

# TOHONO O’ODHAM CODE

## TITLE 2 – AGRICULTURE AND LIVESTOCK

### CHAPTER 6 – RANGE MANAGEMENT

#### PURPOSE

The policy of the Tohono O’odham Nation is to encourage productive and enjoyable harmony between members of the Nation and their environment; to promote efforts which will preserve and protect the natural and cultural environment of the Tohono O’odham Nation, including its lands, air, water, flora and fauna, its ecological systems, and natural resources, and its historic and cultural artifacts and archeological sites; and to create and maintain conditions under which members of the Nation and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of members of the Tohono O’odham Nation.

#### ARTICLE I– DEFINITIONS

##### Section 6101 Definitions

For the purposes of this Chapter:

*Allocation* means the distribution and assignment of grazing privileges to the Nation’s members or entities, including the assignment of grazing permits and the number and kind of livestock for grazing.

*Animal Unit Month (“AUM”)* means the amount of forage required to sustain one bull/cow or one cow with one calf for one month.

*Carrying Capacity* means the maximum Stocking Rate possible without causing damage to vegetation or related resources. Carrying Capacity is calculated by estimating the annual long term average production of usable forage, expressed in pounds per acre on a given Range Unit, which can be harvested by domestic livestock or wildlife without damaging the range resources.

*Range Management Program* means the Nation’s Range Conservation and Management Program that is vested with the authority to implement, apply, and enforce this Chapter.

*“District” or “Districts”* means one or more of the districts of the Nation referred to in Article IX of the Constitution of the Tohono O’odham Nation or as later created by action of the Legislative Council.

*Good Standing* means the livestock owner has fulfilled all requirements of a livestock association or committee membership and has not been expelled or suspended from the association or committee.

*Grazing area* means Rangeland designated for grazing.

*Grazing Permit* means a revocable permit issued to a permit holder to use specific Range Units for grazing.

*Grazing Permit Fee* means the fee charged for issuance of a revocable permit to use specific Range Units for grazing.

*Livestock* means animals of the family Bovidae, including cows, bulls, steers, and calves and the family Equidae, including horses, mules, and donkeys.

*Livestock Association or Livestock Committee* means a District level association or community recognized committee authorized by District resolution to regulate livestock owned in the District or community in accordance with custom or tradition.

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

*Range Management Plan* means a defined plan of operations for the management and use of the Nation's Rangelands.

*Range Unit* means an area of managed Rangeland enclosed and separated by fencing or other barriers.

*Stocking Rates* means the amount of animal units that can be grazed on an area under prevailing conditions consistent with sustained yield principles of range management. The stocking rate is based upon the carrying capacity of each Range Unit with adjustments for management capability, topography, climatic conditions, water developments, and the Nation's objectives.

*Unauthorized Grazing* means any unauthorized occupancy or grazing by Unauthorized Livestock on a Range Unit.

*Unauthorized Livestock* means livestock found grazing in a Range Unit where the livestock owner does not hold a valid grazing permit.

## **ARTICLE II – NATION'S RANGE CONSERVATION AND MANAGEMENT PROGRAM**

### **Section 6201 Authority of the Range Management Program**

- (A) The Range Management Program shall have civil regulatory authority over the issuance of grazing permits, the creation and enforcement of the Nation's Range Management Plan, and the promulgation of rules and procedures in accordance with this Chapter.

- (B) The Range Management Program, in accordance with the Nation's Range Management Plan, shall set the annual number and type of livestock that can graze on the Nation's Rangelands based on annual rainfall, general range conditions, and applicable sound conservation policies.
- (C) On an annual basis, the Nation's Range Management Program shall generate a report on the conditions of the Nation's Rangelands, including drought conditions, for presentation to and review by the Legislative Council. The Nation's Range Management Program may collaborate with other Nation's departments, such as the Water Resources Department, to collect necessary information for the annual report.
- (D) The Nation's Range Management Program report shall include:
  - (1) information from the Districts;
  - (2) an evaluation of the condition of the Nation's Rangelands;
  - (3) the total number and acreage of Grazing Areas and Range Units on the Nation;
  - (4) the total number of valid grazing permits;
  - (5) the number of grazing permits newly issued that calendar year;
  - (6) the number of Unauthorized Grazing incidents that occurred in the past calendar year;
  - (7) the number of trespass incidents (as defined in Ordinance No. 03-01);
  - (8) the number and type of repairs on hydrologic structures;
  - (9) the number of livestock owners on the Nation; and
  - (10) the number and type of livestock authorized to graze by the Range Management Program.

### **Section 6202 Inventory Required**

- (A) The Nation's Range Management Program shall complete a vegetation inventory of the Nation's Rangelands every five years. Each vegetation inventory shall be included in the five-year report required by Section 6203.
- (B) The Nation's Range Management Program shall conduct a livestock inventory every five years to update the number and type of livestock on the Nation's lands. Each livestock inventory shall be included in the five-year report required by Section 6203.

### **Section 6203 Submission of the Five-Year Report**

Within five years of implementing the Nation's Range Management Plan, the Nation's Range Management Program will submit to the Bureau of Indian Affairs a comprehensive report on the Nation's Range Management Plan. The report will include information required in Section 6201(D).

### **ARTICLE III – NATION'S RANGE MANAGEMENT PLAN**

#### **Section 6301 District Information.**

- (A) The Nation's Range Management Program shall develop, in consultation with the Districts and other appropriate Nation's departments, livestock owners, livestock associations, and livestock committees, a Nation's Range Management Plan.
- (B) The Nation's Range Management Plan shall include:
  - (1) a description of the Grazing Areas within the Nation's Lands;
  - (2) a description of the condition of the Nation's Grazing Areas;
  - (3) an estimated acceptable stocking rate based upon sound conservation policies;
  - (4) any District-specific information regarding Grazing Areas;
  - (5) a map of the proposed Range Units within the Nation's Grazing Areas, including existing water sources;
  - (6) an estimate of the number and type of livestock currently grazing within the Nation's Lands;
  - (7) the seasons of highest use;
  - (8) the names of livestock associations or committees, and any recognized Range Bosses;
  - (9) the number of livestock owners within the Nation;
  - (10) the Nation's policies for range conservation; and
  - (11) a drought emergency policy.
- (C) In addition to the requirements of subsection B, the Range Management Program shall also identify in the Nation's Range Management plan how it plans to:
  - (1) protect, conserve, utilize, and maintain the highest productive potential on the Nation's Rangelands through the application of sound conservation practices and techniques;
  - (2) manage the Nation's Rangelands in accordance with the identified goals of the Range Management Plan; and

(3) plan, construct, and maintain range improvements to support the long-term use of Rangelands, Grazing Areas, and Range Units.

- (D) The Nation's Range Management Program shall complete the Nation's Range Management Plan within three years of the effective date of this Chapter.
- (E) Upon completion, the Nation's Range Management Program shall provide notice to the Nation's members of the Range Management Plan and shall accept public comments for not less than 90 days.
- (F) The Nation's Range Management Program shall summarize any public comments and publish the responses before submitting the finalized Nation's Range Management Plan to the Tohono O'odham Legislative Council for review and approval.
- (G) When reviewing and considering the Nation's Range Management Plan, the Legislative Council may consider the factors and requirements outlined in this Chapter.
- (H) If a Nation's Range Management Plan is not approved by the Legislative Council, the Nation's Range Management Program shall revise the Range Management Plan and submit it for approval no later than one year from the date of the disapproval.

#### **Section 6302 Enforcement**

The Nation's Range Management Program, in coordination with the Nation's Department of Public Safety, will enforce the Nation's Range Management Plan.

### **ARTICLE IV – THE DISTRICTS, LIVESTOCK OWNERS, AND LIVESTOCK ASSOCIATIONS**

#### **Section 6401 Districts, Livestock Owners, Livestock Associations or Committees**

Each District's livestock association, livestock committee, communities, or if no association exists, the District, shall identify livestock owners and approve the membership of livestock associations or livestock committees within District boundaries.

#### **Section 6402 Fencing requirement**

In coordination with the Districts, the Nation's Range Management Program shall fence identified Range Units within Grazing Areas identified in the Nation's Range Management Plan and in accordance with the conservation and management objectives stated in the Range Management Plan.

#### **Section 6403 Drought emergencies**

Upon declaration of a drought emergency, the Nation's Range Management Program shall, in coordination with Nation's departments, implement the drought emergency policy under Section 6301(B)(11) .

#### **Section 6404 District Contact**

Each District shall designate a primary contact person to coordinate with the Nation's Range Management Program. If the District's contact person changes, the District shall inform the Nation's Range Management Program within 30 days of the change.

### **ARTICLE V - GRAZING PERMITS**

#### **Section 6501 Grazing Permit Required**

- (A) Upon completion and approval of a Nation's Range Management Plan, all livestock owners grazing livestock on the Nation's lands shall apply for and obtain a valid grazing permit in order to continue grazing livestock on Nation's lands.
- (B) Before a livestock owner is issued a valid grazing permit, the livestock owner shall first pay grazing permit fees to the Range Management Program.
- (C) Each grazing permit application form shall include:
  - (1) the name of the applicant;
  - (2) contact information for the applicant;
  - (3) if the applicant is not same person as the livestock owner, then the relationship to the livestock owner and the authority to apply for the permit;
  - (4) the prohibition against creating a nuisance, any illegal activity, or negligent use or waste of resources;
  - (5) season(s) of use;
  - (6) the number and types of livestock allowed;
  - (7) grazing permit fee, payment schedule, and late payment interest and penalties;
  - (8) administrative or Program fees, if applicable;
  - (9) payment method;
  - (10) requested Range Unit number(s) or name;
  - (11) livestock brand and earmark;
  - (12) a description (preferably a legal description) of the permitted area;
  - (13) the term of grazing permit (including beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate)
  - (14) the Program's right of entry for purposes of inspection or enforcement purposes, subject to notice requirements; and
  - (15) a statement authorizing enforcement of the grazing permit requirements by the Nation's Program and Department of Public Safety.
- (D) The Range Management Program shall provide to the grazing permit holder a copy of the approved Nation's Range Management Plan and outline the requirements for a grazing permit, including the authorized AUMs, for that calendar year.

- (E) Grazing permits shall become effective upon signature by the Range Management Program and payment of the grazing permit fee, as provided in this Chapter.

### **Section 6502 Grazing Permit Process**

In order to obtain a grazing permit, an applicant must:

- (A) Complete a grazing permit application.
- (B) Confirm with the Range Management Program that sufficient AUMs exist for the applicant's requested grazing permit.
- (C) Present, with information from the Range Management Program, to the District Council about the requested grazing permit and obtain a resolution in support of the grazing permit.
- (D) Present the executed resolution along with the completed grazing permit application to the Range Management Program for issuance of a permit.

### **Section 6503 Issuance of Permits**

The Range Management Program shall issue the grazing permit within 30 days if the applicant completes the permit process and meets the following requirements:

- (1) Applicant must be an enrolled member of the Tohono O'odham Nation and must be 18 years of age or older.
- (2) Applicant must be a member in good standing of their respective livestock group, if applicable.
- (3) Applicant must own the livestock or otherwise show proof of authority to apply for the permit on behalf of the livestock owner.
- (4) The grazing permit application submitted by the applicant includes all requested information.
- (5) A supporting resolution from the District where the Range Units are located.

### **Section 6504 Submission of Applications**

Applications for grazing permits must be submitted prior to the first Monday in May of every calendar year.

### **Section 6505 Duration of Grazing Permits**

- (A) Grazing permits are valid for one year, starting June 1 of the issuing year until May 31 of the following year. The Range Management Program may authorize multi-year grazing permits, up to a maximum of 5 years.
- (B) Issuance of multi-year permits will be at the discretion of the Range Management Program and will be issued only after a review of the permittee's practices and compliance with the requirements of this Chapter.

**Section 6506 Grazing Permit Fees**

- (A) Grazing permit fees shall be set and calculated by the Nation's Program on an AUM basis for the number of livestock specified in the grazing permit.
- (B) AUM shall be calculated as follows:

**Animal Unit (\$1.00) x Number of Months (M) Animals will graze = AUM(s).**

**Calculated AU for Livestock:**

<b>CATTLE</b>	<b>HORSES</b>
Yearling = \$1.00	Yearling = \$1.00
2 Year Old = \$1.00	2 Year Old = \$1.00
Cow (with or without calf) = \$1.00	3 Years or older = \$1.00
Bull (Mature) = \$1.00	

- (C) Grazing permit fees are calculated as follows:

**Number of AUMs x Minimum Rate of Charge = Grazing Permit fee**

- (D) The livestock owner shall pay the permit fee at the Nation's Treasurer's Office and submit a copy of the receipt to the Nation's Range Management Program.
- (E) The Range Management Program may recommend amendments to the permit fees or adopt additional fees, provided that the public shall be given at least an advance 30 day public notice and the opportunity to submit written comments to the Legislative Agricultural and Natural Resources Committee. Any recommended amendments to the fees are subject to Legislative Council approval.



- (F) The Range Management Program will not provide refunds for grazing permit fees.
- (G) Proceeds from all grazing permit fees shall be held in a segregated account dedicated for use by the Range Management Program for implementation of this Chapter in accordance with a budget approved by Council.

### **Section 6507 Grazing Permit Payment Due; Notice of Delinquency**

- (A) Grazing permit fees are due once the Range Management Program approves the permit. The livestock owner then has 30 days after the issuance of the permit to pay the permit fee before the payment becomes delinquent.
- (B) If a livestock owner has not paid the fee within 30 days of receiving permit approval, the Range Management Program shall send a notice of delinquency, through certified U.S. Mail, to the permit holder.
- (C) The notice of delinquency shall inform the permit holder that he or she has a period of 30 days to cure the delinquency.
- (D) If the permit holder fails to cure the delinquency within 30 days, the grazing permit will not be issued. Unauthorized Livestock will be subject to removal and seizure under this Chapter.

### **Section 6508 Renewal of Grazing Permits**

When a permit holder has complied with the conditions of his or her grazing permit, the Nation's Range Management Program shall have the option of renewing the expiring permit. All renewals of grazing permits are subject to the approval of the Range Management Program, in consultation with the affected District, livestock associations or livestock committee, or Range Bosses.

### **Section 6509 Grazing Permit Modifications**

Modifications to grazing permits may be obtained following the process set out in Section 6502.

### **Section 6510 Suspension of a Grazing Permit**

- (A) A permit holder's grazing permit may be suspended or revoked by the Range Management Program when the permit holder:
  - (1) fails to pay the grazing fee pursuant to this Section;
  - (2) fails to correct a condition leading to Unauthorized Grazing as defined in this Chapter;
  - (3) fails to fully comply with the grazing permit requirements; or
  - (4) fails to fully comply with the requirements of this Chapter.

- (B) Before a permit is revoked, the Range Management Program shall inform the permit holder with a copy to the respective District of the violations with a written notice of suspension sent through certified U.S. Mail.
- (C) The permit holder shall have 60 days after receipt of the written notice to correct the violations identified before the Range Management Program revokes the permit holder's grazing permit.
- (D) If a permit holder fails to correct the violations identified, the Range Management Program shall provide a written decision identifying the reasons for revoking the permit holder's grazing permit.
- (E) The permit holder may appeal the Range Management Program's permit revocation in the Tohono O'odham Judicial Court pursuant to Article VII of this Chapter.
- (F) In the event of a permit holder's death, with the exception of shared brands, the permit holder's grazing permit shall expire the same year, even if the permit is a multi-year permit.
- (G) The Nation's Range Management Program is authorized to provide pro-rata refunds of grazing permit fees in the event of a permit holder's death.

### **Section 65011 Limitations of a Grazing Permit**

The following limitations apply to all grazing permits on the Nation's Rangelands:

- (1) The permit holder shall not use or allow others to use, any part of the permitted area for any unlawful conduct or purpose.
- (2) The permit holder shall practice recognized principles of good range management.
- (3) The permit holder shall not allow other livestock owners to graze Unauthorized Livestock on the permit holder's Range Units.
- (4) The permit holder shall not transfer the grazing permit to any other livestock owner.

## **ARTICLE VI -- INHERITANCE OF LIVESTOCK**

### **Section 6601 Inheritance of Livestock**

- (A) A person who inherits livestock, as determined by the Tohono O'odham Judicial Court, may apply for a grazing permit, in accordance with the application process in this Chapter.

- (B) A person who inherits livestock, but who does not obtain a grazing permit and does not remove inherited livestock from the Nation's lands shall be in violation of this Chapter. Unauthorized Livestock will be subject to removal and seizure under this Chapter.

## **ARTICLE VII – VIOLATIONS, ENFORCEMENT, AND SEIZURE OF LIVESTOCK**

### **Section 6701 Violation Citations**

- (A) The Nation's Range Management Program, in coordination with the Department of Public Safety, shall enforce the requirements under this Chapter by issuing citations to livestock owners for livestock found grazing without a valid Permit.
- (B) All violations under this Chapter issued by the Nation's Range Management Program or Nation's Department of Public Safety are civil violations.
- (C) Any person issued a violation may request a hearing at the Tohono O'odham Judicial Court within 30 business days of receiving the violation. If a request for a hearing is not filed within 30 business days, then the person waives his or her right to a hearing and must pay the assessed civil penalty within five business days.

### **Section 6702 Repeated Citations; Seizure of Livestock**

If a livestock owner is cited for two or more violations of this Chapter and the livestock owner's livestock continues the practice of Unauthorized Grazing, the Range Management Program, in coordination with the DPS shall seize the Unauthorized Livestock.

### **Section 6703 Disposition of Seized Livestock**

- (A) All livestock seized by the Department of Public Safety shall be kept at the Livestock facilities in Sells, Arizona, until the Court has made a determination of the fine or forfeiture, in accordance with this Chapter.
- (B) The livestock owner shall be assessed the expense of seizure, feed, and care for the livestock during the confinement period.
- (C) All proceeds from assessed fees and costs shall be deposited in the Nation's General Fund in a separate account for the Nation's Range Management Program.

### **Section 6704 Seizure Petition**

- (A) Pursuant to this Chapter, the Range Management Program shall file a Petition with the Court within five business days of any livestock seizure.
- (B) The Petition shall provide:
  - (1) a general description of the livestock seized, holding brand, and earmark;

- (2) the location of the seizure;
  - (3) the alleged violation(s) of this Chapter and the reason(s) for the seizure;
  - (4) the number of livestock seized;
  - (5) the estimated value of damage to vegetation and the Nation's lands;
  - (6) the owner of record and his or her address (if known); and
  - (7) the basis for jurisdiction.
- (C) Upon filing the seizure petition, the Range Management Program shall serve the seizure petition and a copy of any other document filed with the Court to the livestock owner, if known.
  - (D) If the livestock owner cannot be determined, then the Range Management Program shall inform the Brand Inspector Supervisor or Livestock Brand Inspector to initiate procedures outlined in Article 6 of 2 Tohono O'odham Code, Chapter 4.

#### **Section 6705 Hearing**

- (A) The seizure petition shall be served at least 10 business days before the scheduled hearing date and time.
- (B) The hearing shall take place at least 12 business days and not more than 20 business days after the date a summons is issued, unless good cause is shown.
- (C) The hearing shall be informal in nature.
- (D) The Court shall determine whether the livestock owner violated this Chapter, the amount of damages, and the amount of the fine, if any for Unauthorized Grazing.
- (E) If the Court determines that the livestock owner was properly cited for repeated instances of Unauthorized Grazing, the Court shall have the discretion to order the sale of the Unauthorized Livestock or to assess a reasonable fine.

#### **Section 6706 Adjudication by Default**

At the hearing, if a determination by the Court is made that the seizure petition has been properly served or published, and if the livestock owner is not identified or no claims are made for the seized livestock, the Court shall adjudicate the livestock as forfeited to the Nation and shall order the livestock sold pursuant to 2 Tohono O'odham Code, Chapter 4.

#### **Section 6707 Sale of Livestock by Court Order and the Disposition of the Proceeds**

- (A) Upon issuance of a court order, the Range Management Program may coordinate with the Brand Inspector Supervisor, Livestock Brand Inspector, or other Nation's program to sell the seized livestock at a public auction.
- (B) If the seized livestock is determined by the Court to be forfeited, the Brand Inspector Supervisor or Livestock Brand Inspector shall execute the order of sale pursuant to Section 4606(B)(2) of 2 Tohono O'odham Code, Chapter 4 and shall deliver a bill of sale to the buyer describing the livestock sold and the amount obtained from the sale. A duplicate of the bill of sale will be kept at the Livestock Inspectors' Office and Range Management Program. Upon delivery of the bill of sale, title to the livestock shall pass to the buyer.
- (B) Immediately after the sale pursuant to Section 4606(B)(2) of 2 Tohono O'odham Code, Chapter 4, the Brand Inspector Supervisor or Livestock Brand Inspector shall remit the sale proceeds in accordance with Section 4607(B) of 2 Tohono O'odham Code, Chapter.

## **ARTICLE VIII - VIOLATIONS, JURISDICTION, AND JUDICIAL REVIEW**

### **Section 6801 Appeal**

Any applicant for a grazing permit or any permit holder under this Chapter may apply to the Court for judicial review of a final Range Management Program decision, pursuant to 6 Tohono O'odham Nation Code, Chapter 3, Article 3, except that a trial de novo is not permitted.

### **Section 6802 Limited Waiver of Sovereign Immunity**

The sovereign immunity of the Nation is hereby waived to the limited extent that lawsuits may be brought against the Nation under Section 6801 in Tohono O'odham Nation Judicial Court for injunctive or declaratory relief only, but not for damages (compensatory, consequential or punitive), penalties, attorneys' fees, court costs, or any other remedy. The sovereign immunity of the Nation extends to its officers, employees and agents, and is in no way waived except for the limited waiver of sovereign immunity contained herein.

### **Section 6803 Private Right of Action**

Any person may sue any other person in the Court to enforce the provisions of this Chapter or the regulations issued hereunder to perform any act or duty under this Chapter. In lawsuits against parties other than the Nation, the Court may award damages, penalties, attorneys' fees or court costs to the prevailing party.

### **Section 6804 Restriction**

No one may file a lawsuit under this Chapter: (1) within sixty calendar days of the Nation notifying the alleged violator in writing of the violation complained of; or (2) if the Program has filed an enforcement action for the same violation.

### **Section 6805 Statute of Limitation**

Subject to the provisions of Section 6802 and Section 6803, any lawsuit brought under this Section must be filed within two years after the discovery of the act or violation complained of. In the event that the Nation has filed an enforcement action in Court against the same alleged violator for the same violation, the two year time period shall be stayed and shall begin to run on the date of the final order or judgment.

### **Section 6806 Intervention**

The Nation, if not a party to the action, may intervene as a matter of right in any action under this Chapter.

## **ARTICLE IX – EXCLUSION OF LIABILITY AND INDEMNIFICATION**

### **Section 6901 Exclusion of Liability and Indemnification**

The Nation or any of its members, officers, agents or employees shall not be liable for any loss, damage or injury of any kind to persons, property, resources or the environment caused by any person or licensee who transports or handles livestock within the Nation. Any person, licensee, or permittee who transports or handles livestock, shall indemnify the Nation, its members, officers, agents or employees and shall defend and hold them harmless from any claims and liabilities of any nature whatsoever arising from actions of the person, licensee or permittee taken under this Chapter, licenses or permits issued under this Chapter.