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# INTRODUCTION

The settlement, allocation, and use of our rangelands has been and continues to be a very controversial issue throughout the western United States. The early range wars between the early cattle barons gave rise to livestock grazing disputes between sheep and cattle ranchers. The cattle verses sheep battles in turn gave way to the historic open range debates that raged at the turn of the century, which pitted the ground plowing homesteaders against the traditional rangeland livestock producers, who saw their future disappearing in the dust clouds created by the indiscriminate plowing of the western landscape. Orderly development of the public domain that comprised so much of the western rangeland would not come into affect for at least another 20 years, and in many areas our rangeland resources would suffer greatly as a result.

Montana was not spared the controversies of the era, and our early settlers were deeply involved in the issues associated with the open range debates. In fact, many of our forefathers came to be recognized as innovative leaders in these historic debates by visualizing the true value of our western rangelands, and the need for the proper allocation of grazing rights within the public domain. Through their foresight and vision they created several cooperative grazing associations, the forerunner to our current state grazing districts. These associations were self-imposed, self-governing, regulatory mechanisms used to allocate local grazing rights. They also found themselves advancing an effort to properly manage livestock grazing to protect the western rangelands on which many of our Montana ranches depended for survival. The first of such grazing associations were created in the 1920's in southeastern Montana, the most prominent of which was the Mizpah-Pumpkin Creek Grazing Association, which operated in Powder River and Custer Counties.

In an unsurpassed effort to address the unregulated settlement and use of the vast acres of public domain, the pleadings of the western livestock industry finally convinced Congress to address the issue, and they reformed the open range grazing practices with the passage of the Taylor Grazing Act in 1934. This legislation laid out a mechanism for the orderly allocation of the public domain based on historic land uses called "preference rights". These allocations were attached to the private grazing lands used in conjunction with the public lands, and they resulted in the reserving of vast amounts of public lands from future homestead settlement, and allocating their use for permitted livestock grazing. At the same time the state of Montana was addressing the issue through the State Legislature, which passed the enabling legislation for the creation of a Montana Grass Commission in 1935, and then passed the Montana Grass Conservation Act of 1939, which allowed for the creation of State Cooperative Grazing Districts. Montana is in a very unique position as it is the only western state that has provided for formal recognition of federal grazing districts in state law, which gives rise to the land use allocation difficulties that were evident within our widely diverse and scattered land ownership patterns.

From 1935 through the mid 1940's, the Montana Grass Commission oversaw the consolidation of almost 100 separate grazing associations into 26 state grazing districts. They also oversaw the historical adjudication of western grazing permits, they assisted grazing districts in filing the required paper work to become incorporated under Montana law, and they drafted a set of standard operational by-laws that regulated how each district would function under the Grass Conservation Act. The ability of the Grass Commission to use their cooperative authority under both state and federal law resulted in a much more orderly settlement of the open range issue in Montana. A few districts have been created since this process was completed, and several smaller districts have either merged with other districts, or simply ceased to function as a result of changes in land ownership and land use patterns.

Many of the family ranches, owned and operated by the original proponents of the Montana Grass Commission, are still active members of local grazing districts today. Grazing Districts have historically administered livestock

grazing on both state and federal lands within Montana, interacting with many different branches of our state and federal governments, and numerous local or county authorities on land use and resource allocation issues. A state wide memorandum of understanding is in place between the DNRC and the Bureau of Land Management, to which is also tiered a local memorandum of understanding between each state grazing district, the DNRC, and the local BLM district or field office. The memorandums of understanding outline the cooperative nature of the relationship between the various entities involved in grazing district administration, and how the various responsibilities associated with land management and grazing permit administration are to be addressed.

## **ISSUES AND FINDINGS:**

Currently, the 26 state grazing districts cooperatively administer the allocation of annual forage for approximately 250,000 head of livestock which is equal to about one million Animal Unit Months (AUM's) of forage on ten million acres of combined private, state, and federal lands in eastern Montana. Membership in the district is based on the historic "grazing preference" allocated to each ranch or permittee member within the district, and each AUM of preference is a share in the state grazing district, which is equivalent to a share in a corporation. Approximately 1000 livestock permittees or member ranches operate within state grazing districts in Montana.

The 1939 Montana Grass Conservation Act is still in effect today, but had unfortunately seen little revision or updating since the mid 1940's until revisions which took place during the 1999 and 2001 legislatures. Many other legislative and litigation related changes have occurred over the years, and these changes are having a pronounced effect on the manner in which state grazing districts must operate. The reorganization of state government in 1973, and again in 1995, has had pronounced effects on the operation of our state grazing districts. The first reorganization eliminated the original 1935 Grass Commission, and assigned the authority for their function to the Board of Natural Resources under the Department of Natural Resources and Conservation (DNRC), which was in turn eliminated in the 1995 state reorganization plan. Administrative authority lied with the Director of the Department of Natural Resources and Conservation, with no grazing district representation or formal consultation process regarding appeals of local decisions, or other matters affecting the operation of state grazing districts until the recent revisions came into affect.

Several state and federal court cases have also resulted in numerous changes to the way state grazing districts must operate, including procedures for the leasing of state lands, as well as methods of accounting for membership equity, and the disposal of district owned assets. The appeal of local grazing district board of director decisions has also changed, and is now subject to the Montana Administrative Appeals Act, not to mention significant changes to federal grazing regulations, and numerous other state laws and regulations.

Changes to traditional land use practices and historic grazing principles are also having both positive and negative effects on the operation of state grazing districts, but the original Grass Conservation Act failed to address these issues adequately. Open range and common pastures, the founding reasons for the creation of state grazing districts, are becoming much less common in many parts of Montana, and yet in other regions they are still widely used, but the previous statutes failed to address the use of both practices when situations warranted. New "non-agricultural" landowners are purchasing traditional ranching properties for a variety of reasons, often at the expense of livestock production, and these purchases are having significant affects on local economies, and state grazing districts have been very active in participating in discussions to alleviate many of these local land use or livestock production related problems. The Montana rural landscape is rapidly changing, and the Montana state grazing districts are looking to adjust their role and function to take advantage of the opportunities and challenges that will come with the 21<sup>st</sup> century.

## **ESTABLISHMENT OF THE GRASS CONSERVATION ADVISORY COMMITTEE:**

The 1997 State Legislature, at the request of the Montana Association of State Grazing Districts (MASGD), passed legislation, Senate Bill 326, to enact the Montana Grass Conservation Act Advisory Committee. The legislation required the appointment of several grazing district officials to an interim committee that was commissioned to examine the application of the current Montana Grass Conservation Act, the operations of our 26 state grazing districts, and the effectiveness of the Department of Natural Resources and Conservation (DNRC) in administering the grazing districts program. The study committee, along with DNRC officials, and the MASGD had aggressively undertaken the task presented to them, and throughout 1997 and 1998 they convened several public meetings, and numerous work sessions in order to outline the necessary changes that should be made to the current Montana Grass Conservation Act. As a result of these findings, a recommendation was made to the legislature in the form of HB 444 to, in fact, reestablish the Montana Grass Conservation Commission and make other applicable changes.

## **ESTABLISHMENT OF THE MONTANA GRASS CONSERVATION COMMISSION:**

In 1999, HB 444 was introduced to the legislature at the request of the Montana Association of State Grazing Districts to implement recommendations of the Grass Conservation Advisory Committee. The bill was approved by the 56<sup>th</sup> Legislature of the State of Montana and signed by Governor Racicot. Significant points of legislation include the formation of the Montana Grass Conservation Commission transferring all grazing district responsibility and authority held at that time by the Conservation and Resource Development Division, DNRC, to the Commission effective July 1, 1999; district by-law review and updates; and various revisions in the Grazing Act.

## Question and Answer Section

Following are helpful answers to 44 questions commonly raised about grazing districts. The answers are based on relevant sections of the Montana Grass Conservation Act and the Standard Bylaws. The Grass Conservation Act comprises sections 76-16-101 through 415 of the Montana Codes Annotated (MCA), a copy of which is reprinted in this handbook on pages 17 through 37. The sample Standard Bylaws are also reprinted here, on pages 39 through 50.

In no way are the following answers intended as legal or binding interpretations of the Act or bylaws.

1. Q. What is a state grazing district?
  - A. In Montana, a grazing district is a nonprofit, cooperative association of ranchers and farmers who raise livestock. Grazing districts are organized under the Montana Grass Conservation Act, which gives them the power to lease or purchase grazing lands, to develop and manage district lands, and to allocate grazing privileges on those lands.
2. Q. What is the purpose of a grazing district?
  - A. Grazing districts work to conserve, protect, restore, and ensure the proper use of Montana's grass, forage, and range resources. Districts work with federal and state agencies, county commissioners and other entities that own or manage land and thus promote cooperation where land ownership is diverse. The state network of grazing districts helps stabilize the livestock industry and protects ranch operations that depend on the availability of supplemental rangeland. See Section 76-16-102, MCA.
3. Q. What is the role of the Commission (MGCC)?
  - A. The Commission works to carry out the purposes of the Montana Grass Conservation Act. Commission serves in an advisory capacity to the boards of county commissioners and also supervises and coordinates the formation and operation of state districts. See Section 76-16-104, MCA.
4. Q. How do I contact the office of the Commission?
  - A. Address all correspondence to the Montana Grass Conservation Commission, PO Box 675, Terry, MT 59349-0675. Or call (406) 635-GRAS (4727).
5. Q. How is a grazing district formed?
  - A. A grazing district is formed when three or more livestock growers, who own or control private non-range grazing lands, file a written request to incorporate with the Commission. A map showing the proposed boundaries of the district must accompany the request. The Commission will also furnish information and advice on request. For specific information see Section 76-16-201, MCA.
6. Q. May a district own land?

A. Yes. By law, grazing districts may "acquire forage producing lands by lease, purchase, cooperative agreements, or otherwise." Districts, however, can not lease state lands. Lands owned by a grazing district are subject to taxation as if they were private property. See Section 76-16-305, MCA

7. Q. May a district borrow money?

A. Yes, and if necessary, the physical assets of the district may be mortgaged to provide for operation and development, provided that at least 80 percent of the permittee members give consent in writing to such borrowing, and such borrowing is approved by the Commission. See Section 76-16-323 93), MCA.

8. Q. What are grazing fees?

A. Grazing fees are an annual charge based upon the number of animal units or animal unit months permitted. The fees are used by the district to pay leases, rentals, operating expenses, and state fees. See Article VII, Section 3, Std. Bylaws.

9. Q. What is an assessment?

A. An assessment is a special levy imposed on permittee members to fund land purchases or for constructing improvements in the district. Assessments are levied based on each member's number of animal units and can be levied only with the written consent of 80 percent of the permittee members. See Article VII, Section 5, Std. Bylaws and 76-16-103(2), 76-16-323, MCA.

10. Q. Are the district's records open for inspection by the membership?

A. Yes. The secretary-treasurer must allow members to inspect the books during any reasonable hours. See Article VI, Section 3. Std. Bylaws.

11. Q. Are the grazing district's financial affairs audited frequently?

A. Yes. The districts are required by law to have an audit made of their books at the close of the fiscal year by a person approved by the Commission. A copy of the audit is submitted to the Commission for review. See Article V, Section 5, Std. Bylaws.

12. Q. Does a livestock operator need a permit to graze livestock on his or her own privately controlled lands within the boundaries of a state grazing district?

A. No; with the exception being if the operator has district controlled lands intermingled with private lands.

13. Q. Must a preference holder use his or her range each year?

A. No. The bylaws of state grazing districts may allow the member to obtain a non-use permit for as many as three years in a row upon payment of 10 percent of one year's grazing fee to allow the district to make use of that range. If a member holding an individual allotment wishes to reduce the stocking rate to rest the range, she must pay the full fee on the carrying capacity as determined by the district. See Article XIII, Section 1, Std. Bylaws as well as individual district by-laws.

14. Q. What happens to a preference when control of commensurate property changes hands?
- A. Preferences are attached to commensurate property. When control of commensurate property changes hands, the preference changes with the land, provided that the new owner or lessee secures a nonuse permit or pays the regular fees. Any preference may be revoked if the member fails to pay fees or assessments or refuses to abide by the rules and regulations laid down by the district. See Section 76-16-409, MCA.
15. Q. May a preference be transferred from one commensurate property to another?
- A. Yes, upon application and after a hearing held before the Board directors and approval of MGCC. There must be sufficient commensurability and the owner of the property losing preference must be give written consent to the transfers. See Section 76-16-406, MCA.
16. Q. Who holds authority to approve transfers of grazing preferences?
- A. If BLM land is involved in the transfer, then the BLM has final authority over the transfer. The grazing district has final authority if no federal lands are affected.
17. Q. If a permittee fails to pay fees or abide by regulations, and the district threatens to revoke the preference attached to the land, is the real mortgage holder or landowner protected?
- A. Yes. Section I of Article XII of the sample bylaws provides that in such cases the real mortgage holder or owner be notified and given 60 days to comply. A statement must be filed with the board of directors identifying the commensurate land of which he or she is the mortgagor or owner. See Section 76-16-412, MCA.
18. Q. What happens when a member buys or rents land formerly controlled by a state grazing district?.
- A. The established grazing capacity of the land acquired by the member is treated as self-furnished range and deducted from the amount of grazing furnished by the district.
19. Q. What happens when a member or nonmember buys or leases land within the boundaries of a state district not controlled by the district?
- A. In such cases, the person acquiring ownership or control of such land has the right to obtain from the district a grazing permit determined by the carrying capacity of the land. In the case of a member, the permit allots grazing rights in addition to his or her preference. See Section 76-16-411, MCA
20. Q. Does a grazing district member have any recourse if he or she feels that action taken by the district board of directors does not conform to the bylaws or the Grass Conservation Act?
- A. Yes. Decisions of any state- grazing district may be appealed to the Commission. The board's decision may also be appealed to the judicial district court where a portion of the land within the grazing district lies. See Section 7& 16-109, MCA.



21. Q. Can a grazing district change its boundaries?

A. Yes, with the consent of a majority of the members in the affected area and the approval of the Commission after a hearing with MGCC. Whenever the boundaries of a state district are changed, a plat indicating the change must be filed with the county clerk in each affected county and also with MGCC. See Section 76-16-207-209, MCA.

22. Q. Can a district merge with another grazing district?

A. Yes. Districts can merge with the consent of a majority of the members of each district. The merger can be agreed upon either by vote at the annual meeting or by a poll of the members. In addition, a hearing on the merger must be held before MGCC. The findings of this hearing are then considered by MGCC, who may approve or deny the merger.. See Section 76-16-209, MCA.

23. Q. Can a grazing district's bylaws be amended?

A. Yes, they may be amended in any regular annual meeting or special meeting called for the purpose. Any amendment must be passed a two-thirds vote of the permittee members present. No such amendment shall be effective until approved by MGCC. See Article IX, Section 1, Std. Bylaws and Section 76-16-208, MCA.

24. Q. Can a grazing district be dissolved?

A. Yes, with the written consent of three-fourths of its permittee members. A request to dissolve the district is made to the Commission, which then holds a hearing to determine whether the continued operation of the district is no longer feasible, beneficial, and desirable. See Sections 76-16-210, 211, MCA.

25. Q. Can an individual member withdraw from a grazing district?

A. In general, no. Membership in a district continues as long as the district exists. However, if a district's articles of incorporation or bylaws contain provisions for voluntary withdrawal, then a member may withdraw from that district. See *Opinions of the Attorney General* volume 42, opinion number 127.

26. Q. When a grazing district is dissolved, what happens to its assets?

A. With approval from Commission, the district must distribute all of its assets, either in items of property, or cash, or both. Assets are distributed first to creditors up to the amount of their claims. The remaining assets are then distributed to permittee members based on their proportionate stake in the district's assets.

27. Q. Who may vote at district meetings?

A. Only permittee members are entitled to vote on issues submitted to a vote of the membership. Permittee members are all members who had preferential grazing permits during the preceding grazing season or who own such permit at the time of voting.

An agent may become a permittee member for any person, association, partnership, or corporation in place of his principal. The agent's qualifications, obligations, and privileges shall be the same as those his or her principal would have had as a member.

No agent and principal shall both be members of the district, the agent has individual qualifications separate from those of his or her principal.

**No member shall have more than one vote.**

Voting by proxy is not allowed. See Sections 76-16-302, 303 MCA.

28. Q. What does it cost to become a member of a district?

A. The membership fee in any state- grazing district cannot exceed five dollars. See Section 76-16-204(C), MCA; also see Question 33

29. Q. Does a permittee member receive a share of the surplus assets district?

A. Whenever a grazing district possesses reserves and physical assets of greater value than its liabilities, and a permittee member loses his or her grazing preference, the member is entitled to receive his or her share of the value of such excess from that district. This value determined by the annual accounting of the district.

Whenever a new member receives a grazing preference, he or she must pay the district the value of the equitable interest in the physical assets and reserve fund which accrues to the new member by virtue of such membership. See Section 76-16-414, MCA.

30. Q. Does a grazing district prevent new operators from getting started?

A. No. New operators are entitled to the same preference as the former operator. However, any operator acquiring property not classed as dependent commensurate or commensurate property would not be entitled to a preference in the district. Section 76-16-409, MCA.

31. Q. May a state district impound animals found in trespass and hold them for damages?

A. Yes. Livestock may not run at large or under herd within a district unless the owner or person in charge has first obtained a permit. Within 72 hours after impounding trespassing animals, the owner or persons in charge of that livestock is notified by registered mail of the location and number of livestock held, and the damages claimed to date. He or she is then given 10 days to pay the damages claimed and take the livestock away. At the end of 10 days, any unclaimed animals are turned over to the sheriff for sale at public auction. For a more detailed account of trespass procedure see Sections 76-16-311, 312, 313, MCA.

32. Q. Can a member of a district be found in trespass?

A. Yes. No one is allowed to run livestock within the boundaries of the district without first obtaining a permit. If a member runs livestock within the district in excess of the permit or without a permit, said member would be found in trespass. See Section 76-16-310, MCA.

33. Q. May an individual member of the district impound animals and recover trespass damages?

A No, not unless he or she is acting as an agent of the district with the express permission of the board of directors. Sections 76-16-311 312, 313, MCA give the district or its duly authorized agent the sole right to impound animals and recover damages.

34. Q Are there any other penalties for trespass within grazing districts?

A. Yes. The owner or person in control of trespassing livestock is guilty of a misdemeanor and upon conviction will be assessed a fine of not less than \$10.00 nor more than \$500.00. The person in trespass is also liable for damages resulting from the trespass.

For a more detailed account of trespass procedure see Sections 76-16-311, 312, 313, MCA.

In cases where federal lands are administered by the districts, the federal government reserves the right to protect its lands from trespass by appropriate civil action.

Grazing districts may also bring civil action against trespassers and obtain restraining orders.

Most districts have enacted provisions in their bylaws providing for a penalty of not less than \$1.00 per animal unit in trespass for the first offense and not less than \$5.00 per animal unit in trespass for the second offense.

# GRASS CONSERVATION ACT

## Montana Code Annotated

### Title 76

### Chapter 16

### Grazing Districts

**76-16-101. Short title.** This chapter may be cited as the "Grass Conservation Act".

**History:** En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

**76-16-102. Purpose.** The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit state districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate properties.

**History:** En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part); amd. Sec. 1, Ch. 31, L. 2001.

**76-16-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Animal unit" means one cow, one horse, or five sheep, 6 months of age or older.
- (2) "Animal unit month" or "AUM" means one cow/calf pair, one horse, or five sheep, grazed individually for 1 month, or an equivalency as determined by a local state district.
- (3) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in [76-16-323](#)(1). The term does not include fees.
- (4) "Commensurate property" means land that is privately owned or controlled and that is not range.
- (5) "Commission" means the Montana grass conservation commission provided for in [76-16-112](#).
- (6) "Department" means the department of natural resources provided for in Title 2, chapter 15, part 33.
- (7) "Dependent commensurate property" is commensurate property that:
  - (a) requires the use of range in connection with it to maintain its proper use;
  - (b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) has been used in connection with the range for a 5-year period immediately preceding the date of organization of the state district.

(8) "Directors" means the board of directors of a state district provided for in [76-16-301](#).

(9) "Grazing preference" is a right to obtain a grazing permit from a state district, expressed in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a member's proportionate interest in state district assets.

(10) "Permits" are evidence of grazing privileges granted by state districts.

(11) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

(12) "Range" is the land within a state district upon which grazing permits are granted to maintain livestock through the established grazing period.

(13) "Secretary" means the secretary of the Montana grass conservation commission.

(14) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members.

**History:** En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974; R.C.M. 1947, 46-2302(part); amd. Sec. 299, Ch. 418, L. 1995; amd. Sec. 2, Ch. 244, L. 1997; amd. Sec. 1, Ch. 401, L. 1999; amd. Sec. 2, Ch. 31, L. 2001.

**76-16-104. Role of the commission.** (1) The commission shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of state districts that may be incorporated under this chapter.

(2) The commission may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies.

**History:** En. Secs. 1, 17, Ch. 208, L. 1939; amd. Secs. 35, 47, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part), 46-2317; amd. Sec. 300, Ch. 418, L. 1995; amd. Sec. 3, Ch. 244, L. 1997; amd. Sec. 3, Ch. 31, L. 2001

**76-16-105. Repealed.** Sec. 45, Ch. 31, L. 2001.

**History:** En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part); amd. Sec. 301, Ch. 418, L. 1995; amd. Sec. 4, Ch. 244, L. 1997

**76-16-106. Commission fees.** (1) The commission may impose fees against the state districts in an amount not in excess of 10 cents per animal unit month of grazing preference, based upon the number of animal unit months per year for which the state district grants permits, to defray expenses incurred by the commission in carrying out its powers and duties under this chapter.

(2) These fees must be held in the state special revenue fund to be expended by order and direction of the commission for the operation and administration of the commission under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the state district is provided with a full report from the department of all money collected and expended by it for its fiscal year preceding that date, the commission may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

**History:** En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974; R.C.M. 1947, 46-2331; amd. Sec. 1, Ch. 34, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 401, L. 1999; amd. Sec. 4, Ch. 31, L. 2001.

**76-16-107. Range for wild game animals.** In each state district a sufficient carrying capacity of range must be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the state district. The commission may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts.

**History:** En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974; R.C.M. 1947, 46-2332; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 3, Ch. 401, L. 1999; amd. Sec. 5, Ch. 31, L. 2001.

**76-16-108. Nature of rights.** (1) Grazing preferences or rights under this chapter through the creation of the state district or the issuance of permits based on AUMs of grazing preference are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the state district except as provided in this chapter.

(2) A person who chooses to become a member of a state district is bound by all the provisions of this chapter and is limited to the statutory remedies contained in this chapter, and a court has no jurisdiction to consider any right claimed under this chapter except by judicial review from the final decision of the commission as provided in this chapter.

**History:** (1)En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; Sec. 46-2314, R.C.M. 1947; (2)En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; Sec. 46-2308, R.C.M. 1947; R.C.M. 1947, 46-2308(part), 46-2314(3); amd. Sec. 4, Ch. 401, L. 1999; amd. Sec. 6, Ch. 31, L. 2001.

**76-16-109. Appeal procedure.** (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the state district.

(2) A person affected by the decision of a state district may appeal to the commission, and the commission shall hear and decide all those appeals. An appeal from the decision of the state district to the commission may be taken by filing written notice of the appeal with the commission, by filing a copy of the notice of appeal with the secretary of the state district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the state district. The appellant shall also file with the commission proof by affidavit of the filing and service of the notice of appeal. The appeal to the commission must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the commission may, for good cause shown, permit additional testimony to be submitted.

**History:** En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(part); amd. Sec. 302, Ch. 418, L. 1995; amd. Sec. 5, Ch. 401, L. 1999; amd. Sec. 7, Ch. 31, L. 2001.

**76-16-110. Administrative procedure act applicable.** The Montana Administrative Procedure Act applies to this chapter.

**History:** En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(3).

**76-16-111. What constitutes receipt of notice.** In all cases where notices are given to permittees under this chapter by certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices must be considered received by the permittee when deposited in the United States post office by the state district or by the commission.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(8); amd. Sec. 6, Ch. 401, L. 1999; amd. Sec. 8, Ch. 31, L. 2001.

**76-16-112. Creation of Montana grass conservation commission -- membership -- meetings -- compensation.** (1) There is a Montana grass conservation commission. The commission is composed of five members appointed by the governor to serve staggered 3-year terms.

(2) (a) The governor, after giving full consideration to representation by both large and small operators, shall appoint:

- (i) two members who are either officers of or who serve on the board of directors of a state district;
- (ii) two members who hold active grazing preference rights within a state district; and
- (iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state districts for the purpose of livestock production.

(b) Ex officio members may be appointed by the commission as needed.

(3) Members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer.

(4) The commission shall meet annually at the main offices of the department in Helena. The commission may hold other meetings at times and places as necessary upon the call of the presiding officer or the request of a majority of commission members and upon at least 7 days' written notice to the commission members of the time and place of the meeting. A majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission.

(5) Commission members may receive no compensation for their services, but members are entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem.

(6) The commission is allocated to the department for administrative purposes only as provided in [2-15-121](#). The commission shall, if it determines that personnel services are required, hire its own personnel, and [2-15-121\(2\)\(d\)](#) does not apply. The secretary must be employed at the discretion of the commission.

**History:** En. Sec. 33, Ch. 401, L. 1999; amd. Sec. 9, Ch. 31, L. 2001.

**76-16-113. Powers of commission.** The commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to:

(1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state districts, including appeals of decisions made by the board of directors of an individual state district or other actions taken in accordance with this chapter;

(2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and state districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter;

- (3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state districts that, for whatever reason, no longer have access to historical grazing preference records;
- (4) preparing and standardizing various forms to be used by the state districts and supervising or regulating the organization and operation of state districts;
- (5) issuing citations directed to any person requiring the person's attendance before the commission and subpoenaing witnesses and paying expenses that would be allowed in a court action;
- (6) requiring an officer or director of a state district to submit records of the state district to the commission for the purpose of aiding an investigation conducted by the commission;
- (7) requiring state districts to annually furnish itemized financial reports; and
- (8) cooperating and entering into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

**History:** En. Sec. 34, Ch. 401, L. 1999; amd. Sec. 10, Ch. 31, L. 2001.

**76-16-201. Procedure to incorporate state district.** (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the commission together with a plat showing the proposed boundaries of the area.

(2) The statement must set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The commission may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the commission shall fix a time and place of a hearing for approval within the state district or county, which may not be less than 30 days or more than 60 days after receipt of the statement.

**History:** En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 7, Ch. 401, L. 1999; amd. Sec. 11, Ch. 31, L. 2001.

**76-16-202. Notice and hearing on question of incorporation.** (1) The persons deciding to incorporate the state district shall cause notice of the hearing to be given by publishing a notice prescribed by the commission once a week for 2 consecutive weeks in a newspaper of general circulation in the area. The first publication must be at least 30 days prior to the date of hearing.

(2) The commission shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation.

**History:** En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 303, Ch. 418, L. 1995; amd. Sec. 8, Ch. 401, L. 1999; amd. Sec. 12, Ch. 31, L. 2001.

**76-16-203. Certificate of approval.** If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the state district, the commission may issue a certificate of approval.

**History:** En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 304, Ch. 418, L. 1995; amd. Sec. 9, Ch. 401, L. 1999; amd. Sec. 13, Ch. 31, L. 2001.



**76-16-204. Articles of incorporation.** (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.

(2) The articles must be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the commission, shall substantially state the following:

- (a) the name of the state district, the last four words of which must be "cooperative state grazing district";
- (b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;
- (c) the membership fee for each member of the state district, which may not be more than \$5;
- (d) the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;
- (e) the powers of the state district, which may not be inconsistent with this chapter;
- (f) the officers of the state district, their principal duties, and the principal duties of the board of directors;
- (g) the purpose for which the state district is incorporated.

**History:** En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part); amd. Sec. 10, Ch. 401, L. 1999.

**76-16-205. Issuance of certificate of incorporation.** If the articles substantially comply with the requirements set forth in 76-16-204 and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation.

**History:** En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

**76-16-206. Amending articles of incorporation.** (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the commission. The only notice of the meeting that is necessary is the notice of meetings of members as required by the bylaws of the state district. The amended articles of incorporation and bylaws must be submitted to the commission for approval. Upon approval, the commission shall issue a certificate of approval. The amended articles of incorporation must be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment must be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the state district possesses the same powers and is subject to the same obligations as if incorporated under this chapter.

**History:** En. Secs. 11, 18, Ch. 208, L. 1939; amd. Secs. 41, 48, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part), 46-2318; amd. Sec. 11, Ch. 401, L. 1999; amd. Sec. 14, Ch. 31, L. 2001.

**76-16-207. Filing of map or plat of state district.** A state district shall, upon completion of its organization, file with the commission and the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district showing the allocation of individual allotments, members running in common allotments, allotment names, and references to lands used as base properties, along with a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the

commission after a hearing, the state district shall file with the county clerk or clerks and with the commission a revised map or plat indicating the changed boundaries.

**History:** En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part); amd. Sec. 305, Ch. 418, L. 1995; amd. Sec. 12, Ch. 401, L. 1999.

**76-16-208. Adoption of bylaws and periodic review -- annual report.** (1) A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the commission. The bylaws may be amended or revised with the approval of the commission. Each incorporated state district shall review and update its bylaws to ensure compliance with this chapter and the general laws of this state. A review and update must be completed at reasonable intervals, not to exceed 5 years.

(2) Each state district incorporated under this chapter shall report annually to the commission any changes to the allocation of grazing preferences, redefinitions of grazing allotment boundaries, or dispositions of base properties within the state district. The annual reports must include an updated plat depicting current allocation of grazing preferences, grazing allotment boundaries, and a list of all members running in common allotments where more than one member may have grazing preferences.

**History:** En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974; R.C.M. 1947, 46-2315; amd. Sec. 13, Ch. 401, L. 1999; amd. Sec. 15, Ch. 31, L. 2001.

**76-16-209. Alteration of state district.** (1) A state district may change the boundaries of the state district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the commission after a hearing.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the commission after a hearing.

**History:** En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(11); amd. Sec. 306, Ch. 418, L. 1995; amd. Sec. 14, Ch. 401, L. 1999; amd. Sec. 16, Ch. 31, L. 2001.

**76-16-210. Request for dissolution of state district.** A state district, with the written consent of three-fourths of its permittee members, may at any time request the commission to dissolve the state district subject to the preferences of this chapter. The commission shall establish procedures for the dissolution of any state district.

**History:** En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 307, Ch. 418, L. 1995; amd. Sec. 15, Ch. 401, L. 1999.

**76-16-211. Dissolution of state district.** (1) If a state district ceases to function in accordance with its bylaws and this chapter and it appears to the commission that the reinstatement and future operation of the state district is no longer feasible, beneficial, and desirable to the majority of members of the state district, the commission, after a hearing and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the state district, may dissolve the state district.

(2) A notice of the dissolution must be filed by the commission with the secretary of state and the clerk and recorder of the county or counties in which the state district is located.

**History:** En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(1)(b); amd. Sec. 308, Ch. 418, L. 1995; amd. Sec. 16, Ch. 401, L. 1999; amd. Sec. 17, Ch. 31, L. 2001.

**76-16-212. Distribution of state district assets.** (1) When a hearing on the request for dissolution has been held before the commission and the consent of the board of directors has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or both. Distribution must first be made with the approval of the commission to creditors up to the amount of their claims. Distribution must then be made with the approval of the commission to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction or through another competitive bidding procedure after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district. State district members holding grazing preference directly proportional to and associated with the assets being liquidated must be offered an opportunity to meet the highest bid submitted through the bidding process.

**History:** En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 17, Ch. 401, L. 1999; amd. Sec. 18, Ch. 31, L. 2001.

**76-16-213. Final report on dissolution proceedings.** A final report of all dissolution proceedings must be made to the commission by the directors. Upon the approval of the report, the commission shall order the state district dissolved.

**History:** En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 309, Ch. 418, L. 1995; amd. Sec. 19, Ch. 31, L. 2001.

**76-16-301. Powers and duties of directors.** The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the commission as provided in this chapter.

**History:** En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974; R.C.M. 1947, 46-2313; amd. Sec. 20, Ch. 31, L. 2001.

**76-16-302. Membership in state district.** (1) Membership in a state district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the state district, except that the agent of a person entitled to membership in the state district may become a member in place of the agent's principal.

(2) If an agent becomes a member, the agent's qualifications for membership and the agent's obligations to and the privileges in the state district must be measured by those that the agent's principal would have had if the principal had elected to become a member. An agent and the agent's principal may not both be members of the state district unless the agent has individual qualifications for membership that are separable from and independent of those of the principal.

(3) Livestock producers owning or controlling base property within the designated boundaries of the state district and who held grazing preference during the preceding grazing season or at the time of voting must be designated as permittee members.

**History:** En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part); amd. Sec. 18, Ch. 401, L. 1999; amd. Sec. 21, Ch. 31, L. 2001.

**76-16-303. Voting rights.** Only permittee members in good standing as set forth in the state district bylaws are entitled to vote on all issues submitted to a vote of the members. Individuals or livestock producers who operate on temporary permits may not vote. A permittee member has only one vote. Voting by proxy may not be permitted unless clearly outlined procedures for proxy voting are incorporated into the state district bylaws.

**History:** En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part); amd. Sec. 19, Ch. 401, L. 1999; amd. Sec. 22, Ch. 31, L. 2001.

**76-16-304. Effect of transfer of land.** When a member disposes of a part of the lands or leases owned by that member so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved must be determined by the directors of the state district with the approval of the commission.

**History:** En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(2); amd. Sec. 20, Ch. 401, L. 1999.

**76-16-305. Acquisition and disposal of property.** A state district may:

(1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise;

(3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

**History:** En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(1), (3), (5).

**76-16-306. Management of grazing lands.** A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseedling and other approved conservation and improvement practices of depleted range areas or abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseedling or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

**History:** En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(4), (8), (13); amd. Sec. 23, Ch. 266, L. 1979.

**76-16-307. Leasing of state lands.** State land that is situated within the boundaries of a state district created under this chapter may be leased by one or more members of a state district if the lease is in accordance with

existing laws and regulations of the department. The board of directors of a state district may assist members of a state district in acquiring and administering a state grazing lease. The commission shall require that all state districts comply with this section.

**History:** En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974; R.C.M. 1947, 46-2316; amd. Sec. 310, Ch. 418, L. 1995; amd. Sec. 21, Ch. 401, L. 1999; amd. Sec. 23, Ch. 31, L. 2001

**76-16-308. Regulation of stock grazing in state district.** A state district may:

- (1) specify the breed, quality, and number of male breeding animals that each member must furnish when stock is grazing in common in the state district;
- (2) regulate the driving of stock over, across, into, or through the range and collect fees for driving stock.

**History:** En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(7), (12); amd. Sec. 22, Ch. 401, L. 1999.

**76-16-309. Knowledge of state district boundaries responsibility of livestock owner.** A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the state district.

**History:** En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part); amd. Sec. 24, Ch. 31, L. 2001.

**76-16-310. Permit required to run livestock in state district.** (1) An owner or person in control of livestock may not permit livestock to run at large or under herd within the exterior boundaries of a state district unless the owner or person in control of the livestock first obtains a grazing permit from the state district.

(2) The owner or person in control of livestock running at large or under herd within a state district without a permit from the state district or in excess of the permit is liable for all damages sustained by any member, permittee, or state district that are a result of the person's unpermitted use of the state district. If livestock wrongfully enter a state district, the owner or person in control of the trespassing livestock, who willfully or negligently permits livestock to run at large within the state district without first obtaining a permit from the state district, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine in an amount not less than \$10 or more than \$500. In addition to a fine, the owner or person is liable for all damages that are caused by the trespassing livestock.

(3) This provision does not require any person to obtain a grazing permit to graze livestock on land that the person owns or controls within a state district if the stock being grazed are restrained from running at large within the state district and from grazing on any other lands within the state district.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(1); amd. Sec. 25, Ch. 31, L. 2001.

**76-16-311. Control of trespassing livestock.** (1) The state district or its duly authorized agent controlling the land upon which wrongful entry is made by trespassing livestock may take the livestock into its possession and shall reasonably care for the livestock while in its possession and may retain possession of the livestock and have a lien and claim on the livestock as security for payment of damages and reasonable charges for the care of livestock while in its possession.

(2) The state district taking possession of trespassing livestock shall, within 72 hours after taking possession,

notify the owner, owners, or person in charge of the livestock by a notice in writing describing the livestock by number of animals and brands on the livestock, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the livestock thereafter. Charges may not exceed \$2 per animal unit per day. The notice must generally describe the location where the livestock is held and require the owner or owners, within 10 days after receiving the notice, to take the livestock away after making full payment of all damages and costs.

(3) In case the parties do not agree as to the amount of damages, the state district taking possession of the livestock may at the expense of the owner retain a sufficient number of livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by the state district in a civil action to foreclose its lien, have returned to the owner all livestock held. The state district is liable to the owner for any loss or injury to the livestock accruing through the state district's lack of reasonable care.

(4) If the state district taking possession of the livestock fails to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the state district shall bear the expense of keeping and feeding the livestock while in its possession. Notice may be given by personal service on the owner, owners, or person in charge of the livestock by sending notice by prepaid registered or certified mail, addressed to that person's last known place of residence. Service by registered or certified mail is considered complete upon the deposit of the notice in the post office.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(2), (3); amd. Sec. 23, Ch. 401, L. 1999.

**76-16-312. Impoundment of trespassing livestock.** The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(9).

**76-16-313. Release of livestock.** Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

**76-16-314. Recovery of excess charge for damages.** If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

**76-16-315. Procedure upon inability to locate person responsible for trespassing livestock.** If a state district takes possession of livestock after due diligence to discover the owner or possessor of the livestock and the owner or possessor cannot be found or the ownership of the livestock discovered or if a party takes possession of livestock and the owner or claimant refuses to pay the amount of damages or charges or to furnish bonds, as provided in 76-16-311, the state district or person shall, within 10 days from the time that the livestock was taken into possession, deliver to the sheriff of the county in which the livestock was taken into possession or to the nearest state livestock inspector a statement containing the information required to be given in the notice set out in 76-16-311.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part); amd. Sec. 24, Ch. 401, L. 1999.

**76-16-316. Sale of trespassing livestock.** (1) Upon receipt of the statement referred to in 76-16-315, the sheriff shall proceed to advertise and sell at public auction the livestock taken up.

(2) The livestock must be sold on 5 days' notice posted at the courthouse of each county in which any portion of the state district lies and in a newspaper of general circulation in the county. The sheriff may require from the state district a sufficient bond, conditioned upon the following:

(a) that the state district has used reasonable diligence to discover the owner of the stock and to notify the owner in the premises;

(b) that all requirements of law on the part of the state district to be performed in the premises have been performed; and

(c) that the sheriff is indemnified against all liability for the sale of the livestock except as to the sheriff's own failure to perform the things required by law.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part); amd. Sec. 25, Ch. 401, L. 1999; amd. Sec. 26, Ch. 31, L. 2001.

**76-16-317. Disposition of sale proceeds.** (1) The proceeds of the sale must be applied by the sheriff, after first deducting the sheriff's costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up the livestock. The remainder of the proceeds, if any, may be paid over to the owner of the livestock, if known. If the owner is not known, then the remainder must be deposited with the county treasurer, who shall keep the remainder of the proceeds in a public fund to be designated state district fund (giving the name of the state district). A separate fund, styled as above, must be kept by the county treasurer for each state district within that county. The county treasurer shall record the number, type, and brands, if any, of animals sold, the amount received for the animals, and the amount of deductions. The record must be open to public inspection.

(2) A person claiming ownership of the livestock and submitting proof of ownership to the board of county commissioners within 1 year from date of sale is entitled to receive any excess received from the sale of the livestock, provided the claim is to the satisfaction of the board.

(3) Any money received from the sale of the livestock that is not claimed within 1 year after the sale must be transferred to the general fund of the county.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(7); amd. Sec. 27, Ch. 31, L. 2001.

**76-16-318. Unlawful recovery of trespassing livestock.** Any person taking or rescuing from the possession of a state district or an agent of a state district any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 is guilty of a misdemeanor and upon conviction shall be punishable by a fine not exceeding \$200.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(10); amd. Sec. 28, Ch. 31, L. 2001.

**76-16-319. No liability for official acts.** An officer, the commission, an employee of an officer or the commission, or an employee of any county or of any state district is not liable for any act performed in good faith in discharging official duties under this chapter. All acts are presumed to have been in good faith and in conformity with this chapter.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(8); amd. Sec. 311, Ch. 418, L. 1995; amd. Sec. 26, Ch. 401, L. 1999.

**76-16-320. Maintenance of fences.** (1) The cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of the state district must be borne by the member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of the state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by the cost of construction and maintenance of fence, the state district's proportionate share of the costs and maintenance must be financed only by assessments levied by the state district against the permittee members of the state district and upon consent by 55% of the permittee members.

**History:** En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(11), (12); amd. Sec. 29, Ch. 31, L. 2001.

**76-16-321. Construction of trespass and fence provisions.** (1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.

(2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

**History:** (1)En. Sec. 8, Ch. 199, L. 1945; Sec. 46-2327, R.C.M. 1947; (2)En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; Sec. 46-2326, R.C.M. 1947; R.C.M. 1947, 46-2326(13), 46-2327.

**76-16-322. Fence-out requirement.** Farming lands lying within the external boundaries of a state district shall be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101(1). The state district or its members shall not be liable for damages unless such farming lands are protected by a sufficient fence as described in this section.

**History:** En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).



**76-16-323. State district finances.** A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on a grazing preference basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the commission. This subsection does not confer power upon a state district to mortgage the property of the individual members of the state district.

**History:** En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(6), (9), (10); amd. Sec. 27, Ch. 401, L. 1999; amd. Sec. 30, Ch. 31, L. 2001

**76-16-324. Lawsuits involving district.** A state district may sue or be sued in its corporate name.

**History:** En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(2).

**76-16-325. Compliance with commission orders required.** (1) If a state district or the directors of a state district fail to comply with an order of the commission, the commission may order a hearing on the order within the state district or county and cite the directors of the state district to appear before the commission.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the commission, the directors may be summarily removed from office by the commission, and the state district shall elect new officers. During the period until the election, the commission may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district must be paid by the noncomplying state district before it may be reinstated.

**History:** En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part); amd. Sec. 312, Ch. 418, L. 1995; amd. Sec. 28, Ch. 401, L. 1999; amd. Sec. 31, Ch. 31, L. 2001.

**76-16-401. Distribution of grazing preferences.** When a state district is organized, grazing preferences must be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the grazing preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range 5 years immediately preceding the organization of the state district.

**History:** En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 32, Ch. 31, L. 2001.

**76-16-402. Conversion of temporary permittee lands to dependent commensurate property.** (1) When a temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by the permittee within or near the state district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by the permittee may be considered dependent commensurate property and, upon application, the state district may accordingly grant such permittee membership and grazing preference in the state district providing an application had been made for temporary rights for each of the 5 years.

(2) However, temporary permits are privileges granted from year to year, and their possession does not establish a grazing preference right unless a grazing preference right is expressly granted by the state district and in the manner provided in this part.

**History:** En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 33, Ch. 31, L. 2001.

**76-16-403. Procedure if reduction in grazing privileges necessary.** (1) If a reduction in grazing privileges becomes necessary, operators with temporary permits will be reduced on a proportionate basis prior to any reduction to any holder of grazing preference.

(2) Reductions of grazing preference for individual members that result from actions beyond the control of the state district or the board of directors of a state district or as a result of actions or of the failure to take appropriate actions by the holder of the grazing preference in question do not require a general reduction in grazing preference, and the state district may not be compelled to require proportionate reductions in grazing preference, by the membership of the state district.

**History:** En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 29, Ch. 401, L. 1999; amd. Sec. 34, Ch. 31, L. 2001.

**76-16-404. Application for grazing preferences.** Any person entitled to grazing preferences within any state district based on dependent commensurate property or commensurate property shall make application within 1 year after the state district is organized to qualify for grazing preference. However, all permittees must be entitled to benefits accruing under 76-16-401 through 76-16-403.

**History:** En. Sec. 21, Ch. 208, L. 1939; amd. Sec. 6, Ch. 199, L. 1945; R.C.M. 1947, 46-2321(part); amd. Sec. 35, Ch. 31, L. 2001.

**76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property.** Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based except as provided in this chapter. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process or transaction, except as provided in this section, 76-16-406 through 76-16-409, 76-16-412, and 76-16-413 or in the bylaws of a state district.

**History:** Ap. p. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; Sec. 46-2322, R.C.M. 1947; Ap. p. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945, amd. Sec. 37, Ch. 253, L. 1974; Sec. 46-2302, R.C.M. 1947; R.C.M. 1947, 46-2302(part), 46-2322(part).

**76-16-406. Transfer of grazing preferences.** (1) Upon application by a permittee, the state district with the approval of the commission may allow a grazing preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability. However, in any transfer of grazing preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the grazing preference appurtenant to the property for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the commission.

(3) All expenses involved under the application must be borne by the applicant.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 24, Ch. 266, L. 1979; amd. Sec. 30, Ch. 401, L. 1999; amd. Sec. 36, Ch. 31, L. 2001.

**76-16-407. Processing of application for transfer.** (1) When an application for transfer is presented to the board of directors of a state district, the secretary of the state district upon the direction of that board shall give notice, setting forth in general the application and the time and place of a hearing on the application as fixed by the board. A copy of the notice must be given or mailed to the applicant and must be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the state district. The notice must also be posted for at least 2 full weeks prior to the hearing in three public places within the state district.

(2) The date of the hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections to the application.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(2); amd. Sec. 37, Ch. 31, L. 2001.

**76-16-408. Effect of transfer of grazing preference.** Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the grazing preference transferred.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(3); amd. Sec. 38, Ch. 31, L. 2001.

**76-16-409. Transfer of underlying property.** (1) When the land to which a grazing preference is attached changes its control or ownership, the grazing preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the grazing preferences may be revoked by the state district.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 39, Ch. 31, L. 2001.

**76-16-410. Compensation to state district for range improvements.** Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value must be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it must be fixed by the commission.

**History:** En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974; R.C.M. 1947, 46-2323; amd. Sec. 40, Ch. 31, L. 2001.

**76-16-411. Grazing permits to owners of land not controlled by state district.** (1) When any land is situated within the boundaries of a state district and is not leased or controlled by the state district and not surrounded by a legal fence, any person owning or controlling these lands has the right to obtain a grazing permit from the state district, the size of which must be determined by the carrying capacity of the land, full consideration being given for location of necessary stock water. The use of the permit is subject to all regulations by the state district.

(2) If the person owning or controlling the land declines to secure a permit or fails to lease the land to the state district at a fair lease rental and fails to fence the land at the person's expense, the person is not entitled to recover damages for trespass by stock grazing under permit, but the state district may not issue a permit to use the carrying capacity of the land.

**History:** En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part); amd. Sec. 41, Ch. 31, L. 2001.

**76-16-412. Revocation of grazing preferences upon failure to obtain permits, pay fees, or obey rules.**

(1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by certified mail that the grazing preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by certified mail that the grazing preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the permittee or owner fails to pay the charges or comply.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 42, Ch. 31, L. 2001.

**76-16-413. Effect of revocation.** (1) When a grazing preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district. A revocation includes all rights, privileges, and authorities associated with a grazing preference.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(7); amd. Sec. 31, Ch. 401, L. 1999; amd. Sec. 43, Ch. 31, L. 2001.

**76-16-414. Equalization of state district assets.** (1) Whenever a state district possesses reserves, the values of which are greater than its liabilities, and the state district determines that a part of the reserves is in excess of its reasonable needs to operate the state district, the state district may refund to the permittee members their proportionate share of the reserves as determined at the last annual accounting.

(2) Whenever a state district possesses reserves and physical assets, the values of which are greater than its liabilities, and a permittee member loses a grazing preference or any portion of a grazing preference, the permittee member is entitled to receive a proportionate share of the value of the excess from the state district, as determined by the annual accounting of the state district. Valuation must be as prescribed by the bylaws of the state district. The state district may set off the amount of any claim it may have against a former member.

(3) Whenever a new member receives a grazing preference, the new member shall, as a condition of receiving the grazing preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund that accrues to the new member by virtue of membership. The value must be determined at the time of receiving a grazing preference, as prescribed by the bylaws of the state district, and upon the basis of the determination of value of physical assets and reserves made at the last annual accounting.

**History:** En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953; R.C.M. 1947, 46-2324; amd. Sec. 32, Ch. 401, L. 1999; amd. Sec. 44, Ch. 31, L. 2001.

**76-16-415. Application to trespass actions.** Sections 76-16-405 through 76-16-409, 76-16-412, and 76-16-413 do not apply to trespass violations.

**History:** En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

**COOPERATIVE AGREEMENT**

**Between**

\_\_\_\_\_ **COOPERATIVE STATE GRAZING DISTRICT**

**And**

**THE MONTANA GRASS CONSERVATION COMMISSION**

**And**

**BUREAU OF LAND MANAGEMENT**

**U.S. DEPARTMENT OF INTERIOR**

\_\_\_\_\_ **FIELD OFFICE/** \_\_\_\_\_ **FIELD STATION**

**I. PURPOSE**

This Cooperative Agreement is between the \_\_\_\_\_ Cooperative State Grazing District, hereinafter called the District, and the \_\_\_\_\_ Field Office of the Bureau of Land Management, hereinafter called the Bureau and the Montana Grass Conservation Commission hereinafter referred to as the Commission.

The provisions of the Memorandum of Understanding between the Montana State Director of the Bureau of Land Management and the Montana Grass Conservation Commission, dated \_\_\_\_\_, are hereby incorporated into this agreement.

Where appropriate delegations of authority have been made from the Bureau District Manager to a Bureau Area Field Manager for the Field Station to take those actions listed as Bureau Field Office Manager, the Bureau Assistant Field Manager may take those actions.

**II. POLICY**

Subject to the policy stated in the Memorandum of Understanding dated \_\_\_\_\_ between the Montana Grass Conservation Commission and the Bureau of Land Management.

**III. AUTHORITY**

Subject to the authority stated in the Memorandum of Understanding dated \_\_\_\_\_ between the Montana Grass Conservation Commission and the Bureau of Land Management.

**IV. RESPONSIBILITY**

Subject to the responsibility stated in the Memorandum of Understanding dated \_\_\_\_\_ between the Montana Grass Conservation Commission and the Bureau of Land Management.

**V. MANAGEMENT CONSIDERATIONS**

The parties hereby do agree to the following rules and procedures:

- 1.) Environmental Impact Statements

When Grazing or other Environmental Impact Statements involve any of the lands within a State Grazing District, the Bureau will notify the Commission and Grazing District(s) involved and will call for their recommendations, usually through public meetings with the District membership. Allowable grazing authorizations and forage allocations will be determined and made for all allotments based upon assessments and monitoring in accordance with BLM land use planning process after public review with the public at large.

## 2.) Allotment Management Plans

The Bureau Field Office Manager/Field Station Manager will periodically review with the District the priority lists for new plans as well as progress on existing plans.

In accordance with the Federal Land Policy and Management Act and Public Rangeland Improvement Act, AMPs will be prepared in careful and considered consultation, cooperation, and coordination with lessees, permittees and landowners involved, the Bureau's advisory counsels established pursuant to Section 403 of the Federal Land Policy and Management Act (43 USC 1753 as amended and updated), and any State or States having lands or other affected interest to be covered by such allotment management plan. After the details are worked out, the AMP will be presented to the District for review. District approval will be requested when District controlled lands, as defined in the Memorandum of Understanding, are involved. Where permittee/lessee, District, and BLM are unable to agree on an AMP and intensive grazing management has been determined necessary, a meeting of the District, BLM, permittee(s) and the Commission will be held to resolve concerns. When resolution cannot be reached, the Bureau in accordance with applicable law, may incorporate a grazing treatment with specific terms and conditions into a permit by decision.

## 3.) Standards for Rangeland Health and Guidelines for Livestock Grazing

In accordance with the Standards for Rangeland Health and Guidelines for Livestock Grazing Management EIS, allotments will be assessed in careful and considered consultation, cooperation with permittees/lessees and landowners involved. Decisions will be presented to the District for review. District approval will be requested when District controlled lands, as defined in the Memorandum of Understanding, are involved.

## 4.) Authorized Grazing Use

a.) Term Permits: The Bureau will offer grazing permits for a term not to exceed 10 years to users of federal lands in the District as qualifications and circumstance allow. These permits will be computer printed and distributed to the individual operators by the Bureau Manager, with signed copies sent to the District. Grazing permits will authorize grazing use and will specify the grazing capacity available and the kind and class and numbers of domestic or indigenous livestock use, the period of time which the lands may be used by allotment, and may contain other specific terms and conditions. Grazing systems may be incorporated into permits or leases by the Bureau.

All grazing permits or adjustments in grazing permits will be determined for all allotments based on periodic field assessments and forage allocations in the Bureau Land Use Planning Process after public review. Adjustments may also be needed to conform to existing law or regulation.

A term permit that is in question will be discussed with the District before action is taken.

b.) Grazing Applications: The Grazing applications will be computer printed by the Bureau's Grazing Automated Billing System (GABS) (or updated system replacing GABS). This statement will state the allocation of forage and authorized use the grazing permittee qualifies for on public land. It will show the basic grazing schedule including the allotment name or number, kind and class of livestock and periods (seasons) of use. In case of an allotment management plan it will so indicate.

The Bureau will forward the Grazing Application to the Grazing District Secretary for each federal land operator in the State District. The District Secretary will send each member his application by 14 days after receipt each year.

The permittee will indicate brands of livestock, sign and return the application to the Bureau regardless if there is a change or not. Failure to return an application may delay or prevent authorizing grazing on the public land.

Change in Grazing Schedule: If the operator wants to change his grazing schedule, he will make application to the Bureau at least 30 days prior to the earliest turning out, and to the District Secretary, using the Grazing Application Form, or a format, which indicates the following:

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Grazing Area or Allotment  
Number, Kind & Class of Livestock  
Grazing Season From: \_\_\_\_ To: \_\_\_\_

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Active or Nonuse

This application will be considered by the District and the Bureau prior to any District protest meeting. If a change is authorized, the Bureau will make the change and the billing will be issued to the District for payment. (If the requested change is made after ir retrievable billing action has been taken, a \$10 service charge will be required.)

Any operator served with an adverse notice by the District shall have the right of appeal to the Montana Grass Conservation Commission as set out in the Montana Grass Conservation Act.

If the change in grazing use as requested is considered unacceptable by the Bureau Manager, a proposed decision will be issued to the operator by certified mail providing the right of protest to the Bureau Manager as set out in the Grazing Regulations. If no protest is filed within 15 days, the proposed decision becomes the final decision. If a protest is filed, it will be considered in the issuance of the final decisions. In either case, the final decision may be appealed to an Administrative Law Judge as provided for in the Administrative Remedies (43 CFR 4160).

c.) Non-use and temporary non-renewable: Applications for extended non-use and temporary non-renewable will be reviewed by the District and Bureau in accordance to regulations and policies of each before being authorized.

d.) Grazing Fees and Billings: Federal land grazing fees are established annually. Immediately upon receipt of notice of the fee for the forthcoming grazing season, the Bureau Manager will notify the District. Payment will be in accordance with the billing notices.



After the District members' applications have been approved by the Bureau Manager, the individual grazing billings will be transmitted to the District for payment. Routine grazing bills will be generated approximately 30 days before the earliest turn out on the grazing schedule and sent to the District secretary.

The District will prepare the overall ranch unit permit conforming with Bureau billing and District preference. Where District forms are used, copies will be furnished the Bureau Field Office/Field Station Manager upon request.

Bureau regulations require payments for grazing use of public land before the grazing would begin unless specifically provided for by an allotment management plan. Payment not received within 15 days of the due date may be subject to late fees in accordance with 43 CFR 4130.8-1(f).

Where grazing is authorized on the basis of an allotment management plan either of two optional billing procedures may be used as specified (in 43 CFR 4130.8-1(e)). The option used will be mutually agreed upon by the Bureau, the District, and the operator.

Grazing will be authorized in conformance with the plan which will include the operators providing an accurate actual use report to the Bureau within 15 days of leaving the federal land allotment. Bills will be prepared from the actual use report and sent to the District for payment. Failure to return or inaccurate actual use reports may be basis for billing on the basic schedule plus surcharges by the Bureau and District. Failure to return an accurate actual use report as specified may be basis for cancellation of actual use billing privileges in accordance with Bureau regulations.

e.) Transfers: Documentation of transfer of ownership or control of base properties and other private lands grazed in conjunction with the public lands will be furnished to the Bureau by the applicant. Each application transfer requires a \$10 service charge, which is nonrefundable.

Documentation of ownership or control of District controlled lands upon which the State District issues a permit to graze in conjunction with public lands will be furnished to the Bureau Manager by the District upon request.

The Bureau will consult with the District on transfers of grazing privileges occurring in the District. The Bureau, District, Commission and applicant shall meet to resolve problems arising from a transfer. Signed concurrence of the District and the Commission shall be requested in cases of changing base property or changing of allotment designations or allocations.

f.) Exchange of Use Agreements: If a District member wishes to offer private, state or district lands for additional grazing capacity, the "exchange" will be recognized only through a formal agreement between the Bureau Manager and the member on the standard Bureau form. In the event District lands are involved, District and Commission approval will be required. The District will be consulted on Exchange of Use applications and will be furnished copies of the consummated agreement on request.

g.) Livestock control agreements and transfers based on lease of base property: Transfers of grazing privileges based on leases of base property and/or pasturing of livestock not owned by the permittee must be approved by the Bureau, District and Commission may be subject to additional fees assessed by the Bureau and or District in accordance with 43 CFR 4130.8-1(d)

5.) TRESPASS

In the event a trespass is discovered or brought to the attention of either party, the other party will be immediately notified. If only District-controlled lands are involved, the District will take action. If federal lands are involved, joint action will be taken. Whenever possible, the Bureau and District will cooperate in counting livestock and verification of a trespass. The notice of trespass will be served upon the individual in trespass, with a copy sent to the District.

- a.) Either party may take immediate action after notification of the other party.
- b.) The bill for trespass damages will be issued to the individual through the District.
- c.) Trespass and trespass charges will be handles in accordance with 43 CFR 4150, Unauthorized Grazing Use.
- d.) The District may incur expenses associated with the administration, time and travel and other reasonable costs which can be charged to the violator in settlement of the trespass obligation.
- e.) Settlement for willful, and repeated willful violations shall also include all damages to the public lands and other property of the United States; all reasonable expenses incurred by the United States in detecting, resolving violations, and livestock impoundment costs.

6.) Other Special Provisions:

- 1. Project Maintenance: As for all range improvements covered by a cooperative agreement, permittees are responsible for repair and maintenance in good and serviceable condition. Installation, abandonment, relocation, enlargement or other modifications.

VI. ADMINISTRATIVE CONSIDERATIONS

1.) Review and Updating

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The parties to this Cooperative Agreement will meet at least once a year to review progress and/or problems and will review and update this agreement as changes in policy and other needs require. Changes shall not affect outstanding licenses, permits, or leases.

This Cooperative Agreement shall be effective when signed by the parties and shall continue in effect unless sooner canceled by the mutual agreement of the parties. Further, should either party violate any of the terms of this Cooperative Agreement the other party may give the violating party written notice of such violations, said notice to specify the violation. Should said violation not be corrected or discontinued within thirty (30) days after giving such written notice, the other party may cancel this Cooperative Agreement upon thirty (30) days written notice to the violating party. Cancellation shall not affect outstanding permits or leases.

\_\_\_\_\_  
Chairman, \_\_\_\_\_ Cooperative State Grazing District

\_\_\_\_\_  
date

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Bureau of Land Management authorized officer

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date

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Chairman, Montana Grass Conservation Commission

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date

# **STATE AND FEDERAL AGREEMENTS**

## **PROPOSED DRAFT**

### **MEMORANDUM OF UNDERSTANDING**

**Between**

**MONTANA GRASS CONSERVATION COMMISSION**

**And**

**BUREAU OF LAND MANAGEMENT**

**U.S. DEPARTMENT OF THE INTERIOR**

**MONTANA STATE OFFICE**

### **PURPOSE**

This Memorandum of Understanding is between the Bureau of Land Management, hereinafter called the Bureau, and the Montana Grass Conservation Commission, hereinafter called the Commission.

The purpose of this agreement is to create an atmosphere of cooperation and mutual trust between the Bureau and the Commission. A working agreement founded on these principles will allow the Bureau, the Commission and the State Districts to achieve the objectives spelled out in the Federal Land Policy and Management Act, Public Rangelands Improvement Act, the Taylor Grazing Act and the Montana Grass Conservation Act. As a result, benefits will be brought to all the lands within the Districts.

### **POLICY**

The Commission and State Districts are interested in the multiple use of lands, as is the Bureau. This Memorandum of Understanding reaffirms that interest, but also recognizes that nonlivestock uses depend on the cooperation of many. Where such needed cooperation is not present, the parties to this agreement will work to resolve any conflict which may occur with other land users.

To coordinate the use of public lands and the State District-controlled lands within the boundaries of Cooperative State Grazing Districts, the Bureau and the Commission set forth the following policies, objectives and principles:

## Definitions

- A. Cooperative State Grazing District (hereinafter called State District) – a district organized and operating under the provisions of the Montana Grass Conservation Act of 1939 as amended.
- B. Bureau District – An administrative subdivision of the Bureau of Land Management.
- C. All definitions included in 43 CFR 4100.0-5 are embraced in this document.
- D. Public lands – those lands owned by the United States under the jurisdiction of the Bureau.
- E. State District Lands – those private, state, county or other nonfederal lands owned, leased or controlled by a State District.
- F. Multiple Use – the doctrine that a given piece of land may have many uses to people. (FLPMA – PL94-579 – Sec. 103 (c))

## AUTHORITY

The bureau under the National Environmental Policy Act, the Federal Land Policy and Management Act, Public Rangeland Improvement Act, the Taylor Grazing Act, 43 U.S.C.A., Section 315 and the Commission under the Montana Grass Conservation Act, Title 76, Chapter 16, Montana Code Annotated, have similar purposes in providing for (but not limited to) the conservation, protection, restoration and proper use of grass, forage and range resources. The intermingled, diverse ownership land pattern of many Montana areas presented a situation which led to the enactment of the Montana Grass Conservation Act. This Act, which sets up State Grazing Districts, was designed to supplement and implement the Taylor Grazing Act. It provides a useful tool for range management, inasmuch as it brings all lands within the State Districts' boundaries under coordinated administration.

## RESPONSIBILITY

### A. The Bureau

Regulations implementing the National Environmental Policy Act, the Federal Land Policy and Management Act, the Public Rangeland Improvement Act, the Taylor Grazing Act and other applicable Federal Law regulates the management and use of the public lands. The Secretary of the Interior sets policies and establishes rules having the force and effect of law, which control and define the duties and authorities of Bureau officials. The Bureau may enter into cooperative agreements that are consistent with Federal laws and regulations. The Bureau must consider environmental implications of all actions planned or taken, as required by applicable law. The following major principles result:

1. The Bureau will manage the public lands in accordance with the Congressional directives provided in the National Environmental Policy Act, Federal Land Management and Policy Act, Public Rangeland Improvement Act and the Taylor Grazing Act, as well as other public land laws. In furtherance of these directives, the Bureau will manage the grazing use of the public lands based on all present and potential uses and values, giving full consideration to the influence that grazing management has on those uses and values.

2. Only a livestock operator, who controls the base properties to which Federal grazing preferences are attached, may be a preference applicant. It is agreed that no State District shall make application for a grazing permit or lease, except where the State District controls the base properties described above.
3. Federal grazing preferences and the use and enjoyment thereof may be established, revoked, reduced or otherwise modified under the provisions of the Federal Land Policy and Management Act, Public Rangeland Improvement Act, the Taylor Grazing Act and the grazing regulations.

#### B. The Commission

The Commission, with the approval of the Board of Natural Resources and Conservation, supervises and coordinates the formation and operation of State Districts. These State Districts provide a means of cooperation with the Secretary of Interior through the Bureau and other agencies. State Districts facilitate grazing administration where the ownership is diverse and intermingled. They promote stabilization of the livestock industry and the improved management of dependent base ranch properties.

#### C. Coordinated Administration

In order that the highest possible degree of coordination can exist, the BLM District Manager will furnish a representative to meet with the State District Boards at their regular meetings. This representative from BLM will counsel and advise the boards on all matters concerning the administration of the lands involved in this agreement, such as considering applications, making allocations, trespass, range improvements, management plans, fences, repairs to existing improvements, etc.

### **MANAGEMENT CONSIDERATIONS**

#### A. Cooperative Agreements

1. A cooperative agreement may be entered into between any State District and a Bureau District. The cooperative agreement form which implements this memorandum of understanding provides the opportunity to identify and cope with unique operational problems peculiar to individual State Districts and Bureau Districts. Attached Exhibit A contains mandatory sections for each such cooperative agreement.
2. Before entering into cooperative agreement, State Districts will submit a proposal to the Commission for review.
3. Each agreement shall be effective upon approval by the State District and the Bureau District. Provisions for review, updating and cancellation shall be the same as for this Memorandum of Understanding.

4. Once consummated, a new cooperative agreement, together with this memorandum of understanding, supersedes any existing cooperative agreement between the Bureau and an individual State District.

#### B. Grazing Capacities and Levels of Uses

1. The State District will determine grazing capacities on State District Lands.
2. Where the Bureau establishes that public lands possess sufficient public values and the public lands are intermingled with and grazed at the same time as State District lands, the Bureau will make the final determination of the level and timing of grazing use in all pastures which contain public land, in absence of coordinated ranch plans, in cooperation with the permittee/lessee and the State District

#### C. Management Plans

1. Allotment management plans are provided for in the Federal Land Policy and Management Act, Public Rangeland Improvement Act and Taylor Grazing Act. Allotment plans are cooperatively developed between the rancher (s), involved, the State Districts and the Bureau District Manager. Bureau District planning priorities and schedules will be reviewed for each State District Board at the Board's request. After the details are worked out with the rancher (s), each AMP will be presented to the State District for review. State District approval will be required where State District lands are involved. Where permittee/lessee, State District and BLM are unable to agree on an AMP and intensive grazing management has been determined necessary, the Bureau may, in order to comply with the applicable law, incorporate a grazing treatment into a permit/lease.
2. A State District may develop allotment management plans on its own initiative using technical information made available by the Bureau and others. Bureau approval of an AMP is required where public lands are involved.

#### D. Environmental Impact Statement

When the Bureau undertakes to write Environmental Impact Statements on any of the lands within State Grazing Districts, the Bureau shall notify the Commission and the Grazing District (s) involved and shall call for their recommendations and review.

#### E. Grazing Trespass Control

1. Prompt and vigorous handling of trespass is essential. Where public and nonpublic lands are simultaneously involved in a grazing trespass, the State District and the Bureau District, in accordance with their respective responsibilities, shall take appropriate action to halt such violations and to assess damages and penalties and deposit proceeds under applicable State and Federal law. On the public lands, the procedures for handling trespass are covered in Title 43 of the Code of Federal Regulations.
2. It is highly desirable for the State Districts to take the lead in coping with grazing trespass actions due to the greater flexibility of the procedures prescribed by the Montana Grass

Conservation Act. The State Districts are encouraged to assume this responsibility and define it clearly in the cooperative agreement. In the absence of the State District taking the lead, the Bureau will take necessary action.

3. In any event, if public lands are involved, the Bureau must collect its share of penalty payments as prescribed by Federal regulations. The Bureau District Manager will bill the trespasser through the State District, unless the BLM and District agree otherwise.

F. Communication

The BLM and Commission agree to keep each other informed at least quarterly of all ongoing programs and activities. Each agency also agrees, in the event special actions require immediate attention, they will notify the other party before such action is taken.

**ADMINISTRATIVE CONSIDERATIONS**

A. Reviewing and Updating

The parties to this memorandum of understanding will meet at least once a year to review progress and/or problems and will review and update this memorandum as changes in policy and other needs require. Changes shall not affect outstanding licenses, permits or leases.

B. Effective Date – Violations – Termination

This Memorandum of Understanding shall be effective when signed by the parties and shall continue in effect unless terminated by the parties and shall continue in effect unless terminated by mutual agreement of the parties, or terminated as provided herein. Should either party violate any of the terms of this Memorandum of Understanding, the other party may give the violating party written notice of such violation, said notice to specify the violation. Should said violation not be corrected or discontinued within a reasonable time after giving such notice, the other party may cancel this Memorandum of Understanding upon thirty (30) days written notice to the violating party. Cancellation shall not affect outstanding licenses, permits or leases. Further, this memorandum may be terminated by either party after thirty (30) days notice.

Bureau of Land Management

By \_\_\_\_\_ Date \_\_\_\_\_  
State Director-Montana

Montana Grass Conservation Commission

By \_\_\_\_\_ Date \_\_\_\_\_  
Chairman



## **RANGELAND IMPROVEMENT LOAN PROGRAM**

The Rangeland Improvement Loan Program offers low-interest loans to Montana farmers and ranchers who want to develop and improve their rangelands. Many types of projects are eligible for loans, including stockwater development, fencing, reseeding, establishing grazing systems, sagebrush management, wildlife habitat improvement, weed control, and mechanical rangeland renovation.

Loans are funded through a revolving account earmarked for range improvements by the state legislature in 1983. Outstanding loans are repaid to this account, ensuring that funds will be available for future loans. More than \$1,000,000 is currently available for rangeland improvement loans.

To obtain a loan, the borrower applies to the local conservation district. The district supervisors review the loan application and the landowner's conservation plan and forward feasible projects to DNRC. The application is then reviewed by DNRC and the Rangeland Resource Executive Committee. A successful application receives final approval from the director of DNRC.

- \* The maximum loan amount is \$50,000
- \* The interest rate is 3 percent
- \* Loans are available over a 10-year term with annual payments

An administrative fee of 1 percent of the loan amount is charged, and loans are secured by a first or second mortgage. Preference is given to applicants who have additional funding available. Applicants must pay all loan costs, such as title insurance, appraisal fees, and filing fees.

For more information, contact your local conservation district, or Larry Bloxsom, DNRC, 406-444-6668.

## **RANGELAND MONITORING**

Range conditions change from year to year-and within a sin season-due to weather, wildlife foraging, insect infestations, fire, and erosion. To gain the greatest productivity from the range, while also protecting the resource over the long term, livestock producers must grazing use to reflect these changing conditions. *Rangeland monitoring* is the key to making the proper adjustments.

The information gained by monitoring may also help to protect grazing interests for the future. By collecting factual data about trends in range condition, livestock producers can establish a historical record of the actual effects of grazing. Such evidence will help support the continuing role of livestock producers as stewards of the range.

A monitoring program is best carried out by the individual landowner, with help from the local county extension agent, grazing district, conservation district, federal land manager, Soil Conservation Service office, or private professional range consultant. A monitoring program should include four basic steps:

Define the objectives- set attainable goals for short-and-long-term improvements in soil, moisture, and vegetative conditions.

Identify study sites- select and map representative study sites and record baseline data for existing conditions and management practices.

Gather measurable data- keep records of grazing use, precipitation levels, range trends, and other factors.

Photograph study plots annually to create a permanent, objective record of range conditions.

Evaluate the data- compare annual conditions to the baseline data. Adjust grazing use and other management practices as needed to meet the pre-determined objectives.

Remember: proper monitoring takes time and effort, but it is time and effort well invested. Careful planning at the outset will result in a more efficient monitoring program.