Extension agent to develop a profitable livestock operation that protects the Tribes natural resources. The rancher will not be eligible for the Beginning Rancher Program until a final business plan is approved by the Tribal Natural Resource Office and local NRCS.
- (c) Leases. A beginning rancher is eligible for reduced lease rates on tribal range unit leases. The reduced rates apply for only the first three (3) years of the lease agreement. The 4<sup>th</sup> and subsequent years' lease rates will be based on the AUM rates which apply to all lessees.

### D. Pasture and Hayland

#### 1. Term of Permit or Lease

- (a) Pasture Lease. All pasture lease agreements shall have a minimum term of five (5) year duration.
- (b) Dryland Hay Permits. Dryland hay permits shall have a minimum term of five (5) year duration.
- (c) Irrigated Hay Permits. Irrigated hay permits for idle tracts within the Fort Peck Irrigation Project shall have a term of one (1) year duration with the permittee paying the annual O&M charge.

#### 2. Rate Structure

- (a) Irrigable and sub-irrigated native hay lands. Not less than \$8.00 per acre plus all operation and maintenance charges, including any and all water charges.
- (b) Native grass hay. Hay permits shall be \$5.00 per acre plus all O&M charges, including any water charges, if applicable.

- (c) Pasture lease rate. Pasture lease rate on Tribal land for Tribal members is \$2.42 per acre and the non-Indian pasture lease rate is \$6.00 per acre. *(Revised 11/1/2013, as per Resolution No. 26-3025-2013-10)*

E. Timber Land

1. Permittee Identification

- (a) The Natural Resource Department will determine who is eligible to hold a permit.
- (b) The immediate family of the permittee, regardless of their enrollment, may assist the permittee with the wood cutting operation.
- (c) If the wood is to be cut and hauled by a non-tribal member, the permittee must be present during all cutting and hauling operations, and must have the permit in their possession, with exception of the disabled or elderly. With written approval by the Natural Resources Department, the permittee may be allowed to be absent during cutting and hauling operations. Permit Issuance and Revocation
- (d) All individuals or organizations qualifying for timber cutting permits are required to obtain the appropriate approved permit prior to utilizing any forest product.
- (e) The Natural Resources Department will execute and issue paid permits.
- (f) Free use permits will be issued by authorized tribal personnel. Such permittees are normally issued only on idle Tribal lands. On the rare occasion that a permit is issued on a leased parcel, it will be the responsibility of the proposed permittee to contact the lessee as a matter of courtesy. However the courtesy contact is not mandatory.
- (g) Each permit shall have an ending date and permit number for accounting purposes. The requirements of a permit must be completed to the satisfaction of the Natural Resources Department before another permit will be issued to the permittee.

- (h) No permit shall be issued for the cutting of timber in a designated recreation area, ceremonial grounds, or other similar locations unless approved by the Natural Resources Department.
- (i) The holder of any permit must have the permit in his/her possession at all times when cutting or hauling permitted material.
- (j) Free use permits are issued as a service to meet the needs of Tribal members but must be executed consistent with sound silviculture and ecological principles that maintain and enhance productivity of timber stands and the land base.
- (k) By accepting any permit, the permittee and his/her associates shall be deemed to have consented to the jurisdiction of the Fort Peck Tribal Court for any violation of the terms of a timber cutting permit.
- (l) Permits are subject to limitations, temporary suspension, or termination due to road conditions and/or fire danger as determined by the Superintendent, Natural Resources Department, or the Executive Board.
- (m) The following people may revoke a timber cutting permit for any violation of permit conditions:
  - (1) Tribal Law and Order Officer
  - (2) BIA Rights Protection and Fire personnel
  - (3) Natural Resources Personnel
  - (4) Fish and Game Personnel
  - (5) Superintendent of the Fort Peck Agency
  - (6) Executive Board

## 2. Liability

- (a) The holder of a timber cutting permit, who violates any of the permit regulations, shall be liable under the Law and Order Code of the Fort Peck Tribes, and 45-6-101 Criminal Mischief, Montana Code Annotated, 1979.
  - (b) The BIA and Fort Peck Tribes will not be liable for any actions of the permittee or his/her associates while operating under a permit.
  - (c) When operating under a permit where the cutting and hauling area is not designated by the Natural Resources Department, the permittee or his/her associates shall be responsible for recognizing land ownership boundaries.
  - (d) If the permittee or his/her associates damage any roads, bridges, culverts, ditches, fences, or other improvements in the permit area, or other such improvement in areas used to access the permit area, he/she shall replace or repair them to their original condition to the satisfaction of the Natural Resources Department of the permittee's expense.
  - (e) The permittee may be liable for any loss or damages incurred to resources such as cropland, pasture/rangeland, livestock, soils, and vegetation. This shall include littering and land or water pollution.
3. Operational Requirements
- (a) No road construction will be allowed without prior written approval of the Natural Resources Department or Executive Board.
  - (b) Equipment requirements may be specified in each permit. Any use of mechanized skidding equipment must be approved by the Natural Resources Department before the permit is issued.
  - (c) The permit and hauling area will be kept clear of all litter and garbage at all times.
  - (d) Felled material and debris shall be removed from all access roadways from a point two (2) feet back of the upper slope to the top of the fill, or at least two (2) feet from the edge of the road where no fill exists. When operating on

reservation roads, the permittee must ensure that the road is kept open at all times.

- (e) All trees shall be cut below the lowest live limb and severed completely from the stump.
- (f) Utilization standards such as stump height, top diameters, bucking lengths, and slash treatment will be specified in each permit and shall be enforced.
- (g) Cutting wood along riverbanks (within 50-feet) or any other riparian area is prohibited in order to protect streambank stability and preserve the integrity of riparian areas.

#### 4. Free Use Permits

(a) Free use permits will be issued using Timber Cutting Permit, form BIA-5331. A permit will be valid for a period not to exceed six (6) months. Exceptions will be permitted for the Elderly Assistance Program which will be allowed to obtain a one (1) year permit. Permits will not be issued on allotments without written consent of the beneficial owners.

(b) Free use permits may be issued to:

- (1) Enrolled Tribal members who are eighteen (18) year of age or older;
- (2) Tribal organizations and enterprises, local schools, local non-profit organizations and missionary groups where use of the timber will benefit the Reservation and member of the Tribes, or will be used exclusively for improvements on the Reservation. Forest products removed under this authority cannot be sold or exchanged for other goods or services.

(c) The following may be harvested under a free use permit:

- (1) Small round-wood products such as fence posts, corral rails, or teepee poles, and firewood (dead and fallen wood only).

- (a) A maximum of 500 posts/poles/rails and five cords of firewood may be harvested; exception being the Tribal Elderly Assistance Program which will be allowed to cut up to but not exceeding ten (10) cords.*
    - (b) Products must be for personal use only.*
  - (2) Green house-log and green saw-log timber for personal use.
    - (a) Tribal members may harvest a maximum of \$5,000 worth of logs under this authority.*
    - (b) Free use permits will specify the species and types of forest products to be removed.*

## 5. Paid Permits

### (a) General Stipulations

- (1) Paid permits subject to forest management deductions, as provided in 25 CFR 163.25 (c), may be issued only with the written consent of the beneficial Indian owners. Unless otherwise authorized by the Natural Resources Department, the stumpage value which may be harvested under paid permits in a fiscal year by any individual under this authority shall not exceed \$25,000.
- (2) All paid permits for the sale of saw-logs and related products must be approved by the Tribal Chairman and the Superintendent.
- (3) Paid permits shall be issued on Timber Cutting Permit, Form BIA-5331, for the sale of:
  - (a) Small volumes of saw-timber*
  - (b) Saw-timber from salvage*
  - (c) Green and dry house-logs for commercial sale*

*(d) Utility poles for commercial sale*

*(e) Small volumes of firewood for commercial sale*

- (4) All individuals not qualifying for a free use permit, are required to obtain a paid permit or contract for the harvest of any forest product.
- (5) Paid permits for the sale of small round-wood products, small volumes of saw-logs, and small volumes of firewood may be issued to Tribal and non-Tribal members.
- (6) Stumpage payments will be made in advance of the approval of all permits and held in a special deposit account until the permit expires.
- (7) Paid permits may not be extended and no refunds will be made for the partial use of a permit. When conditions beyond the control of a permittee preclude the completion of a permit, the Natural Resources Department may modify or extend the permit, in writing, upon request of the permittee. This action must occur on or before the permit expiration date and must be conducted in the Tribe's best interest.
- (8) Permits for allotted lands must be approved in writing by a majority interest of the Indian beneficial owners.
- (9) Paid permits are issued under two situations as follows:
  - (a) Negotiated Permits – A permit may be negotiated when the appraised value of the timber to the Tribes is small and a significantly higher value could not be obtained through formal advertisement. These permits are issued primarily to Tribal members. Negotiated rates will not be less than the appraised value of the timber products.*

*(b) Advertised Permits – Permit areas with significant value to the Tribes shall be advertised, and bids received in accordance with 25 CFR 163.15. Tribal members and non-members may bid on this type of permit. In the case where a non-member is the high bidder, any qualified bidder, that has submitted a qualifying bid for the permit who is also a Tribal member may secure the permit by matching the high bid of the non-member.*

### III. SPECIAL MANAGEMENT AREAS

#### A. Buffalo Grazing Areas

##### 1. Management Area

(a) Authority. All Tribal buffalo herds will be managed and overseen by the Tribal Fish and Game Department in coordination with the Department of Natural Resources.

(b) Boundary. Boundary information regarding Range Units occupied by the Tribal buffalo herd will be kept by the Natural Resources Department and made available upon request.

##### 2. Restrictions

(a) Hunting. Hunting shall not be allowed within Range Units occupied by the Tribal buffalo herd.

(b) Brucellosis. All lessees operating a buffalo herd shall participate in the Montana State Brucellosis Eradication Program.

##### 3. Stipulations

(a) Fencing. All Range Units occupied by buffalo shall be fenced as recommended by NRCS guidelines. All fences shall be inspected and approved by the Natural Resource Department prior to turnout.

(b) Grazing Schedule. Year round grazing will be permitted for the Tribal buffalo herd on occupied Range Units. Range Units under year round grazing shall be inspected annually to monitor range condition and health. Year round grazing privileges may be revoked by the Natural Resources Department if the Range Unit condition and health are detrimentally impacted as determined by Natural Resources Department staff during inspection.

B. Manning Lake Wetlands Tribal Wildlife Refuge

1. Management Area

(a) Authority. The Tribal Office of Environmental Protection shall have the authority to manage and maintain the lands within the Manning Lake Wetlands Tribal Wildlife Refuge.

(b) Boundary. The Manning Lake Wetlands Tribal Wildlife Refuge is comprised of all Tribal lands located within the E ½ of Section 11, Section 12, and the NE ¼ of Section 13 of T29N R53E, and within Sections 7, 8, 9, 17, 18, 19, and 20 of T29N R54E. Additional trust, allotted, and fee lands are included within the boundary. The Tribal Office of Environmental Protection shall maintain and manage current boundary maps.

2. Restrictions

(a) Hunting. Hunting shall not be allowed within the Refuge during the nesting season of local and migratory birds, defined as April 15-July 15.

(b) Haying. Haying shall not be allowed within the Refuge during the nesting season of local and migratory birds, defined as April 15-July 15.

(c) Grazing. Grazing shall not be allowed within the Refuge during the nesting season of local and migratory birds, defined as April 15-July 15.

C. Wetland Management Areas

1. Management Area

(a) Authority. The Tribal Office of Environmental Protection shall have the authority to manage and maintain the lands within the Wetland Management Areas.

(b) Boundary. The Tribal Office of Environmental Protection shall maintain and manage current boundary maps for all Wetland Management Areas.

## 2. Restrictions

(a) Hunting. Hunting shall not be allowed within the Wetland Management Areas during the nesting season of local and migratory birds, defined as April 15-July 15.

(b) Haying. Haying shall not be allowed within the Wetland Management Areas during the nesting season of local and migratory birds, defined as April 15-July 15.

(c) Grazing. Grazing shall not be allowed within the Wetland Management Areas during the nesting season of local and migratory birds, defined as April 15-July 15.

## IV. BUSINESS LEASING

### A. General

1. All business leasing, permitting, contracting, disputes, and/or settlements shall be governed by the Fort Peck Tribes C.C.O.J. Title XXIV – Commercial Law.

## V. HOMESITES

### A. Inventory

1. The Committee shall prepare and maintain an inventory listing each lot owned by the Tribes located within any townsite on the Reservation. The inventory shall show with respect to each lot the legal description, the number of square feet, a general description of the improvements and the outstanding rights of occupancy.

B. Preference Right

1. Any adult enrolled member of the Tribes who is the economic head of the immediate family and who establishes by satisfactory proof the need for a homesite shall have a preference right to lease from the Tribes for homesite purposes and for no other purposes, the surface only of one town lot, or the surface only of a rural tract of not more than 2.50 acres outside of any townsite or populated community. Where the need is justified the Committee may lease two town lots to a single applicant.

C. Homesite Lease Checklist

1. Before a homesite lease is approved the Homesite Lease Checklist must be completed in its entirety and submitted to the Office of Environmental Protection along with a completed septic permit.

D. Land Not Available For Homesite Leasing

1. The subsurface shall not be available for homesite leasing. The surface of land that has a special use value or a potential special use value for a public, commercial, business, industrial, mineral or other special purpose, shall not be available for homesite leasing.

E. Floodplains

1. All new homesites must comply with the Montana Floodplain and Floodway Management Act and ensure compliance with the requirements of the continued participation by the Fort Peck Indian Reservation in the National Floodplain Insurance Program. Land use regulations are to be applied to all 100-year floodplains within local jurisdiction as identified by current Flood Insurance Rate Maps (FIRM).

F. Land That Has Existing Leases For Farming or Grazing

1. All home site leases must contain a provision for the lessee to fence the acreage for a home site area.

2. The BIA has the authority to make home site suitability determinations and no home site application will be approved where the BIA or Land Office has determined significant impacts upon rangeland and farmland.

G. Scattered Homesites

1. The Fort Peck Tribes reserve the right to modify this lease or permit on Tribal Land to provide scattered homesites for their enrolled members.

H. Applications For a Homesite Lease

1. Application for a homesite lease shall be filed with the Agency and shall include all facts necessary to satisfy the requirement of this Program.

I. Term of the Homesite Lease

1. A homesite lease shall be for a term of not more than 25 years. Where a longer term is necessary to obtain mortgage financing for the construction of a dwelling on the lease, as through FHA, the lease term may be for twenty-five (25) years, renewable at the expiration thereof for not more than another 25-year term. The term of any homesite lease shall expire and the lease terminate, if the lease is not improved with a dwelling by the end of the first year, or an extension thereof. The Committee shall grant extensions liberally where actual construction has begun and the applicant shows a good faith intent to complete construction.

J. Home Site Lease Bonding

1. A tribal bonding account for homesite leases will be established and used until depleted before utilizing the agricultural bond account.
2. Homesite lease bonding at the rate of \$25.00 per lessee upon the execution of new leases will be required.
3. The Fort Peck Housing Authority will also be required to pay a bond for new leases.
4. The maximum amount of funds to be allocated from the tribal bonding accounts is \$250.00 per incidence homesite clean-up.

K. Conditions of the Homesite Lease

1. In addition to such conditions as may be required by the Secretary that are not inconsistent with this Program, each lease of a homesite shall be subject to the following conditions, whether or not set forth in the lease instrument.
  - (a) Rent. The annual lease rental must be paid by the anniversary date of the lease.
  - (b) Bonding. Lease bonding at the rate of \$25.00 per lessee upon the execution of new leases will be required. Additionally the Fort Peck Housing Authority will also be required to pay a bond for new leases.
  - (c) Homesite use only. The lease may not be used for any purpose except a homesite.
  - (d) Occupancy. The lessee or his immediate family must use and occupy the homesite as a home.
  - (e) Maintenance, repair, etc. The lessee must maintain and keep in good repair without charge to the Tribes all Buildings, fences and other improvements, keep the premises in a safe and sanitary condition, protect the property from trespass, not use the property for any unlawful purpose, and not use the property to the detriment of, or damage to, or interference with the use of, other lands and property.

- (f) Ownership of structures and improvements on homesites. Subject to the prior rights of a mortgagee, buildings, or other structures, erected or placed by the lessee on the lease that are not attached, or connected, to buildings or other improvements owned by the Tribes shall be deemed the personal property of the lessee; Provided, that the lessee shall furnish a description of such buildings, preferable with a photograph, to the Agency and the Tribal Office promptly after completion of construction. The description shall be attached to and made a part of the lease. Upon expiration or termination of the lease, such buildings shall become the property of the Tribes unless all rentals due under the lease are paid and the buildings are removed within 120 days after the date of termination or an extension thereof. Except as noted in this subsection, all buildings or other improvements located or placed on the land shall become part of the realty and the property of the Tribes.
- (g) Assignment or Alienation of Lessee's Interest. Subject to the prior rights valid mortgage, any assignment, sublease, rental or other transfer direct or indirect, of a lease, or of any interest in a lease shall be void and terminate the lease, without the prior approval of the Executive Board granted or such reasonable terms and conditions as may be appropriate.
- (h) Transfer by Will, inheritance or operation of law. Any alienation, or transfer of the leasehold interest by Will, inheritance, or operation of law, shall terminate the lease, unless approved by the Executive Board on such reasonable terms and conditions as may be appropriate. In the event the lease is terminated by death, or if the lessee deserts the family, or disappears, the lessee's immediate family, if otherwise qualified, shall be given a preference to a lease for the unexpired portion of the lease term.

#### L. Rentals on Homesites

1. Rental to members - unimproved homesites. The annual rental for leases of unimproved homesites to members of the Tribes shall be not less than 5% of the estimated value of the homesite as of the date of the lease, or \$12 per year, whichever is higher provided that at the end of each 10-year period of the lease the value of the homesite, exclusive of improvements placed thereon by the lessee shall

be re-determined and the rent adjusted accordingly. Rent shall be paid in 5-year increments at a rate of \$60 per 5-years up front prior to occupancy.

2. Rental to members - improved homesites. The annual rental for leases of improved homesites to members of the Tribes shall be fixed by the Committee, taking into consideration the estimated fair market rental value, the demand for the property and extenuating circumstances where the applicant is the occupant of the property and has invested money and time in its maintenance and repair. Rent shall be paid in 5-year increments up front prior to occupancy.
3. Rental to nonmembers. The annual rental for leases of improved homesites to nonmembers shall be the fair market rental value of the homesite as of the initial date of the lease or, in the case of unimproved homesites, 10% of the estimated value of the homesite as of the initial date of the lease, but not less than \$25, provided that at the end of each 5-year period of the lease the value of the homesite, exclusive of improvements placed thereon by the lessee, shall be redetermined and the rent adjusted accordingly. Rent shall be paid in 5-year increments at a rate of \$125 per 5-years up front prior to occupancy.

## VI. RIGHTS OF WAY

### A. Regulations

1. Permission to traverse Tribal land, or to use Tribal land as a means of ingress and egress to other property, or to construct on Tribal land public highways, pipelines, power lines, telephone lines, communication lines, and similar uses shall be governed by 25 CFR, Part 169, except as modified by this Program.

### B. Policy

1. The policy of the Tribe is as follows:
  - (a) Not to burden the Tribal land with easements and not to convey an easement, or other interest, in Tribal property unless absolutely essential to the need;

- (b) When the conveyance of an easement is essential, to grant such an interest only for fair compensation, as herein defined, for the shortest possible period compatible with the intended use;
- (c) No permission by the Tribes to use tribal land shall be deemed or construed as an easement, transferring an interest in tribal property, or in the nature of such an easement, unless the instrument of grant, or conveyance, bears on its face the Tribes' consent to that effect, and there is annexed to the instrument the resolution, or action, of the Executive Board authorizing the conveyance.
- (d) The term of any easement shall not exceed 25 years and that period shall be deemed an extravagant maximum, and shall not be used with respect to tribal land except in the most unusual and exceptional circumstances and then only with the explicit consent of the Executive Board expressed by resolution that is made a part of and requisite to the validity of the instrument of conveyance.
- (e) Where appropriate and necessary, the Tribes will grant revocable permits of ingress and egress across tribal land for use in connection with the permittee's stockraising, agricultural and residential purposes, but not for any other use, commercial, industrial, or otherwise, unless authorized by resolution of the Executive Board that is made a part of the revocable permit.

C. Revocable Permit for Ingress and Egress Across Tribal Land

1. Shall require the payment of an annual rental, no matter how modest, to preclude any claim of right under the law to traverse tribal land based on the doctrine of necessity, or use, or prescription, or adverse possession.
2. Shall require the permittee to post on the road or way of ingress and egress across the tribal land, a sign on which is marked out in letters of a size sufficient to make them obvious to the public, that the road or way of ingress and egress is on tribal land and is a private, not public road or way; and
3. Shall provide, that the permit is by sufferance, does not run with the land, is not assignable without the prior consent of the Executive Board by resolution, and is revocable.

#### D. Measure of Compensation

1. In measuring the compensation for an easement the evaluation shall be based on the value of the easement for the use requested, shall take into account (a) the diminishment in value to the affected remainder of the Tribes' property, (b) the nature of the use, (c) the extent of interference or inconvenience in the use of tribal property, (d) the savings to the applicant in title examinations, (e) the cost to the Tribes in reviewing the processing the application, (f) the cost to the applicant if an alternative route, not using Tribal land were selected, (g) the length of the term of the lease and (h) the diminishment in value of the consideration by reason of the inflation factor, and such other factors as may be appropriate.

### VII. MINERAL LEASING

#### A. General

1. See 25 CFR 211 for Governing Mineral Leasing Policy

#### B. Lessee Development Restrictions

1. The mineral lessee or developer shall work with the surface owner(s), making a good faith effort to reach an agreement of compensation for surface disturbances associated with mineral development.
2. The mineral lessee or developer shall not restrict or significantly reduce the ability of the surface owner to profit from agricultural production on the affected tract.
3. The mineral lessee or developer shall notify the surface owner at least 30 days prior to moving in any equipment or causing significant disturbance of the surface.
4. Any surface facilities remaining following mineral development shall be fenced to prevent domestic livestock traffic through the facility. The cost of installing and maintaining the fence shall be the burden of the developer or mineral lessee.
5. Any harm done to domestic livestock or loss of livestock caused by equipment used in development, processing, or transportation of minerals leased shall be fully

reimbursed by the mineral lessee or developer at fair market values as determined by the Fort Peck Tribes.

## VIII. WATER RIGHTS

### A. Fort Peck Tribal Water Code

1. The Fort Peck Tribal Water Code was established by Resolution 993-86-5 and shall govern all issues regarding the permitting, use, disputes, enforcement, and management of all water usage within the Fort Peck Reservation Boundary being applied to the Fort Peck-Montana Compact.
2. Applications for water permits shall follow procedures outlined in Chapter 4 of the Fort Peck Tribal Water Code.
3. All water permits shall be managed, maintained, and inspected as outlined in Chapter 6 of the Fort Peck Tribal Water Code.
4. During time of water shortage, drought, or dispute amongst permit holders, Chapter 8 of the Fort Peck Tribal Water Code shall govern.
5. The transfer of water rights shall follow the procedures outlined in Chapter 11 of the Fort Peck Tribal Water Code.

### B. Drought Contingency Plan

1. During periods of declared drought the Executive Board shall use the Drought Contingency Plan for guidance in decisions regarding water rights and usage as it affects the Fort Peck-Montana Compact.
2. The Tribal Water Resource Office shall maintain a current copy of the Drought Contingency Plan at all times.
3. During periods of declared drought, the Tribal Water Resources Office shall provide technical advice to the Executive Board regarding all decisions on water rights and usage as it affects the Fort Peck-Montana Compact.

C. Irrigation Water Management

1. All water used for irrigation under the Compact within the reservation boundary shall be reported to the Tribal Water Resources Office.
2. The Tribal Water Resources Office shall request water delivery for every idle Tribal and Trust tract within the Fort Peck Irrigation Project one (1) time per year.

IX. LAND ACQUISITION AND TRADE

A. Land Consolidation Plan

1. The Executive Board shall only pursue the purchase and consolidation of lands within the exterior boundary of the Fort Peck Reservation.
2. The Executive Board shall work to minimize continued fractionation within the Reservation boundary.
  - (a) The Executive Board shall first encourage, promote, and assist in the sale of fractionated lands to enrolled members of the Fort Peck Tribes.
  - (b) The Executive Board shall not compete in the acquisition of fractionated lands with registered members of the Fort Peck Tribes unless it is explicitly in the best interest of the Tribes to acquire the land for the betterment of all Tribal members.
3. The Executive Board shall create a Consolidation Priority List of the fractionated land or areas of the reservation the Fort Peck Tribes intends to target for purchase or trade.
  - (a) The priority ranking is based upon the ability of the land use to have immediate return in investment to pay off any debt associated with the acquisition and provide income for future purchase.
  - (b) All purchases of land shall be within or tied to areas or land types identified on the Consolidation Priority List. Justification for deviation from the Consolidation

Priority List shall be submitted into record with any purchases which do not pertain to the identified priority areas.

- (c) All trades of land shall be within or tied to areas or land types identified on the Consolidation Priority List. Justification for deviation from the Consolidation Priority List shall be submitted into record with any trades which do not pertain to the identified priority areas.
  - (d) Pasture and Rangelands should be purchased as part of a package with dry or irrigated cropland when borrowing money to acquire such lands.
  - (e) All newly acquired lands through purchase, trade, or gift will not be subject to tribal preference leasing. All acquired lands will be leased to the highest bidder. Tribal members will retain the ability to match any high bid offer.
4. The Executive Board can use funds from the Revolving Land Purchase Fund to acquire fractionated land. The Committee is bound to the restrictions of the Revolving Land Purchase Fund as outlined in Section VIII.C.5.
5. Any land trades or purchases completed by the Executive Board shall adhere to the following guidelines:
- (a) The Fort Peck Tribes must be working toward obtaining at least 51 percent of the fractionated interest in tracts with a goal of 100 percent interest.
  - (b) The Fort Peck Tribes will purchase trust, restricted, or controlled lands at no less than fair market value with the consent of the owners of the interest, part or all of the interests.
  - (c) The Fort Peck Tribes has 180 days following an official showing of interest in a tract to offer fair market value and close the purchase. If the Fort Peck Tribes are not able to close the purchase within 180 days the tract shall be put back out for public bid.
  - (d) The Fort Peck Tribes may purchase all interests in a tract with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract.

- (1) Interest owned by the Fort Peck Tribes in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for the purposes of determining whether the consent requirement has been met.
- (e) The Fort Peck Tribes may acquire fee lands that are deemed important for economic development, residential, commercial, agricultural, recreational, or for the purpose of consolidating Tribal land holdings.
- (f) The Fort Peck Tribes may trade any or all interests of land for land of equal value for the purpose of consolidating Tribal land holdings.
  - (1) Land traded to an allottee must be of equal or greater value than the land being acquired by the Tribes.
  - (2) If the land being acquired is of greater value, then compensation must be provided to the allottee to make the trade equitable.
  - (3) The Fort Peck Tribes may also choose at their discretion to trade any undivided interest in allotted lands to non-tribal members in exchange for lands for the purpose of consolidating tribal land holdings. The value of acquired lands must be at least 90% of the value of the lands being offered for lands in fee status.

B. Land Purchase Priority Plan

- 1. The first priority of the Fort Peck Tribes shall be to purchase fractionated trust lands. Trust lands shall maintain a higher priority than fee lands in the Land Purchase Priority Plan.
- 2. Land types shall be ranked for purchase as follows:
  - (a) Improved Irrigated Ground
  - (b) Potential Irrigated Ground

- (c) Dry Land Crop
  - (d) Pasture
  - (e) Range Land
  - (f) Timber
3. Within each land type each parcel shall be ranked by Soil Class using the NRCS Soil Classification System. Parcels within the same land type shall be prioritized by Soil Class with higher Soil Class parcels taking priority over other parcels of the same land type. NRCS Soil Classifications rank as follows:
- (a) Class I. Moderately Slowly, Moderately, and Rapidly Permeable, Well Drained Soils (over 20-inches deep);
  - (b) Class II. Slowly Permeable, Well, and Moderately Well Drained Soils (over 20-inches deep);
  - (c) Class III. Very Slowly Permeable, Fine Textured, Well Drained Soils (over 20-inches deep);
  - (d) Class IV. Wet, Somewhat Poorly, Poorly, and Very Poorly Drained Soils (water table at less than 3-feet);
  - (e) Class V. Well and Moderately Well Drained Shallow Soils;
  - (f) Class VI. Excessively, Well, and Moderately Well Drained Saline and Alkali Soils (moderate to strongly saline and alkali);
  - (g) Class VII. Soils with Surface Fragments Greater than 10-Inches;
  - (h) Class VIII. Other Soils with Coarse Fragments (very cobbly, very flaggy, extremely gravelly, and extremely channery);
  - (i) Class IX. Soils Subject to Damaging Overflow (occasionally and frequently flooded); and
  - (j) Class X. Soils with Poor Available Water Capacity.

## C. Land Purchase Fund

### 1. Irrigated Lands Fund

- (a) The Executive Board shall establish an Irrigation Lands Fund in an interest bearing account, separate of all other tribal accounts, with a financial institution that will allow them to manage the account for the purpose of improving or purchasing irrigable or potentially lands.
- (b) The Irrigation Lands Fund shall be funded by depositing the difference between the lease rate of \$8.00 per acre and the adopted soil classification rate on all irrigated Tribal tracts.
- (c) Funds within the Irrigated Land Fund shall only be used for the purchase of land or to provide for improvements to irrigated Tribal lands and potentially irrigable Tribal lands.
- (d) The Irrigated Lands Fund shall be managed by the Executive Board. All lands proposed for acquisition shall be reviewed by the Tribal Land Committee. The Land Committee shall provide a recommendation for purchase or a recommendation of denial for each proposed acquisition to the Executive Board. A recommendation for approval shall be consistent with the goals and objectives outlined in the Consolidation Priority List.

### 2. Range Purchase Fund

- (a) The Executive Board shall establish a Range Purchase Fund in an interest bearing account, separate of all other tribal accounts, with a financial institution that will allow them to manage the account for the purpose of purchasing new range lands.
- (b) The Range Purchase Fund shall be funded by depositing \$3.00/AUM on all domestic livestock run on Tribal lands.
- (c) Funds within the Range Purchase Fund shall only be used for the purchase of Tribal range lands which can be incorporated into an existing adjacent Range Unit or create a new Range Unit.

- (d) All range lands proposed for acquisition shall be inspected and inventoried by the Natural Resources Department prior to action by the Land Committee. The Natural Resources Department shall provide a recommendation for purchase or denial of each proposed acquisition to the Land Committee.
- (e) Range Improvement Fund
- (f) The Executive Board shall establish a Range Improvement Fund in an interest bearing account, separate of all other tribal accounts, with a financial institution that will allow them to manage the account for the purpose of improving existing range lands.
- (g) The Range Improvement Fund shall be funded by depositing \$1.00/AUM on all domestic livestock run on Tribal lands.
- (h) All decisions regarding allocation of Range Improvement Funds shall be made by the Director of the Natural Resources Department. The Natural Resources Department shall manage the Fund in a manner that provides the most benefit to the tribal natural resource. Funds shall only be spent on improvements to Range Units within the reservation boundary. Applications from permittees will be accepted and reviewed for approval or denial as outlined in Section II.C.10.a.
- (i) All carryover funds in the account at the end of the fiscal year will be allocated to repair or replace boundary fence on Range Units within the reservation boundary. The Natural Resources Department will identify and select reaches of boundary fence to be repaired or replaced.

### 3. Revolving Land Purchase Fund

- (a) The Executive Board will establish a revolving land purchase interest bearing account, separate of all other tribal accounts, with a financial institution that will allow them to manage the account for the purpose of land and mineral consolidation.
- (b) The Revolving Land Purchase Fund shall be funded through the difference between the \$8.00 per acre cropland lease rate and the NRCS soil rates.

- (c) The revolving land purchase account holding can only be used for the purchase of lands or minerals as set forth in Section VIII.B. of this document.
- (d) All income derived from the sale or lease of lands or mineral rights acquired through the Land Consolidation Plan process will be placed in the interest bearing account. The funds acquired will only be used to repay any debt assumed with the purchase of land or mineral rights and for the purchase of future land or mineral holdings as described in Section VIII.B of this document.

## X. AMENDMENTS

Resolution No. 26-1632-2012-11, Re-affirms Section II.A.16 & directs purchased lands be subject to II.A.16 Leasing of Land Through Competitive Bid.

Resolution No. 26-1892-2013-01-2013-01, revised the rental rates for range units and set the minimum for competitive bids. Revised 11/1/2013, Section II(C)(1)(a).

Resolution No. 26-2013-2013-02, provides notice that any attempt to shoot a buffalo will result in rescinding all leases and right-of-ways of Tribal lands. Revised 11/1/2013, Section II(A)(11)(h).

Resolution No. 26-2156-2013-03, authorizes newly acquired land be let for bid to provide financial return on the land. Revised 11/1/2013, Section II(A)(16)(e).

Resolution No. 26-2154-2013-03, revises the animal unit factors. Revised 11/1/2013, Section I(C)(1)(w).

Resolution No. 26-2264-2013-04, revised the rates for pasturing authorizations in the ownership section to \$20.00 per AUM & \$30.00 per AUM. Revised 11/1/2013, Section II(C)(4)(c).

Resolution No. 26-2828-2013-08, increasing pasture lease rates from \$2.00 to \$4.00 for Tribal members and \$4.00 to \$8.00 for non-Indians.

Resolution No. 26-2831-2013-08, requests FSA to directly pay the Tribes the 50% Tribal portion of the funds derived from a lease of Tribal land under CRP.

Resolution No. 26-2845-2013-08, approves receiving 50% of the accepted bid offer of CRP contracts. The 50% will be collected as a lease payment or in the case where \$50,000.00 payment limitation, shall sign the contract as a 50% shareholder. As a share-holder, the Tribes will require a performance bond from the lessee, and the lessee will be responsible for all costs associated with the establishment, maintenance, and penalty, should any occur. Revised 11/1/2013, Section II(B)(1)(c).

Resolution No. 26-3024-2013-10, rescinds Resolution No. 26-2828-2013-08.

Resolution No. 26-3025-2013-10, increases the pasture lease rate on Tribal land for Tribal members from \$2.00 per acre to \$2.42 per acre and to increase the non-Indian pasture lease rate from \$4.00 per acre to \$6.00 per acre. Revised 11/1/2013, Section II(D)(2)(c).