

NAVAJO RANGELAND IMPROVEMENT ACT OF 2013

An Act to Improve the Ecological Health and Productivity of Navajo Rangelands in Order to Protect the Interests of Present and Future Generations of the Navajo People.

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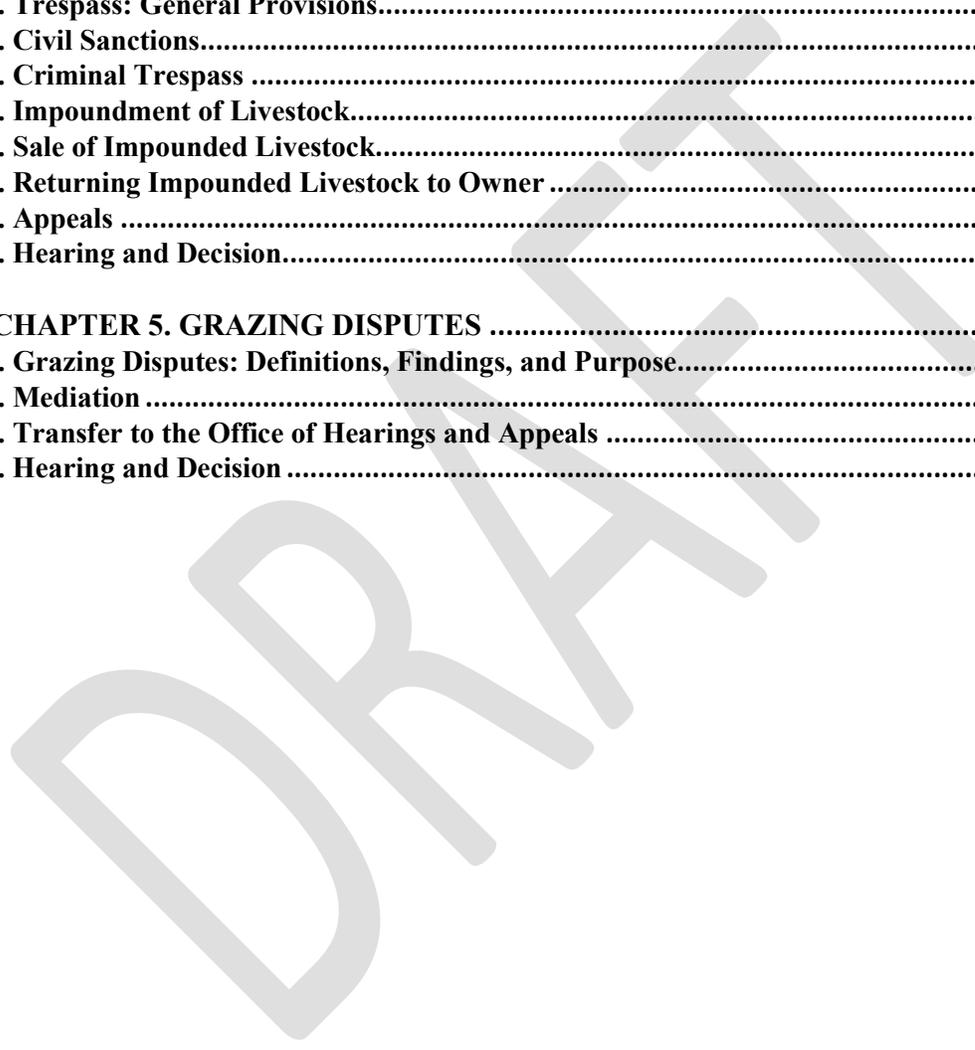
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SUBCHAPTER 1. GENERAL PROVISIONS

§ 101. Title

This Act shall be cited as the Navajo Rangeland Improvement Act of 2014.

§ 102. Authority

- A. The Navajo People possess the inherent right of self-government, secured and protected by the Treaties of September 9, 1849 (9 Stat. 974) and June 1, 1868 (15 Stat. 667) and other Federal laws, which includes the right to regulate the use of Navajo lands within the territorial jurisdiction of the Navajo Nation.
- B. The Navajo Nation, as the legitimate representative government of the Navajo People, has the authority to adopt laws that regulate the use of Navajo lands within the boundaries of the Navajo Nation in order to protect and further the interests of present and future generations of the Navajo People.

§ 103. Findings and Purpose

- A. The Navajo Nation hereby finds that:
 - 1. The raising of livestock on Navajo rangelands holds deep traditional, cultural, spiritual, and economic significance for the Navajo People.
 - 2. The Navajo rangeland is not being appropriately safeguarded. The ecological health and productivity of the Navajo rangeland has been degraded to the point that there is cause for significant concern. In 1950 it took an average of twenty-two (22) acres to support one sheep for one year. Today there are places in Navajo where it takes up to one-hundred (100) acres to support one sheep for one year, with a Navajo national average of around sixty (60) acres.
 - 3. The varied and disparate legal regimes which have regulated rangeland management and grazing have hindered effective rangeland management, and prevented the Navajo Nation from managing Navajo rangelands in the best interest of the Navajo People.
 - 4. Many of the laws currently in place were written by the federal government in the 1930s and do not incorporate the Navajo way of thinking. Since the 1930s there have been significant develops in science and grazing practices which are also not reflected in the current laws.
 - 5. The Navajo People are being deprived the benefits of the Navajo rangeland due to the mismanagement of the rangeland. There are only 10,926 grazing permits in existence on the Navajo Nation. These permits are currently held by only 4.1% of the population.
 - 6. That the resolution of grazing disputes by the Navajo Nation courts, including the Navajo Nation Family Court, is inefficient and unduly burdens the courts' time and

resources, and that this is contrary to the best interests of individual permittees and the Navajo People.

7. Until a comprehensive management plan is put in place and the status of the range improved, there will be less and less permits available to the Navajo People.
8. And that for these reasons the management of the Navajo rangelands must be reformed.

B. It is the purpose of this Act to:

1. Maximize, to the greatest extent practicable, the ecological health and productivity of Navajo rangelands, such that present and future generations of the Navajo People are able to enjoy the full potential of its material, traditional, cultural, spiritual, economic, environmental, and recreational benefits.
2. Mandate the implementation of sound grazing management and conservation techniques and practices on Navajo rangelands. Through the regular monitoring of the ecological health and productivity all Navajo rangelands and the restoration of any ecologically-degraded Navajo rangelands to their full ecological health and productive potential.
3. Support Navajos who raise livestock for traditional, cultural, business, or home use.
4. Harmonize the varied and disparate legal regimes that regulate livestock grazing on Navajo rangelands.

§ 104. Definitions

- A. "Act" means the Navajo Rangeland Improvement Act.
- B. "Animal Unit" or "AU" means one adult cow and her six-month-old calf, or the equivalent thereof based on comparable forage consumption. Equivalents are defined as follows:
 1. One adult sheep or goat is equivalent to one-fifth (0.20) of an AU.
 2. One adult horse, mule, donkey, or burro is equivalent to one and one quarter (1.25) AU.
 3. One adult llama is equivalent to three-fifths (0.60) of an AU.
- C. "Allocation" means the number of animal units authorized under a grazing permit.
- D. "Carrying Capacity" means the number of livestock and/or wildlife that may be sustained on a management unit compatible with management objectives for that unit.
- E. "Co-permittee" means the person designated on the grazing permit as enjoying the right of survivorship.
- F. "Conservation Management Plan" means a written statement of the grazing permittee's decision on the use and conservation objectives of the grazing permit, including, plans for improvements, ecological restoration, and ecological conservation.

- G. "Customary Use Area" refers to an area to which an individual traditionally confined his or her traditional grazing use and occupancy, or an area traditionally inhabited by his or her ancestors.
- H. "Department of Agriculture" means the Navajo Nation Department of Agriculture or its successor.
- I. "Director" means the Director of the Navajo Nation Department of Agriculture or its successor, or his/her his or her designee.
- J. "Grazing Dispute" means any dispute that is substantially related to grazing permits or grazing on Navajo rangelands, and that the Director is competent to resolve.
- K. "Grazing Permit" (or "permit") means a revocable privilege granted in writing by the Navajo Nation to an eligible person to enter on and use a specified tract of Navajo rangeland for grazing livestock.
- L. "Grazing Permit Trustee" means a person appointed by the Navajo Nation Family Court to administer a grazing permit on behalf of a minor child or on behalf of a person suffering from a physical or mental incapacity.
- M. "Individual Allotment Land" means land, or any interest therein, held in trust by the United States for the benefit of the respective individual Navajo.
- N. "Individually Owned Fee Land" means land, or any interest therein, that is owned by an individual and not subject to federal restrictions against alienation or encumbrance.
- O. "Issue," when used in relation to grazing permits (e.g., "to issue a permit," "the issuance of a permit") refers both to the initial issuance of a grazing permit and to any subsequent modification or renewal thereof.
- P. "Law Enforcement Officer" means any person who has successfully completed training at a recognized police training academy, has been commissioned by a designated Navajo Nation authority as a police officer, ranger, forestry officer, or resource enforcement officer, and is vested by law with a duty to maintain public order or make arrests, whether that duty extends to all offenses or is limited to specific areas of offenses or offenders. This term includes police officers, rangers, forestry officers and resource enforcement officers.
- Q. "Livestock" means domestic animals raised for home use or profit. Examples of livestock include cattle, sheep, goats, horses, mules, donkeys, burros, and llamas.

- R. “Management Unit” means a subdivision of a geographic area where unique resource conditions, goals, concerns, or opportunities warrant specific and separate management planning.
- S. “Navajo Nation,” means the Navajo Nation government, including all of the smaller governmental entities that comprise the Navajo Nation, such as the executive departments and their directors.
- T. “Navajo Nation Courts” means all courts in the Judicial Branch of the Navajo Nation; it does not include the Office of Hearings and Appeals.
- U. “Navajo Nation Fee Land” means all land, or any interest therein, that is owned by the Navajo Nation and not held in trust by the United States or subject to federal restrictions against alienation or encumbrance.
- V. “Navajo Nation Forestry Land” means land, or any interest therein, under the regulatory authority of the Navajo Nation Forestry Department, which includes the Commercial Forested Area and woodlands.
- W. “Navajo Nation Parks and Recreation Land” means land, or any interest therein, under the regulatory authority of the Navajo Nation Parks and Recreation Department.
- X. “Navajo Nation Trust Land” means any land, or any interest therein, that is owned by the Navajo Nation and either held in trust by the United States, subject to federal restrictions against alienation or encumbrance, or based on aboriginal title recognized through treaties with the United States.
- Y. “Navajo Partitioned Lands (NPL)” means that portion of the Former Joint Use Area awarded to the Navajo Nation under the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona, and now a separate administrative entity within the Navajo Nation.
- Z. “Navajo Rangelands” refers to rangelands that are within the territorial jurisdiction of the Navajo Nation, including Navajo Partitioned Land (NPL). It does not include Navajo Satellite Communities or any lands that the Navajo Nation has withdrawn for purposes other than grazing (e.g., for homesite, right-of-way, economic development, conservation). It refers to the land itself, including natural resources or improvements that might be considered critical components of the overall rangeland infrastructure, such as fences, naturally occurring waters, and permanent livestock water developments.

- AA. “Non-Use of Grazing Permit” means the absence of livestock on the range unit or the permittee’s abandonment of his or her grazing permit; provided, however, that any portion of a grazing permit temporary set aside for range recovery or conservation reasons shall not be cancelled for non-use.
- BB. “Notice” means an official written document from the Navajo Nation that is delivered to its intended recipient by United States mail, hand-delivery, email, or any combination thereof.
- CC. “Party” means a Navajo person who has a legal interest that is intertwined in a grazing dispute, such that a just resolution of the dispute requires that that person be invited to participate in mediation.
- DD. “Permit Renewal Schedule” refers to the schedule set forth in § 203 of this Act.
- EE. “Petition” means an official written document that a grazing permit applicant, grazing permittee, grazing permit trustee, or other Navajo person or entity, files with the Director in order to request that the Director rescind or modify a prior decision, or make a new decision.
- FF. “Range Conservation Officer” means a commissioned Law Enforcement Officer who has the duties and responsibilities to enforce this Act.
- GG. “Range Technician” means an employee of the Department of Agriculture who is responsible for providing technical assistance to grazing permit holders, performing tallies, monitoring the status of the range, and coordinating educational presentation to grazing permittee holders.
- HH. “Range Unit” means a tract of land designated as a separate management subdivision for the administration of grazing, the boundaries of which are often demarcated by fencing. The term “range unit” is synonymous with “range management unit,” which is used elsewhere in Navajo law.
- II. “Recognized Heir” means an individual who has been recognized pursuant to the process established in § 204 as the successor to the a cancelled NPL grazing permit.
- JJ. “Trespass” means any unauthorized occupancy of, use of, entry on, or grazing livestock on Navajo rangeland, where such occupancy, use, entry, or grazing requires the authorization of the Navajo Nation. Unauthorized grazing includes any violations of grazing permit provisions.

§ 105. Applicability

- A. *Application.* Except as provided in Subsection (B), this Act shall apply to all Navajo Nation lands within the territorial jurisdiction of the Navajo Nation, including the NPL.
- B. *Exceptions.* Subject to Subsection (C), this Act shall not apply to any of the following lands:
 - 1. Navajo Nation fee land;
 - 2. Individually owned fee land;
 - 3. Individual allotment land;
 - 4. New Lands that are under the administration of the Navajo-Hopi Indian Relocation Commission; and
 - 5. Navajo Satellite Communities.
- C. *Inclusions.* The Director may make a determination to bring an individual parcel of Subsection (B) land within the scope of the Act, if such action would substantially advance the purpose of the Act. The burden to the landowners of the parcel cannot substantially exceed the expected benefits to the Navajo People.
- D. *Rules and Regulations.* The Director, in consultation with the Navajo Nation Department of Justice, shall promulgate rules and regulations which clearly set forth the procedures and standards the Director will follow in determining when to bring individual parcels of Subsection (B) land within the scope of the Act. The Director shall not make any such determination until such rules and regulations are promulgated.

§ 106. Administrative Authorities

- A. *Enforcement.* The Director is authorized to enforce this Act and any rules and regulations promulgated hereunder.
- B. *Joint Enforcement.* The Directors of the Navajo Nation Forestry Department and the Navajo Nation Parks and Recreation Department are authorized, in concurrence with the authority of the Director, to enforce any provisions of this Act that are relevant to the regulation of grazing or rangeland management in their respective jurisdictions.

- C. *Delegation.* The Directors of any department of the Navajo Nation may delegate any of his or her authority or responsibilities under this Act to any employee or officer under his or her supervision.
- D. *Limitations.* Nothing in this Act shall be construed to limit or expand the existing regulatory authority of any Navajo Nation department or other governmental entity, except for the Department of Agriculture, unless this Act clearly envisions such an expansion or limitation.

§ 107. Rules and Regulations

- A. *Application.* This Subsection establishes uniform procedures for the promulgation of rules and regulations under the Act. All rules and regulations under this Act, including all joint rules and regulations, shall be consistent with the purpose of this Act.
- B. *Department of Agriculture Rules and Regulations.* The Director is authorized to promulgate rules and regulations to implement the purpose of the Act. Every final regulation shall be effective in accordance with its terms after approval by the Resources and Development Committee.
- C. *Joint Rules and Regulations.* The joint rules and regulations shall control the issue of grazing permits on Navajo Nation Forest land and Navajo Nation Parks and Recreation land. These rules shall be promulgated no later than twelve (12) months following the beginning of the Permit Renewal Schedule under § 204. The content of the joint rules and regulations shall include the following:
 - 1. Eligibility criteria;
 - 2. Procedures for submitting applications;
 - 3. The criteria that will be used in the reviewing process to approve or deny grazing applications; and
 - 4. Any other rules and regulations the Directors of the Department of Agriculture, Forest, and Parks and Recreation see fit to promulgate.
- D. *Proposed Rules.*
 - 1. Proposed rules and regulations shall be published for public review and comment for at least sixty (60) days. Publication shall be by any method reasonably determined to give actual notice of the rule and regulation to the public.
 - a. All comments submitted by Navajo persons and Navajo entities during the sixty (60) day comment period shall be reviewed by the Director.
 - i. In the case of joint rules or regulations, the Directors from the relevant departments shall have the discretion to divide between them the

review of public comments by subject matter; as long as an explanation of how the review is divided is provided. Each Director shall provide a certification of compliance as required by paragraph (2)(a) of this Subsection.

- b. The Director, or in the case of joint rules and regulations the relevant Director(s), shall determine if the proposed rule or regulation should be revised before being finalized and promulgated pursuant to paragraph (2) of this Subsection.
 - c. Comments submitted by non-Navajo persons and non-Navajo entities may be reviewed at the discretion of the relevant department director(s).
2. The promulgation of a final rule or regulation shall be published, along with the public response, and contain the following:
 - a. A certification of compliance, stating the Director has complied with the requirements of paragraph (1) of this Subsection;
 - b. A summary of all comments submitted by Navajo persons and entities during the sixty (60) day comment period; and
 - c. An explanation of whether those comments affected the content of the final rule or regulation, and the reasons therefor.
 3. All final rules and regulations are subject to judicial review in Navajo Nation courts, provided such review is sought within one-hundred and eighty (180) days of the effect date of the final rule or regulation.
- E. *Petition to Review Regulations.* Any Navajo person having cause to do so may petition the Director to change any rule or regulation promulgated under the Act by filing with the Director a Petition to Review Regulations.
- F. *Enforceability.* The effectiveness and enforceability of this Act shall not be dependent upon the adoption of any rules or regulations.

§ 108. Notices and Petitions

A. Notices.

1. *All Notices.* A Notice may be delivered to its intended recipient by United States mail, hand-delivery, email, or any combination thereof. Notices may be delivered by email alone only if the intended recipient has consented to this in writing and provided a valid email address. Each Notice that this Act specifically provides for shall include a statement with the following information:
 - a. The source and content of the Director's legal authority to issue the Notice;

- b. If applicable, the provision(s) of this Act or other applicable law that the recipient has violated;
 - c. An explanation of the general kinds of consequences that recipients may experience if he or she ignores the Notice or fails to act by any specified deadlines;
 - d. An explanation of recipients' relevant legal rights under this Act, including whether recipients may have a right to appeal or to file any specific Petitions;
 - e. If recipients may have a right to appeal, an explanation of how to file such an appeal, and the deadline by which such an appeal must be filed;
 - f. If recipients may have a right to file any specific Petitions, an explanation of how to retrieve copies of those Petitions, how to file them, and the filing deadline; and
 - g. How to contact the Department of Agriculture with questions.
2. *Specific Notices.* This Act specifically provides for the following Notices:
- a. "First Written Notice" refers to the Notice described in § 108(C)(2) for this Act.
 - b. "Second Written Notice" refers to the Notice described in § 108(C)(3) of this Act.
 - c. "Final Notice of Permit Cancellation" refers to the Notice described in § 213(G) of this Act.
 - d. "Notice of Civil Sanctions" refers to the Notice described in § 402(B) of this Act.
 - e. "Notice of Grazing District Boundary Change" refers to the Notice described in § 214(B) of this Act.
 - f. "Notice of Hearing" refers to the Notices described in §§ 409(B) and 504(B) of this Act.
 - g. "Notice of Hearing Officer's Decision" refers to the Notices described in §§ 409(E) and 504(E) of this Act.
 - h. "Notice of Livestock Impoundment" refers to the Notice described in § 404(B) of this Act.
 - i. "Notice of Livestock Sale" refers to the Notice described in § 405(D) of this Act.
 - j. Notice of Permit Application Approval/Denial refers to the Notice described in § 205(E) of this Act.
 - k. "Notice of Petition Approval/Denial" refers to the Notice described in § 109(B) of this Act.
 - l. "Notice of Trespass" refers to the Notice described in § 401(C) of this Act.
 - m. "Preliminary Notice of Permit Cancellation" refers to the Notice described in § 213(B) of this Act.

B. *Petitions.*

1. *All Petitions.* A grazing permit applicant, grazing permittee, grazing trustee, or other Navajo person or entity may file a Petition with the Director. The Petitioner may attach any supporting documentation to the petition that the petitioner sees fit to attach.
 - a. Once filed, the Director shall have thirty (30) days to respond by either approving or deny the Petition in its entirety, or by proposing a custom-made solution that is responsive to the petitioner's grievances, which the petitioner may then accept or reject. The Director's response shall be guided by what the Director reasonably believes would best serve the purpose of this Act.
 - b. If the Director fails to respond to a Petition in thirty (30) days, the Petition shall be deemed to have been denied.
 - c. Upon approving or denying a Petition, the Director shall send the Petitioner a Notice of Petition Approval or Denial which states whether the Director approved or denied the petition and the Director's reasons therefor.

2. *Specific Petitions.* This Act specifically provides for the following Petitions:
 - a. "Petition to Mediate a Grazing Dispute" (or "Petition to Mediate") refers to the Petition described in § 502(A) of this Act.
 - b. "Petition to Modify Preliminary Cancellation" refers to the Petition described in § 213(D) of this Act.
 - c. "Petition to Modify Civil Sanctions" refers to the Petition described in § 402(C) of this Act.
 - d. "Petition to Rescind Preliminary Cancellation" (or "Petition to Rescind") refers to the Petition described in § 213(C) of this Act.
 - e. "Petition to Review Regulations" refers to the Petition described in § 107(C)(5) of this Act.

3. *Petition Forms.* Before the Permit Renewal Schedule begins under § 202 of this Act, the Director shall prepare a standard form for each Petition that this Act specifically provides for. The Director shall make the forms available upon request on the Internet and at all Department of Agriculture offices that are open to members of the public. The standard form for each specific Petition shall include a statement with the following information:
 - a. How to complete and file the Petition with the Director;
 - b. The filing deadline for that specific Petition, if any; and
 - c. How to contact the Department of Agriculture with questions.

§ 109. Records

- A. *Duty to Maintain.* The Directors of the Navajo Nation Departments of Agriculture, Forestry, and Parks and Recreation shall maintain accurate records that are necessary to exercise of their

respective authorities and responsibilities under this Act; and that are necessary for the Office of Hearings and Appeals and the Navajo Nation Courts to conduct a meaningful review of any appealable or otherwise reviewable actions.

- B. *Administrative Records.* The Directors shall maintain the following administrative records:
1. Records of annual livestock counts, capacity assessments, and the administration of the range;
 2. Records related to trespass investigations under Subchapter 5 of this Act;
 3. Records related to mediation of grazing disputes under Subchapter 6 of this Act;
 4. Records sent to, or received from, Navajo Nation courts; and
 5. Records sent to, or received from, the Office of Hearings and Appeals.
- C. *Official Correspondence Records.* The Directors shall maintain official correspondence with grazing permit applicants, grazing permittees, grazing permit trustees, Navajo Nation Courts, and the Office of Hearing and Appeals, provided that such correspondence relates to the Directors' exercise of authorities and responsibilities under this Act. Such records shall include:
1. Grazing permits issued;
 2. Grazing permit brands and identification markings;
 3. Notices that are delivered or attempt to be delivered;
 4. Grazing permit applications that are received; and
 5. Petitions that are received.
- D. *Electronic Database.* A modern electronic database for the recording of permits, premise IDs, GPS coordinates of permitted rangeland, and other records as the Director sees fit, shall be created by the Director in consultation with other departments in the Natural Resources Division, subject to the Navajo Nation making a special appropriation of funding for this purpose. Such data shall be accessible remotely in the field

§ 110. Communication of Land Withdrawals

When land is withdrawn from Navajo rangeland for some purpose other than grazing (e.g., homesite, right-of-way, economic development, conservation), the Director of the Navajo Nation Land

Department shall so inform the Director in writing. This writing shall include the size and location of the land withdrawn, and any other information that the Director has requested be included in such letters, provided that such information is available to the director of the Land Department. When land is withdrawn from Navajo rangeland that is also Navajo Nation Forestry land and/or in Navajo Nation Parks and Recreation land, the Director of the Land Department shall send the same writing to the Directors of the Navajo Nation Forestry Department and/or the Navajo Nation Parks and Recreation Department.

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SUBCHAPTER 2. TRANSITION PERIOD

§ 201. General Provisions

All individuals who currently possess a valid grazing permit must be reissued a new permit by the Department. Couples are a unit.

§ 202. Eligibility Requirements

- A. *Eligibility.* In order to be eligible for a reissued grazing permit, an applicant must meet the following requirements:
1. Be an enrolled member of the Navajo Nation;
 2. Be at least 18 years of age or older;
 3. Have a customary use on the land that is subject of the application; and
 4. Not be issued a grazing permit, of any kind, in any other district.
- B. *Minors.* Notwithstanding the requirements of Subsection (A)(3) of this Section, a minor who meets the other eligibility requirements under Subsection (A) may be reissued a grazing permit. In this situation, a grazing permit trustee shall be appointed to manage the permit for the benefit of the minor until the minor reaches 18 years of age or the trust is terminated under Subsection (C) of this section.
- C. *Termination of Trust.* After the minor reaches 18 years or age, a trust created under Subsection (B) of this Section can be terminated by agreement, unilaterally, or statutorily.
1. *Agreement.* Termination by agreement occurs when the minor and trustee agree to terminate the trust relationship and so inform the Director in a dated writing signed by both the minor and trustee.
 2. *Unilateral termination.* A minor or trustee may unilaterally terminate a trust. Any time after reaching the age of eighteen (18) a minor may terminate a trust by informing the Director and trustee in writing of the termination. A trustee may terminate a trust once the minor reaches the age of twenty-four (24) by giving the Director and minor a thirty (30) day written notice.
 3. *Statutory termination.* Termination occurs automatically under this Act if a trust still exists when the minor reaches twenty-six (26) years of age.

D. *Navajo Partitioned Land*. Only those applicants who meet all of the following requirements will be eligible to receive a permit on Navajo Partitioned Land (NPL). To receive a permit to graze livestock on the Navajo Partitioned Lands a person must:

1. Either appear as a permittee on the lists of permits cancelled on October 14, 1973 or be the recognized heir, pursuant to § 203, of a deceased individual appearing on said list;
2. Be listed on the 1974 or 1975 BIA enumeration within NPL or be the recognized heir, pursuant to § 204, of a deceased individual appearing on said list;
3. Be a recognized full-time resident of the NPL and reside within the customary use area where the cancelled permit was used;
4. Be an enrolled member of the Navajo Nation;
5. Be at least 18 years of age or older;
6. Not have received any of the following accommodations:
 - a. Signed an accommodation agreement to remain on Hopi Partitioned Lands or have a valid grazing permit for Hopi Partitioned Land;
 - b. Received a permit to graze livestock on New Lands; or
 - c. Received a reissued permit outside the Navajo Partitioned Lands.

E. *Seasonal Permits*. A seasonal permittee may hold more than one seasonal permit, as long as they are for two different seasons. No seasonal permittee may hold more than two permits. A seasonal permittee may not hold a seasonal permit in conjunction with an annual permit.

§ 203. Determination of the Recognized Heir to NPL Cancelled Permits

A. *General*. Any individual who meets the eligibility requirements in § 202 and who wishes to be named the recognized heir to a cancelled permit in NPL must submit an application to the Department within one year from the passage of this Act.

B. *Initial Application*. An individual [applicant] who wishes to be named the recognized heir shall complete, sign, and submit to the Director an application. The applicant must submit the following documents with the application:

1. A copy of the original permittee's Death Certificate;
2. Documentation establishing applicant as a descendant of deceased permittee;
3. Documentation verifying applicant is a full time resident of the NPL and resides within the customary area where the cancelled permit was used;
4. Proof applicant is an enrolled Navajo and at least 18 years of age;

5. An affidavit confirming applicant has not received any of the following accommodations:
 - a. Signed an accommodation agreement to remain on Hopi Partitioned Lands or has a valid grazing permit for Hopi Partitioned Land; or
 - b. Received a permit to graze livestock on lands outside the NPL.
6. A list of all descendants of deceased permittee to the best of applicant's knowledge, including all known mailing addresses;
7. An affidavit demonstrating the applicant's history of grazing in Navajo including the area he or she has grazed, for how long, and the number of animals;
8. A Conservation Management Plan;
9. If applicable an Affidavit signed by all the descendants designating applicant as the recognized heir;
10. A copy of the original cancelled permit is recommended but not required; and
11. Any other documentation the Director may deem necessary.

C. *Application Review.* The Director shall not begin the processing of an application until the Applicant has fully complied with the application requirements.

1. Each application submitted shall be reviewed for completeness by the Director within thirty (30) days of its receipt. Upon completing the review the Director may also request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.
2. If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied.

D. *Notice.*

1. *Notice to Identified Descendants.* Once the Department deems an application complete, the Department will mail out notice, via first class mail, to all the identified descendants of the cancelled permit. The notice shall inform the descendants that an application for the cancelled permit has been filed with the Department. All notices shall contain the following minimum information:
 - a. The name the applicant;
 - b. The name of the original deceased permittee;
 - c. An application with instructions on how to complete and submit it; and
 - d. A statement informing the individual that if he or she wishes to submit an application to the Department they must do so with sixty (60) days of the date of the letter.

2. *Notice to Public.* The Department is required to publish notice within the Navajo Nation that an application has been submitted on behalf of the original deceased permittee. Public notice shall be provided for in the newspapers of the Navajo Nation, through postings at the Chapter House of the deceased permittee, and through any method reasonably determined to give actual notice of the application to the persons potentially affected by it. All public notices shall contain the following minimum information:
 - a. The name of the original deceased permittee;
 - b. That an application to be named the recognized heir of the deceased permittee's canceled grazing permit has been submitted to the Department;
 - c. That any descendent of the original deceased permittee who wishes to be named the recognized heir must submit an application to the Department within sixty (60) days; and
 - d. That any descendant may contact the Department for an application.

- E. *Assessment of Conservation Management Plans.* After the required sixty (60) days in Subsection (D) have passed, the Department shall perform a technical review of all the conservation management plans submitted on behalf of the cancelled permit. The Department shall complete an assessment of viability for each conservation management plan. Review of Conservation Management Plans. Conservation plans will be evaluated on:
 1. The proper grazing use of the permit by the permittee. There cannot be any overstock but only the actual number of livestock allowed by the permit.
 2. The implementation of conservation practices to improve the environmental condition of the land.
 3. The improvement of the livestock breed. To improve the quality, vigor of the livestock and prevent inbreeding.
 4. The plan to decrease obnoxious weeds and poisons on the range.

- F. *Reviewing Committee.* After an assessment of the management plans is completed, all the application packets shall be referred to the Reviewing Committee.
 1. *Composition.* The Reviewing Committee shall be comprised of a range specialist, an extension agent, an employee from the Division of Natural Resources, an employee from Forestry, an employee from Fish and Wildlife, and any other individuals who the Department deem necessary.
 2. *Duties.* The Reviewing Committee shall review all the applications submitted for the cancelled permit. In reviewing the applications the Committee shall make sure such each applicant is eligible to receive a permit under § 205 (C) of this Act. In determining which Applicant will be named the designated heir to the cancelled permit the Committee shall give priority to Applicants who have a demonstrated interest in grazing and who submitted a viable management plan.
 3. *Chairman.* The Reviewing Committee shall be chaired by a Hearings Officer from the Office of Hearings and Appeals. The Chairman shall be responsible for all the

administrative duties, including the scheduling of Committee meetings and making sure all the members are provided with the relevant documentation for review. The Chairman shall not participate in the determination of the recognized heir unless the Committee finds there is more than one applicant eligible to be named the recognized heir. In such situations the Chairman shall make the final determination on who is to be named the recognized heir.

4. *Majority.* In order for the Committee to take any action a simple majority of its members must be present.
- G. *Notification of Determination.* After the Reviewing Committee determines who the recognized heir is, notification will be sent out to all applicants informing them of the Committee's decision, the bases of the decision, and that applicants have thirty (30) days to appeal the Committee's decision to the Office of Hearing and Appeals.

§ 204. Reissuance of Grazing Permits

- A. *General.* The term of all grazing permits issued prior to, but still in force on, the effective date of this Act are hereby modified as follows:
1. The term of any permit subject to the Permit Renewal Schedule of this section, is hereby modified (whether shortened or extended), such that the permit's expiration date is now the same as the applicable deadline established by the Permit Renewal Schedule.
 2. The term of any permit for grazing on Navajo Nation Forestry land or Navajo Nation Parks and Recreation land that was issued prior to, but is still in force on, the effective date of this Act, is hereby modified (whether shortened or extended), such that the permit's expiration date is now the same as the effective date of the applicable joint regulations to be promulgated under § 107 of this Act.
- B. *Permit Renewal.* All permits for grazing on Navajo rangeland, issued prior to, the adoption effective date of this Act shall remain valid, but shall no longer be renewed automatically. Instead, permittees must apply to have their permits renewed. Application forms will be developed and made available by the Department. Permittees must submit an application and attach a copy of the permit and a conservation management plan. Permits will be renewed based the sufficiency of the permittee's conservation plan.
- C. *Review of Conservation Management Plans.* Conservation plans will be evaluated on:
1. The proper grazing use of the permit by the permittee. There cannot be any overstock but only the actual number of livestock allowed by the permit.
 2. The implementation of conservation practices to improve the environmental condition of the land.

3. The improvement of the livestock breed. To improve the quality, vigor of the livestock and prevent inbreeding.
4. The plan to decrease obnoxious weeds and poisons on the range.

D. *Permit Renewal Schedule.* Each year the Director will identify which districts are up for permit renewal. The Director shall provide notice to all grazing permittees in the affected districts via first class mail. The notice shall include an application for renewal with instructions how to complete and submit the application to the Department. It will also include a statement of how a permittee can contact the Department with questions regarding the renewal process.

§ 205. Dissolution of District Grazing Committees and District Land Board

- A. *General.* The District Grazing Committees (“DGCs”) and the District Land Boards (“DLBs”) shall be dissolved at the end of the current term of the DGC and DLB officials.
- B. *Transfer.* Upon the dissolution of the DGC and DLB, all DGC and DLB authorities relating to grazing and rangeland management shall be transferred to the Director. All non-grazing agriculture-related authorities shall be transferred to the Farm Boards.
- C. *Educational Fund.* Subject to the special appropriation of funds by the Navajo Nation, the Director shall establish an Educational Fund in order to provide assistance to District Grazing Committee members in attaining the necessary educational requirements necessary for the newly created range technician positions.

§ 206. Responsibility of the Director to Disseminate Information

- A. *Purpose.* In order that the public and grazing permittees might be fully informed of this Act’s passage and its contents, The Director shall disseminate information about this Act and any rules or regulations promulgated hereunder.
- B. *Publication.* The Director shall publicize information about the contents of this Act and any rules or regulations promulgated hereunder using any method reasonably determined to give actual notice of the Act to the public. Publication shall be from the effective date of the Act till the Director deems it no longer necessary. Publicized information shall include at a minimum:
 1. A Summary of the Act;
 2. Explanations about this Act’s Permit Renewal Schedule;

3. How permittees may obtain permit renewal applications;
 4. How permittees and interested members of the Navajo public may obtain additional information about this Act; and
 5. Any other information deemed necessary by the Director.
- C. *Current Grazing Permittees*. In order that current grazing permittees holding permits issued prior to, but still in force on, the effective date of this Act, might be fully informed of this Act's passage and its requirement, the Director shall do all of the following within the first year following the effective date of this Act:
1. *Locate Permit Holders*. Make a good faith effort, by searching the grazing permit records kept by the Department of Agriculture and the Bureau of Indian Affairs, to locate the postal mail and e-mail addresses of all permittees holding grazing permits issued prior to, but still in force on, the effective date of this Act.
 2. *First Written Notice*. Provide written notice by United States Postal Service mail and e-mail to each permittee for whom the Director is able to locate a postal mail or e-mail address. The contents of this First Written Notice shall include information regarding:
 - a. The Permit Renewal Schedule;
 - b. The permit renewal application process including:
 - i. Eligibility requirements;
 - ii. A permit renewal application;
 - iii. Instructions for how to complete the application;
 - iv. The criteria used to evaluate the application;
 - v. How the application will be processed; and
 - vi. The deadline which applications must be filed.
 - c. The important contents of the Act as determined by the Director, in consultation with the Department of Justice, including the ways in which the Act changes the existing grazing permit regime;
 - d. How to obtain or access a copy of this Act; and
 - e. Who permittees may contact if they have any questions about the contents of this written notice.
 3. *Second Written Notice*. In order that permittees holding grazing permits issued prior to, but still in force on, the effective date of this Act might be reminded of this Act's passage and its requirements. The Director shall send a Second Written Notice to all such permittees. The required contents of this Second Written Notice shall be the same of those required of the First Written Notice.

4. *Minors.* For a minor who is the beneficiaries of a grazing permit trust created under § 202(B) of this Act, the Director shall explain in writing the nature of a grazing permit trust under this Act, including how such trusts may be terminated. The Director shall send the minor such a writing on their 18th, 24th, and 28th birthdays, unless the trust has been terminated. When the trust is terminated, the Director shall provide the minor with information about this Act and its requirements.

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SUBCHAPTER 3. GRAZING PERMITS

§ 301. General Provisions

All livestock grazing by Navajo persons on Navajo rangeland must be authorized by a grazing permit issued by the Director.

§ 302. Eligibility Requirements

- A. *Eligibility.* In order to be eligible for a reissued grazing permit, an applicant must meet the following requirements:
1. Be an enrolled member of the Navajo Nation;
 2. Be at least 18 years of age or older;
 3. Have a customary use on the land that is subject of the application; and
 4. Not be issued a grazing permit in any other district.
- B. *Minors.* Notwithstanding the requirements of Subsection (A)(3) of this Section, a minor who meets the other eligibility requirements under Subsection (A) may be reissued a grazing permit. In this situation, a grazing permit trustee shall be appointed to manage the permit for the benefit of the minor until the minor reaches 18 years of age or the trust is terminated under Subsection (C) of this section.
- C. *Termination of Trust.* After the minor reaches 18 years or age, a trust created under Subsection (B) of this Section can be terminated by agreement, unilaterally, or statutorily.
1. *Agreement.* Termination by agreement occurs when the minor and trustee agree to terminate the trust relationship and so inform the Director in a dated writing signed by both the minor and trustee.
 2. *Unilateral termination.* A minor or trustee may unilaterally terminate a trust. Any time after reaching the age of eighteen (18) a minor may terminate a trust by informing the Director and trustee in writing of the termination. A trustee may terminate a trust once the minor reaches the age of twenty-four (24) by giving the Director and minor a thirty (30) day written notice.
 3. *Statutory termination.* Termination occurs automatically under this Act if a trust still exists when the minor reaches twenty-six (26) years of age.

- D. *Seasonal Permits.* A seasonal permittee may hold more than one seasonal permit, as long as they are for two different seasons. No seasonal permittee may hold more than two permits. A seasonal permittee may not hold a seasonal permit in conjunction with an annual permit.

§ 303. Issuance of Permits

- A. *Scope.* If an area of Navajo rangeland is not covered by a grazing permit, or if an area of Navajo rangeland that is covered by one or more grazing permits has a carrying capacity that is sufficient to accommodate additional livestock, then the Director shall consider whether to issue new permits, including increasing the AU allocations for existing permits.
- B. *Publication.* If the Director decides issuing new permits best serves the purpose of this Act, he or she shall publically announce the decision using any method reasonably determined to give actual notice to persons whom the Director knows, or reasonably should know, are likely to meet the eligibility requirements under § 302. Publicized information shall include at a minimum:
1. Where the new permits will be located;
 2. How individuals may obtain a grazing permit application;
 3. The time period during which grazing applications will be accepted by the Department; and
 4. Any other information deemed necessary by the Director.
- C. *Time.* The Director shall have the discretion to issue new permits under Subsection (A) of this Section beginning one year after the date on which the District Grazing Committees and District Land Boards are dissolved under § 205.

§ 304. Application and Review

- A. *General.* The Director shall design one or more grazing permit applications and shall implement internal guidelines for how the Department of Agriculture will process and review such applications. This is to be completed as soon as practicable following the effective date of this Act, but no later than the first day of the Permit Renewal Schedule under § 204, Because these internal guidelines are neither rules nor regulations, the requirements under § 107 of this Act shall not apply.
- B. *Contents.* The application shall contain:
1. The applicant's contact information;

2. A statement explaining that it is the applicant's responsibility to keep this contact information current by immediately informing the Director of any change;
 3. Any supporting documentation necessary to determine whether the applicant meets the eligibility requirements under § 302;
 4. A Conservation Management Plan; and
 5. A writing from the Navajo Nation Land Department stating whether any land has been withdrawn from the tract of land for which the applicant seeks a grazing permit, and if so, the location and size of the withdrawn land.
- C. *Application Review.* In reviewing grazing permit applications the Director shall conduct the following evaluation:
1. *Preliminary Review.* The Director shall first determine whether the applicant meets the eligibility requirements under § 302 and whether grazing permits are available for the tract of rangeland specified in the application. In his discretion the Director may also consider the nature and extent of the applicant's past violations of this Act, the nature and extent of the applicant's complicity in others' past violations of this Act, and such other discretionary criteria as the Director shall establish.
 2. *Review of Conservation Management Plan.* Review of Conservation Management Plans. Conservation plans will be evaluated on:
 - a. The proper grazing use of the permit by the permittee.
 - b. The implementation of conservation practices to improve the environmental condition of the land.
 - c. The improvement of the livestock breed. To improve the quality, vigor of the livestock and prevent inbreeding.
 - d. The plan to decrease obnoxious weeds and poisons on the range.
 2. *Gross Carrying Capacity Assessment.* If the application satisfies the preliminary review requirements, the Director shall then make a scientific assessment of the carrying capacity of the rangeland specified in the application. Such an assessment shall be conducted as close to the permit issuance date as practicable, but in no instance prior to three-hundred and sixty-five (365) days before the issuance date.
 3. *Net Carrying Capacity Assessment.* From the gross carrying capacity assessment, the Director shall subtract the applicable wildlife set-aside, as determined by the Director of the Navajo Nation Fish and Wildlife Department under § 223. The results of the net

carrying capacity assessment under this Subsection shall be the predominant factor in the Director's determination of how many animal units to authorize under the permit.

- E. *Application Approval/Denial.* The Director shall have three-hundred and sixty-five (365) days to approve or deny a grazing permit application. The Director should approve or deny an application based on what the Director reasonably believes would best serve the purpose of this Act.
- F. *Notice of Permit Application Approval/Denial.* Upon approving or denying an application, the Director shall send the petitioner a Notice of Permit Application Approval/Denial that states whether the Director approved or denied the application and the basis of the Director's decision.

§ 305. Contents of Grazing Permit

- A. A grazing permit shall contain the following information provisions:
 - 1. Name, census number, current address, and the permittee's preferred means of receiving official communication from the Director;
 - 2. Unique grazing permit number;
 - 3. Permit's term (including beginning date and expiration date);
 - 4. The range unit number;
 - 5. Description of the land covered by the permit;
 - 6. Range management plan requirements;
 - 7. The number of AU allowed under the permit;
 - 8. Animal identification information (e.g., brands, identifying marks, microchips, freeze brands, earmarks, tattoos);
 - 9. A provision stating that the permittee agrees that he or she will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose;
 - 10. A provision stating that the permit authorizes no other privilege than grazing use;

11. A provision reserving a right of entry by the Navajo Nation for range survey, carrying capacity assessment, livestock counts, inspection or compliance purposes, and other for other purposes related to management of grazing permits and Navajo rangelands;
 12. A provision prohibiting the creation of a nuisance, any illegal activity related to grazing or rangelands, and negligent use or waste of resources;
 13. A provision stating how trespass proceeds are to be distributed;
 14. A provision stating that the permit cannot be subdivided once it has been issued; and
 15. Any other provisions which the Director deems necessary.
- B. *Track Permits*. There shall be track permitting on the Navajo Nation. This Subsection shall not apply to grazing permits on Navajo Nation Forestry land or Navajo Nation Parks and Recreation land. The tracks are as follows:
1. Track Permit A: fifty (50) AUs (250 sheep units)
 2. Track Permit B: [Reserved]
 3. Track Permit C: ten (10) AUs (50 sheep units) or less.

§ 306. Term; Renewal; Supplemental

- A. *Term*. The term of a grazing permit issued under this Act shall be five (5) years.
- B. *Renewal*. Grazing permits may be renewed upon satisfactory compliance with this Act and any rules and regulations promulgated hereunder. All permit renewals shall occur pursuant to an application for permit renewal filed with the Director. Grazing permits shall not renew automatically. Submit conservation plans, update on status, and comply with old plan.
- C. *Supplemental Annual Permits*. If a permittee believes that the carrying capacity of the land covered by his or her permit has increased, the permittee may contact the Department to request an interim carrying capacity assessment. The assessment shall be conducted at the expense of the permittee based on standard reasonable rates set by the Director.
 1. Upon receiving said request, the Director shall select at random a previously qualified rangeland assessment specialist to conduct a carrying capacity assessment on the rangeland in question. Once completed, the specialist shall submit a copy of the assessment to both the permittee and the Director.

2. Upon receiving a copy of the specialist's carrying capacity assessment, the Director shall have thirty (30) days to make one of the following decisions:
 - i. To issue the permittee a supplemental annual permit that would allow the permittee to graze additional animal units on the same land covered by his or her five-year grazing permit;
 - ii. To not issue the permittee a supplemental annual permit; or
 - iii. To issue a one-year restriction that would reduce the number of animal units that the permittee is allowed graze on the rangeland at issue during that year; provided, however, the interim carrying capacity assessment concludes that the rangeland at issue has a carrying capacity that allows for significantly fewer animal units than are allowed under the permittee's five-year permit.
3. The Director shall send the permittee written notice of the decision and the reasons therefor, which shall clearly state how the interim carrying capacity assessment factored into the Director's decision.

§ 307. Co-Permittees; Sublessors; Livestock Operators

- A. *General.* All proposed co-permittee, sublessee, or livestock operator must meet the eligibility requirements under § 302, the Preliminary Review requirements under § 304 of this Act, and must sign the appropriate paperwork, as determined by the Director.
- B. *Co-Permittee.* A co-permittee shall have no rights or responsibilities under the grazing permit. Upon the death of the permittee, the co-permittee shall automatically become the new permittee, and assume all of the associated privileges and responsibilities.
- C. *Sublessee.* A permittee may sublet all or part of his or her grazing permit. The term of a sublease shall not exceed the term of the grazing permit. A sublease shall not grant any right to be consulted by the Navajo Nation regarding proposed land withdrawals.
- D. [Livestock Operator Provision]

§ 308. Assignment; Modification; Encumbrance

- A. *General.* Grazing permits shall not be assigned, collateralized, or subjected to bailment. Grazing permits shall not be modified or encumbered without the advance written approval of the Director. Encumbrances may not exceed the term of the permit.

- B. *Civil Penalty.* In the event that a business entity which deals regularly in financial transactions, such as a bank, pawn shop, check cashing service, or pay-day lending company becomes, or attempting to become, a party to a transaction that is prohibited by Subsections (A) of this Section, that business entity shall be assessed a civil penalty of between five hundred dollars (\$500.00) and two thousand dollars (\$2,000.00) per violation.
- C. *Presumption.* In the event that a grazing permittee becomes, or attempts to become, a party to a transaction that is prohibited by Subsections (A) of this Section; there shall be a presumption that the permittee was ignorant of the requirements of this Section. The presumption may be overcome by evidence to the contrary. The permit shall not be cancelled for the permittee's first violation of this Section. Each grazing permittee shall only be entitled to said presumption once, and only during the first ten years of this Act being in effect. Upon a permittee's second violation of this Section the permittee shall be assessed a civil penalty of between five hundred dollars (\$500.00) and two thousand dollars (\$2,000.00) per violation.

§ 309. Transfer

- A. *General.* A permit can only be transferred to a person who meets the eligibility requirements under § 302 and the preliminary review requirements under § 304. This rule shall apply to all transfers, including those ordered or authorized by Navajo Nation Courts. Persons who receive a grazing permit by transfer shall honor and abide by all previous consents, waivers, and agreements.
- B. *Limitations.* Because a permittee holds a grazing permit as a trustee in significant part for the benefit of his or her family, a grazing permit shall not be transferred to a non-family member if a family member who meets the requirements under Subsection (A) of this section is willing to accept transfer. A grazing permit may not be geographically transferred, as it is inextricably tied to the tract of rangeland for which it was issued.
- C. *Approval.* All transfers must be approved by the Director. The Director shall honor all transfers directed by the Navajo Nation Courts in cases involving the divorce or separation of a permittee.
- D. *Consolidation.* If a permittee acquires an additional permit by other means, including by purchase or transfer, the permittee shall have ninety (90) days to apply to the Director to consolidate all permits into a single permit; provided, however, that the resulting single permit is subject to the same limitations imposed on every grazing permit under this Act and other applicable law. The expiration of the combined permit shall be the same as the earliest expiration date of the individual permits that were combined.

§ 310. Cancellation

A. *Causes for Cancellation.* The Director may cancel a grazing permit for any of the following reasons:

1. Two consecutive years of non-use, if not authorized in advance by the Director.
2. Grazing fees have not been paid after sixty days written notice.
3. Civil monetary sanctions have not been paid after sixty (60) days written notice.
4. The permittee has violated any one of the provisions of his or her grazing permit, including grazing livestock in excess of the permitted number.
5. The permittee has violated this Act or any rules or regulations promulgated hereunder, including any reasons for cancellation that are created by regulation.
6. The carrying capacity of the permitted area has diminished to a point where it cannot support the minimum number of livestock authorized by this Act.
7. The permittee has violated any other law that is related to livestock or to the management of Navajo rangeland.

B. *Preliminary Notice of Permit Cancellation.* Upon determining that there is reason to cancel a grazing permit under Subsection (A) of this Section, the Director shall provide the permittee a Preliminary Notice of Permit Cancellation, which shall contain the following:

1. An identification of the permit and permittee in question;
2. An explanation that the permit in question has not yet been cancelled, but that it will be cancelled if the permittee fails to take all the prescribed "Actions to Avoid Cancellation" by the specified deadline(s);
3. The Director's reasons for issuing the Preliminary Notice of Permit Cancellation, including specific reference to the relevant paragraph(s) in Subsection (A) of this Section, and a brief description of the factual allegations and evidence supporting the Director's reasons;
4. An explanation of the actions, if any, that the permittee must undertake to avoid cancellation of the permit in question;

5. A reasonable deadline, not less than ten days from the permittee's receipt of the Preliminary Notice of Permit Cancellation, by which the permittee must complete all actions to avoid cancellation;
6. Any other information that the Director sees fit to include.

C. Petition to Rescind Preliminary Cancellation.

1. *General.* A permittee who receives a Preliminary Notice of Permit Cancellation may petition the Director to rescind it by filing a Petition to Rescind Preliminary Cancellation at any time before the permittee receives a Notice of Permit Cancellation. The permittee may attach any relevant documentation to the Petition to Rescind Preliminary Cancellation.
2. *Review.* Once the Petition to Rescind Preliminary Cancellation is filed the Director shall either approve or deny the Petition in its entirety. The Director may at his or her discretion propose a custom-made solution for the petitioner to accept or reject. The Director may only approve the Petition to Rescind Preliminary Cancellation if:
 - a. The identity of the permit or permittee was mistaken; or
 - b. The reasons for issuing the Preliminary Notice of Permit Cancellation were without merit.
3. *Notice of Decision.* Upon approving or denying a petition, the Director shall send the petitioner a notice stating whether the Director approved or denied the petition and the basis of the Director's decision.

D. Petition to Modify Preliminary Cancellation.

1. *General.* A permittee who receives a Preliminary Notice of Permit Cancellation may petition the Director to modify it, including an adjustment of the Preliminary Notice of Permit Cancellation deadline, by filing a Petition to Modify Preliminary Cancellation any time before the permittee receives a Notice of Permit Cancellation.
2. *Review.* Once a Petition to Modify Preliminary Cancellation is filed the Director shall either approve or deny the Petition in its entirety. The Director may at his or her discretion propose a custom-made solution
3. *Notice of Decision.* Upon approving or denying a petition, the Director shall send the petitioner a notice stating whether the Director approved or denied the petition and the basis of the Director's decision.

- E. *Final Notice of Permit Cancellation.* If the permittee fails to take any action to avoid cancellation before the prescribed deadline, the Director shall provide the permittee with a Final Notice of Permit Cancellation which clearly states that the Director has cancelled the permittee's grazing permit and explains:
1. The Director's reasons for cancelling the permittee's grazing permit; and
 2. That if the permittee files a Notice of Appeal with the Office of Hearing and Appeals within thirty (30) days of the receipt of the Director's Final Notice of Permit Cancellation, the Director's decision shall be stayed pending the outcome of the appeal; otherwise, the Director's decision to cancel shall be final.
- F. *Exceptions.* Permittees who meet specific criteria outlined in this subsection are exempted from having their permit cancelled.
1. *Young Adult Exemption.* The Director shall not cancel the permit of a young adult between his or her 18th and 24th birthdays who was gifted a permit while a minor and who is not actively grazing livestock under the permit. Upon turning 24 years of age, the young adult may petition the Director for a three-year extension of this exemption for good cause. Good cause includes military service, pursuing higher education, or pursuing any other activity that entails serving others or building life knowledge or life skills. If the young adult chooses to hire a livestock operator or sublet his or her grazing permit, the young adult shall be subject to same requirements as other permittee who does the same, and thus this exemption shall not apply.
 2. *Mental Incompetence Exemption.* The Director shall not cancel the permit of a permittee determined by a court of competent jurisdiction to be mentally incompetent for actions taken by the permittee after becoming mentally incompetent but prior to being appointed a grazing permit trustee.
 3. *Substance Abuse Program Exemption.* The Director shall not cancel the permit of a permittee while the permittee is enrolled in a certified substance program.
 4. *Incarceration.* The Director shall not cancel a permit of a permittee while the permittee is incarcerated if the incarceration is for a period of two (2) years or less.
 5. *Medical Exemption.* The Director shall not cancel of a permittee while the permittee is under the medical care of a physician. Proof of the medical condition must be provided to the Director with a statement of expected recovery time. If it is determined the medical condition is likely to last more than two (2) years then Director may, in his or her discretion, proceed to cancel permittee's permit.

§ 311. Descent and Distribution

Grazing permits shall not be eligible for probate in Navajo Nation Court. A permittee does not have a vested right in the grazing permit; rather they hold the permit at the pleasure of the Nation. Once an individual passes away, their grazing permit reverts back to the Nation unless otherwise provided for in this Act.

§ 312. Range Technicians

- A. *General.* The Director will hire qualified range technicians to assume those grazing-related duties performed by local elected officials.
- B. *Duties.* Range Technicians shall be responsible for supporting grazing permittees in managing, controlling, and improving grazing practices; carrying out resource management objectives; gathering rangeland information; mediating grazing disputes; and providing continuing education to chapters and communities on grazing practices and laws.
- C. *Deputization.* If the Director deems it feasible, range technicians may be deputized as deputy livestock inspectors under current law, as a means of relieving the livestock-inspection burden on Resource Enforcement officers.

§ 313. Grazing Fees

- A. *Purpose.* The Navajo Nation hereby establishes grazing fees for the four agencies of the Navajo Nation and the NPL for the purpose of covering the expenses of the program's operations. Funds generated from the assessment and collection of administrative and grazing fees shall be used for program's operations cost to administer program functions and operations such as the Grazing Permit Office, Livestock Inspection, and the Range Management Program.
- B. *Establishment.* All grazing permittees will be assessed a grazing fee for the actual animal unit authorized on their grazing permit.
- C. *Rate Setting Mechanism.* The rate or amount of administrative and grazing fees to be assessed and charged will be determined by the Department. In determining the rate the Department may rely on relevant research, comparable data, and fees from tribal, state, federal, and private entities on or adjacent to the Navajo Nation.
- D. *Expenditure of Funds.* Expenditures from the fund generated from the assessment and collection of administrative and grazing fees shall be made in accordance with established and approved

Navajo Nation expenditure policies and procedures and shall be budgeted each fiscal year through the Navajo Nation annual budget appropriations process.

- E. *Periodic Review.* All fees will be reviewed annually and recommendations for any changes made to the Resource Development Committee of the Navajo Nation Council.

§ 314. Grazing District Boundary Changes

- A. *General.* The Resources and Development Committee may change grazing district boundaries when the Committee deems such changes to be in the best interests of the Navajo People.
- B. *Notice of Grazing District Boundary Change.*
 - 1. *General.* Upon learning that the boundaries of a grazing district have changed, the Director shall conduct a review of the Department of Agriculture's files to determine if any grazing permittees are likely to be affected by the change. The Director shall send, via first class mail, a Notice of Grazing District Boundary Change to any permittee who, as a direct result of a grazing district boundary change, becomes in noncompliance with one or more requirements of this Act.
 - 2. *Notice.* The notice shall include information about the relevant the grazing district boundary change, the Director's preliminary assessment of the ways in which the permittee may become in noncompliance with one or more requirements of this Act as a direct result of that grazing district boundary change, a statement informing the permittee of his or her right to file a Petition for Relief from Grazing District Boundary Change, a copy of that Petition, instructions for completing and filing the Petition, and the deadline by which the Petition must be filed at the Department of Agriculture.
- C. *Petition for Relief from Grazing District Boundary Change.* A permittee who becomes in noncompliance with one or more requirements of this Act as a direct result of a grazing district boundary change may petition the Director to be temporarily or permanently exempted from having to comply with said requirement(s) by filing a Petition for Relief from Grazing District Boundary Change. The deadline for filing such a petition shall be sixty (60) days following the receipt of the Notice of Grazing District Boundary Change. The Director may not issue the permittee a Notice of Permit Cancellation based on the permittee's noncompliance with this Act as a direct result of grazing district boundary change until the sixty (60) days have passed.
- D. *Review.* Once a Petition to Modify Preliminary Cancellation is filed the Director shall either approve or deny the Petition in its entirety. The Director may at his or her discretion propose a custom-made solution for the petitioner to accept or reject. The Director's decision shall be based on due consideration of both the hardship that each possible response would cause the

petitioner and a determination as to which response would best serve the stated purpose of this Act.

- E. *Notice of Decision.* Upon approving or denying a petition, the Director shall send the petitioner a notice stating whether the Director approved or denied the petition, the basis of the Director's decision, that the permittee has the right to appeal the Director's decision to the Office of Hearings and Appeals, instructions for how to file such an appeal, and the deadline by which such an appeal must be filed.

§ 315. Fences

- A. Fencing Regulations (including build specifications) shall be promulgated by the Director, in consultation with the Director of Navajo Nation Fish and Wildlife Department.
- B. Beginning on the effective date of this Act, no grazing permittee may build or cause to be built any fence that has a substantial grazing-related purpose unless they have first had an application for a range unit approved by the Director, and unless said fencing is in compliance with the provisions of the range management plan. Construction of non-*de minimus* fencing without a substantial grazing-related purpose must seek approval from the Director, but no range management plan is required.
- C. The Director and the Director of the Navajo Nation Fish and Wildlife Department may authorize the removal of unauthorized fences, or fences no longer used for livestock management or agriculture.

§ 316. Range Units

- A. The Director is hereby empowered to establish and adjust range units based on the need to preserve the amount and quality of forage, land status, and customary use areas, land associated problems involved, or in furtherance of any mutually agreed upon or court-ordered resolution of a land dispute that envisions the establishment of range units.
- B. The establishment of a range unit does not grant the permittee exclusive use of that area. The permittee shall not prohibit access to other Navajos who desire to hunt wildlife or gather herbs, firewood, piñon nuts, or other similar resources.
- C. [Range Management Plan]
- D. The Director shall perform annual livestock counts for the purpose of complying with the registry requirement under that neither Navajo rangeland carrying capacity nor permit allocations are not exceeded and that permittees are not exceeded their permitted allocations.

§ 317. Mobile Livestock Auction Program

- A. *General.* Subject to a special appropriation of funds by the Navajo Nation, the Director shall institute mobile livestock auctions for Navajo permittees who need to sell excess livestock but do not have the necessary equipment or means to transport livestock to auction. Nothing in this subsection shall be construed as requiring permittees to utilize the mobile livestock auction if that permittee has the equipment or means to sell their livestock in some other way.
- B. *Exception.* Permittees whose grazing permits are renewed with a lower allocation than their previous permit shall not be required to sell their excess livestock, as a means of complying with their new permit, until a mobile livestock auction comes to a district that is the same as, or that abuts, the district in which the rangeland that is covered by their permit is located.
- C. *Notice.* When the Director issues the new permit, the Director shall inform the permittee in writing, of the next scheduled mobile livestock auction in their area.
- D. *Priority.* Permittees who need to sell livestock in order to comply with the allocation under their permit and who do not have the equipment or the means to their livestock to market shall be given priority at mobile livestock auctions.

§ 318. Voluntary Associations and Cooperatives

- A. Permittees within specific range units are encouraged to establish livestock associations and/or cooperatives to support livestock management planning for the individual range unit. Approval process? By whom?
- B. The recognized livestock association and/or cooperative will develop ?? charter, articles of incorporation or by-laws ??, officers and membership specifications ?? How are decisions made. Include a fund management plan should the livestock association and/or cooperative decide to develop a monetary fund for the organization.
- C. Specific livestock management planning can include but not limited to:
 - 1. Support fencing of the grazing district where membership will cooperatively implement and maintain the fenced area for rotational grazing, range area to rest for a specific period of time, enclose noxious weeds for eradication, etc.
 - 2. Cooperatively purchase bulls for breeding and advance the herd toward superior genetic traits for the specific cow-calf operation, quality beef product, good mothering characteristics, and heartiness.
 - 3. To determine breeding season for the production of uniform calves.

4. To cooperatively determine sale time and dates with the objective to have a full truck load of cattle at premium price through direct sale and/or video auction. (does this conflict with mobile auction)
5. Agreement on livestock supplementation after a soil or vegetative study was completed or as a short term remedy for a rough winter or lengthy freeze.

§ 319. Prohibited Livestock

All rodeo stock and stallions shall be prohibited from grazing upon Navajo rangelands. Any violation of this provision shall be considered a trespass under Subchapter 5 of this chapter. The maximum number of horses that any grazing permit may authorize is two, and the maximum number of llamas is one.

§ 320. Unauthorized Use of Motor Vehicle

- D. *General.* It shall be is prohibited for any person to use a motor vehicle (including all-terrain vehicles and motorcycles) on Navajo rangelands:
1. For the purpose of herding or rounding up livestock; or
 2. In a manner that unreasonably damages or disturbs Navajo rangeland or any of its vegetative or wildlife resources.
- E. *Exceptions.* The following persons are exempted from the prohibition stated in subsection (A) of this section:
1. Law enforcement officers or Navajo Nation officers, employees, independent contractors, or consultants, provided they are operating a motor vehicle on Navajo rangeland in their official capacity; and
 2. Any person who receives advance written exemption from the department director of any department within the Division of Natural Resources and who is operating a motor vehicle in reasonable reliance on that exemption. An advance written exemption shall be granted at the discretion of the department director issuing it, and it shall be subject to appropriate limitations, including but not limited to limitations of geography, time, and approved kinds of vehicles.
- F. *Civil Penalties.* Any person who violates subsection (A) of this section may be subject to a civil penalty of one hundred dollars (\$100.00) for the first violation, three hundred dollars (\$300.00) for the second violation, and five hundred dollars (\$500.00) for every violation thereafter. In addition, the Director may also require the offender to pay the Navajo Nation full restitution for the damage done to Navajo rangeland or any of its vegetative or wildlife resources.⁸² Citations

for violating subsection (A) of this section may be issued by any Navajo Nation law enforcement officer or Range Conservation Officer.

- G. *Hearing.* Any person assessed a civil penalty under this provision shall be entitled to a hearing in accordance with the procedures established under § 603 of this Act.

§ 321. Burials

- A. *General.* No deceased person shall be buried on Navajo rangeland. Deceased persons shall only be buried in designated burial sites or land that has otherwise been withdrawn from Navajo rangeland for the purpose of creating a place of burial.
- B. *Civil Penalty.* Any entity or person who is in the business of burying deceased persons and who violates Subsection (A) of this section shall be assessed a civil penalty of five hundred dollars (\$500.00) for the first violation and between one thousand dollars (\$1,000.00) and three thousand dollars (\$3,000.00) for every violation thereafter.
- C. *Hearing.* Any person assessed a civil penalty under this provision shall be entitled to a hearing in accordance with the procedures established under § 603 of this Act.

§ 322. Construction Near Permanent Livestock Water Developments

- A. *General.* The Navajo Nation Department of Water Resources shall, for the purposes of water resources management and protection, promulgate appropriate criteria and guidelines to regulate the construction of all dwellings, corrals, homes, and other structures within one-half mile of any permanent livestock waters developed by the federal government or Navajo Nation. Permanent livestock waters may include, but are not limited to, springs, wells, charcos, and reservoirs.
- B. *Authorization.* Written authorization from the Department of Agriculture and the Department of Water Resources must be secured before any dwelling, corral, home, or other structures may be constructed within one-half mile of any permanent livestock waters developed by the federal government or Navajo Nation.
- C. *Sewage Prohibition.* In order that waters being used for livestock or as a source of potable water are not contaminated, no sewage disposal system may be authorized or built on any rangelands if that system poses a threat of contaminating any waters being used for livestock or as a source of potable water. This rule applies to permanent livestock waters developed by the federal government or Navajo Nation, as well as any naturally occurring waters, such as streams and ponds.

§ 323. Local Population Assessments of Wildlife

- A. *Assessments.* The Director of the Navajo Nation Fish and Wildlife Department shall conduct local population assessments of wildlife throughout the Navajo Nation for the purpose of making a scientific determination about the amount of available forage, water, and any other necessities that should be set aside for wildlife purposes (the “wildlife set-aside”). The Director of Navajo Fish and Wildlife has the authority to determine the wildlife set-aside with or without consulting the Director.
- B. *Records.* The Navajo Fish and Wildlife director shall maintain accurate records of all local population assessments conducted, and all wildlife set-asides determined, under Subsection (A) of this Section.

§ 324. Enforcement

All permittees shall produce their permit upon the valid request of a law enforcement officer seeking to enforce the laws of the Navajo Nation. Navajo Nation law enforcement officers shall have the authority to seize permits that they have probable cause to suspect were forged, illegally altered, or otherwise part of the commission of a felony.

§ 325. Branding

- A. *General.* All Navajo-owned livestock and equine over six months of age grazing on the Navajo Nation must be branded and maintain individual animal identification. Branding is required to show proof of ownership.
- B. *Branding.* Every individual owning livestock or equine must adopt and record a brand and earmark; said brand can be obtained with grazing permit or applied for from the state.
- C. *Brands.* The Navajo Nation adopts the individual district brands plus the –N, location left shoulder, as the official brand. The Department will accept brands assigned by Bureau of Indian Affairs, District Grazing Committee, and will a state brand if obtained within the requirements of this Subchapter.
- D. *State Brands.* Each Navajo livestock and equine owner who has or obtains a registered individual state brand shall report to the Department showing proof of such active state brand registration in order for said brand to be recorded on his/her grazing permit.
- E. *Illegal Branding Practices.*

1. *Altering Brands.* Any person(s) or agent(s) who brands any livestock or equine with a brand other than the recorded brand of the owner, or who alters any brand upon any livestock or equine, with intent to convert the ownership of the animal(s) to his/her own use, is guilty of an offense and is liable to the owner of the animal for three times (3x) the value there of.
 2. *Refusal to Brand.* A person who refuses to brand or mark his/her livestock or equine is guilty of an offense.
 3. *False Report.* A person who commits a false report of ownership and willfully makes a false report as to the total number of livestock and/or equine owned, or refuses to make a true report of livestock and/or equine ownership, is guilty of an offense and shall be fined a minimum of \$250.00, but not to exceed \$5,000.00.
 4. *Obliterating or changing brand, mark or ear mark.* A person who intentionally obliterates, disfigures, extends or changes a recorded brand, or by other and additional marks, figures or characters converts a recorded brand into some other brand, is guilty of an offense.
- C. *Prima facie guilt of owner of brand to which another brand is altered.* When it is proved that a recorded brand has been converted or changed into another brand claimed or owned by any person, it shall be prima facie evidence that the claimant or owner of the latter brand obliterated, disfigured and changed the prior recorded brand.
- D. *Unlawfully killing, selling, or taking of livestock or equine of another.* Any person who knowingly kills or sells livestock or equine, of another person, the ownership of which is known or unknown, is guilty of an offense. Any person who knowingly attempts to take or does take all or any part of a carcass of any such livestock or equine, for personal use, use of other, or for sale, the ownership of which is known or unknown, is guilty of an offense.
1. Any person who willfully, knowingly purchases livestock or equine, from a person not having the lawful right to sell or dispose of such animals, is guilty of an offense.
 2. Any person depriving the owner of the use of his/her livestock or equine under shall be liable to the owner for damages equal to three times (3x) the value of such livestock or equine.
 3. This Subsection shall not apply to animals under the stray laws or livestock roundups procedures.

- E. *Possession of livestock or equine without bill of sale.* The possession of livestock or equine without a written bill of sale can be used as prima facie evidence for a charge of unlawful possession, handling, driving or killing of livestock or equine.
- F. *Penalties.* Unless otherwise provided, any person who violates this Subchapter and is convicted of such violation shall be subject to the following punishments:
1. He or she shall be sentenced for a period not to exceed one-hundred and eighty (180) days jail or shall be fined a minimum of \$200.00 not to exceed \$5,000.00, or both.
 2. In addition, damages resulting from grazing in withdrawn areas, the offender will be required to pay the Navajo Nation the fair market value of the damaged property and/or restoration costs.
 3. Restitution of three times (3x) the value of livestock, equine and ratite can be included to the owner of the livestock, equine and ratite.
- G. *Resisting or obstructing a Range Technician.* Any person who interferes with the duty and responsibilities of a Navajo Nation bona fide commissioned Range Technician in the performance of his or her duties and responsibilities is guilty of an offense and shall be sentenced to three-hundred and sixty-five (365) days in jail or a minimum fine of \$500.00 not to exceed \$5,000.00 or both.
- H. *Failure to obtained premise identification.* Any person within the Navajo Nation who fails to obtained premise identification from their respective Navajo Nation office is guilty of an offense and shall be fined a minimum of \$100.00 not to exceed \$500.00.
- I. *Failure to properly tag livestock with individual identification.* Any person within the Navajo Nation who fails to tag their livestock with their individual RFID tag for cattle identification number is guilty of an offense and shall be fined a minimum of \$25.00 per head not to exceed \$1,750.00. Any person within the Navajo Nation who fails to properly tag their sheep and goats with the approved Navajo Nation Animal Identification System is guilty of an offense and shall be fined \$10.00 per head and shall not exceed \$3,500.00.

SUBCHAPTER 4. TRESPASS

§ 401. General Provisions

- A. *General.* When an employee of the Navajo Nation becomes aware in the course of employment that a possible trespass has occurred, the employee shall refer the matter to the Director for investigation. When the Director receives such a reference or otherwise becomes aware of a possible trespass, the Director shall investigate the matter in a timely manner. The Director is authorized to refer investigations under this Subsection to the Director of Resource Enforcement, subject to the Director of Resource Enforcement's consent.
- B. *Notice of Trespass.* Upon a determination that a trespass has occurred, the Director or Director of Resource Enforcement may provide the offending individual with a Notice of Trespass that includes an explanation of the trespass decision and reasons therefor, and instructions to correct the trespass, if necessary.

§ 402. Civil Sanctions

- A. *Sanctions.* The Director is authorized to assess any combination of the following sanctions an individual, provided however that the nature of the sanctions assessed is not grossly disproportionate to the nature of the trespass:
 - 1. Impose a civil penalty not to exceed one hundred dollars (\$100.00) per violation per day;
 - 2. Impound the trespassing livestock; or
 - 3. Order monetary damages, for the following:
 - a. The value of the forage consumed by the trespassing livestock, as determined by the fair market value of replacement feed;
 - b. Any damage to Navajo rangeland caused by the trespassing livestock while in trespass;
 - c. The costs of gathering, impounding, feeding or pasturing, and otherwise caring for the trespassing livestock; or
 - d. Other reasonable costs associated with the enforcement of this Act.
- B. *Notice of Civil Sanctions.* If the Director or Director of Resource Enforcement, decides to assess civil sanctions under this Subchapter, the Director or Director of Resource Enforcement shall provide a Notice of Civil Sanctions to the offending individual. A Notice of Civil Sanctions shall include an explanation of the kind and amount of civil sanctions to be assessed, instructions on how to pay the sanctions, and a specified deadline. The Director or Director of Natural Resources, shall not issue a Notice of Civil Sanctions to an individual unless the individual has

also received a Notice of Trespass for the underlying trespass, though the two Notices may be issued simultaneously

- C. *Petition to Modify Civil Sanctions.* An individual who has received a Notice of Civil Sanctions may petition the Director to modify the civil sanctions prescribed therein by either granting an extension of time to comply with the Notice, or by mitigating the severity of the sanctions. The Director shall approve a sixty (60) day extension of time upon a showing of financial hardship or other good cause. The Director has the discretion to mitigate the severity of the sanctions as the Director thinks best serves the purpose of this Act.
- D. *Lien.* Any civil penalties or damages assessed under this section shall constitute a lien against a livestock owner's livestock. Such a lien becomes enforceable upon failure of an individual to pay civil sanctions by the deadline specified in the Notice of Civil Sanctions. If the lien is enforced, unnecessary hardship to the individual shall be avoided by limiting enforcement to the number of animals necessary to satisfy the civil penalties or damages assessed, and by the Director or the Director of Resource Enforcement making a good faith effort to consult with the individual as to which animals to seize.

§ 403. Impoundment of Livestock

- A. *Notice of Livestock Impoundment.* The Director, or the director of Resource Enforcement, shall deliver a Notice of Livestock Impoundment to the livestock owner in person or via first class mail. In the event personal or mail delivery is unsuccessful or impractical, the Director, or director of Resource Enforcement, may post a Notice of Livestock Impoundment in public places in such a way that the Notice of Livestock Impoundment is reasonably likely to be seen by members of the public. A Notice of Livestock Impoundment shall contain the following:
1. The name of the livestock owner, if known;
 2. A description of the trespassing livestock;
 3. The kind of the trespass(es) being committed, with citation to the relevant provision(s) of this Act or other applicable law; and
 4. The time and date by which the livestock owner must remedy the trespass to avoid impoundment.
- B. *Impoundment.* The Director, or the Director of Resource Enforcement, shall provide a seven (7) days notice before they may impound trespassing livestock. Although the Director of the Department of Resource Enforcement should typically carry out the physical acts of impoundment and transport, the Director may impound and transport livestock in instances

where the Director deems that such a course of action would best serve the purposes of this Act. In instances where the Director takes the lead in impounding and transporting livestock, the Director may request assistance from the Director of Resource Enforcement, and provided that such request is reasonable, it shall not be denied by the Director of Resource Enforcement.

- C. **Notice Exemption.** The Navajo Nation may impound trespassing livestock without notice in any of the following situations:
1. The owner does not possess a valid grazing permit;
 2. The livestock is trespassing in a restricted or withdrawn area closed to grazing; or
 3. The livestock presents a serious risk to the health and safety of the public, other livestock, or wildlife.

§ 404. Sale of Impounded Livestock

- A. *General.* Unless otherwise provided by law, livestock not claimed within seven (7) days following the day of impoundment may be sold at a public sale or auction. All proceeds shall be deposited in a special account until the outcome of any hearing.
- B. *Proceeds.* The proceeds of any a sale of impounded livestock shall be applied in the following priority:
1. To reimburse the Navajo Nation for expenses incurred in gathering, impounding, feeding or pasturing, and otherwise caring for the livestock.
 2. To satisfy the payment of any penalties or damages assessed pursuant to this Act.
 3. To return all remaining proceeds to the livestock owner. If the owner does not claim the proceeds within six (6) months of receiving a Notice of Livestock Sale, the owner shall be deemed to have forever forfeited those proceeds to the Navajo Nation.
- D. *Notice.* The Director, or the director of Resource Enforcement, shall provide a Notice of Sale of Impounded Livestock to the livestock owner in person or via first class mail. The Director, or director of Resource Enforcement, shall also post a Notice of Sale of Impounded Livestock in public places in such a way that the Notice is reasonably likely to be seen by members of the public. A Notice of Sale of Impounded Livestock shall contain the following:
1. The name of the livestock owner, if known;
 2. A description of the livestock;

3. The time, date, and location the impounded livestock will sold.

§ 405. Returning Impounded Livestock to Owner

- A. *Claiming Livestock.* The livestock owner, upon the satisfactory compliance with this Act, may claim his or her livestock impounded pursuant to this subchapter at any time before the time set for sale by the Navajo Nation, provided that the owner first satisfies all of the following requirements:
 1. Submit proof of ownership;
 2. Pay for the expenses incurred in gathering, impounding, feeding or pasturing, and otherwise caring for the livestock; and
 3. Pay any trespassing-related civil penalties or damages assessed by the Navajo Nation.
- B. *Return of Livestock.* If returning the impounded livestock to the owner will result in a violation of law, including a violation of this Act, the livestock shall not be returned but shall be sold in accordance with this subchapter. If returning only a portion of the impounded livestock will not result in any such violation, then that portion shall be returned to the livestock owner upon the owner first satisfying all of the requirements set forth in Subsection (A) of this Section.
- C. *Erroneously Impounded.* The Navajo Nation shall return erroneously or unlawfully impounded livestock to the owner by delivering the livestock to the area covered by the owner's grazing permit. As soon as possible following the determination that the livestock were erroneously impounded, the Director shall coordinate with the owner to determine a mutually agreeable time for the immediate return of the impounded livestock. Further, the Director shall waive any and all expenses incurred by the Navajo Nation as a result of the erroneous impoundment.

§ 406. Appeals

- A. *General.* Any person shall have the right to appeal the Director's decision under this Subchapter to the Office of Hearings and Appeals. An individual has thirty (30) days from receipt of the adverse action to file an appeal with the Office of Hearing and Appeals. The Department shall cooperate with the Navajo Office of Hearings and Appeals and provide information as may be necessary to assist in reaching a timely and just resolution of the appeal.
- B. *Stayed Action.* If an appeal is filed the Director shall be stayed pending the outcome of the appeal; provided, however, that the stay shall not apply to the seizure or sale of livestock. If a notice of appeal is not filed within thirty (30) days of the receipt of the notice of trespass, the Director's trespass decision and the sanctions assessed shall be final.

- C. *Stayed Impoundment.* The filing of a Notice of Appeal with the Office of Hearings and Appeals shall not stay the enforcement of impoundment. However, a livestock owner may file a motion for a stay of impoundment at any time after a Notice of Livestock Impoundment is served upon the person. A stay may be granted by the Hearing Officer where justice so requires, and upon such terms and conditions as the Hearing Officer may find just and proper. An order granting a stay shall be in writing and shall state the grounds therefore and the terms and conditions thereof.
- D. *Contents.* The Notice of Appeal shall be in writing and shall contain all of the following:
1. The name, census number, contact information, and address or location of residence of the livestock owner against whom the Director has issued a trespass decision, assessed civil sanctions, or impounded their livestock;
 2. The grazing permit number and expiration date of the livestock owner's grazing permit, if any;
 3. The date(s) that the livestock owner received a Notice of Trespass, Notice of Civil Sanctions, or Notice of Livestock Impoundment, if any;
 4. A statement of the facts;
 5. The action(s) being appealed;
 6. The legal basis for the appeal; and
 7. A statement as to why the appeal should be granted.

§ 406. Hearing and Decision

- A. *General.* Within thirty (30) days of the filing of the Notice of Appeal at the Department, the Office of Hearings and Appeals shall appoint a hearing officer and schedule a hearing.
- B. *Notice of Hearing.* The Office of Hearings and Appeals shall send a Notice of Hearing to each party at least thirty (30) days in advance of the date set for the hearing. The Notice of Hearing shall inform the parties of the time and place of the hearing and of their rights to be represented by counsel, to subpoena witnesses, to present evidence, and to cross-examine witnesses.
- C. *Hearing.* At the hearing, each party may at his or her options be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and cross-examine witnesses.

Where only one party is represented by counsel, the hearing officer shall, to the extent allowable by law, strive to ensure a fair hearing.

- D. *Notice of Hearing Officer's Decision.* The Hearing Officer shall issue a written opinion that explains his or her decision based upon findings of fact and conclusions of law. The Office of Hearings and Appeals shall notify the parties in writing of the hearing officer's decision by sending each party a written Notice of Hearing Officer's Decisions, which shall include the following:
1. A copy of the hearing officer's written opinion;
 2. A statement notifying the parties of their right to appeal the hearing officer's decision to the Navajo Nation District Court within ninety (90) days of the mailing date of the decision; and
 3. Information on how to file such an appeal.
- E. The Navajo Nation District Court's shall review of the hearing officer's decision for abuse of discretion.

SUBCHAPTER 5. GRAZING DISPUTES

§ 501. General

It is the purpose of this Subchapter to provide a fair, impartial, and efficient means of resolving grazing disputes in a way that serves the best interests of individual permittees and the Navajo People, without unduly burdening the time and resources of the Navajo Nation courts.

§ 502. Mediation

- A. *Petition to Mediate a Grazing Dispute* (“*Petition to Mediate*”). Any person who is a party to a grazing dispute may file a Petition to Mediate a Grazing Dispute with the Director. A Petition to Mediate, shall be completed to the best of the filing party’s knowledge. It shall include space for the following information:
1. The names and addresses of parties to the dispute;
 2. The grazing permit numbers and permit expiration dates of the parties to the dispute;
 3. A statement of the facts or events that are relevant to the dispute; and
 4. Any other information that the filing party thinks may be useful to the Director in mediating the dispute.
- B. *Fees*. The Director may establish a reasonable filing fee.
- C. *Notice*. Upon filing a petition, the Director shall provide all parties to the dispute with a date-stamped copy of the petition and a document that summarizes the process by which grazing disputes are resolved under this Act and other applicable law. The Director should send these documents to the non-filing parties by registered or certified mail, or some other means of delivery by which receipt can be confirmed.
- D. *Mediation*. Within sixty (60) days of the non-filing party receiving a copy of the petition, a Range Technician shall meet with the disputing parties to attempt to get them to agree upon a settlement of their differences.
- E. *Transfers*. If the disputing parties fail to reach a settlement within sixty (60) days, the Director shall transfer the matter to the Navajo Nation Office of Hearings and Appeals with copies of all Department records relevant to the dispute. In transferring the matter, the Director may make a recommendation as to how the dispute should be resolved and the reasons therefor.

§ 504. Hearing and Decision

- A. Within thirty (30) days of the Director transferring a dispute to the Office of Hearings and Appeals receipt of the Notice of Hearing by the Department, the Office of Hearings and Appeals shall appoint a hearing officer and schedule a hearing.
- B. *Notice of Hearing.* The Office of Hearings and Appeals shall send a Notice of Hearing to each party at least thirty (30) days in advance of the date set for the hearing. The Notice of Hearing shall inform the parties of the time and place of the hearing and of their rights to be represented by counsel, to subpoena witnesses, to present evidence, and to cross-examine witnesses.
- C. *Hearing.* At the hearing, each party may at their option be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and cross-examine witnesses.
- D. *Notice of Hearing Officer's Decision.* The Hearing Officer shall issue a written opinion that explains his or her decision based upon findings of fact and conclusions of law. The Office of Hearings and Appeals shall notify the parties in writing of the hearing officer's decision by sending each party a Notice of Hearing Officer's Decisions, which shall include the following:
 - 1. A copy of the hearing officer's written opinion;
 - 2. A statement notifying the parties of their right to appeal the hearing officer's decision to the Navajo Nation District Court within ninety (90) days of receiving this notice; and
 - 3. Information on how to file such an appeal.
- E. The Navajo Nation District Court's review the decision of the hearing officer's decision shall be limited to the administrative record. The hearing officer's findings of fact shall not be subject to de novo review, though the Court may substitute its own judgment on questions of law. The Court may only reverse the hearing officer's decision if it finds that the decision is arbitrary, capricious.