

R657. Natural Resources, Wildlife Resources.

R657-28. Use of Division Lands.

R657-28-1. Purpose and Authority

(1) Pursuant to Title 23, Chapter 21 and Subsection 23-14-8(3), this rule defines:

- (a) management objectives for division lands;
- (b) unlawful uses and activities on division lands;
- (c) application procedures and administration on division lands for special use permits; termed easements; leases; grazing permits; seed harvesting; wood products removal; water uses; and sand, gravel, and cinder extraction.

(2) The division may approve a land use only if, in the opinion of the division, such use:

- (a) does not unreasonably conflict with the intended use or purpose of the property or is not detrimental to wildlife or wildlife habitat; or
- (b) the impacts can be avoided, minimized, rectified, mitigated or compensated.

(3) The division may not authorize a land use under this rule without first obtaining the written approval of persons or entities, if any, holding contractual, funding or proprietary interests in the subject property.

(4) Notwithstanding Subsection 23-21-2(6), nothing in this rule shall prevent the division from closing division lands to public use or activity if the division determines that the disturbance from the use or activity is detrimental to wildlife or wildlife habitat.

R657-28-2. Definitions

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

- (a) "Christmas tree" means any pinyon or juniper tree; or other species that the division may so designate on a subject property; or any part thereof cut and removed from the place where it was grown, without the foliage being removed.

- (b) "Commercial gain" means compensation in money, services, or other valuable consideration as part of a scheme or effort to generate income or financial advantage.

- (c) "Cord" means a unit of cut firewood equal to a stack 4x4x8 feet or 128 cubic feet.

- (d) "Division lands" means all land and water owned by the division, or managed by the division under contractual agreement. When lands or waters owned by other parties are managed by the division under contractual agreement, and the terms of the agreement conflict with this rule, the agreement shall govern.

- (e) "Firewood" means any portion of a dead and fallen tree not included in any other definition of this section.

- (f) "Grassbank" means forage reserved on a particular division property to be used as in-kind trade for conservation actions on public or private lands, emergency forage for division-approved grazing permittees, or any other purpose designated by the division.

(g) "In-kind compensation" means anything paid or given in goods, commodities, or services in lieu of monetary payment, that is done on, affixed to, invested in, or beneficial to division lands for the purpose of wildlife habitat maintenance or improvement, or other wildlife-related projects.

(h) "Lease" means a legal agreement authorizing the right to occupy or use division lands for a specified purpose and period of time.

(i) "Motorized vehicles" means a vehicle capable of self-propelling, including but not limited to cars, trucks, motorhomes, off-highway vehicles (OHV), and class II and III electric bicycles.

(j) "Organized event" means any event in which registration fees are collected, commercial gain may occur, prizes are awarded for competition, an enrollment or participation list is created, is advertised, or a group is assembled as part of a club or organizational activity.

(k) "Ornamental" means any coniferous or deciduous tree that is less than 20 feet in height and has a trunk of no more than 6 inches in diameter at breast height, which is removed from a natural setting, generally with roots attached, for transplant to a different location.

(l) "Post" means a portion of a tree or tree stem, generally a Utah juniper, which is less than 10 feet in length and 6 inches in tip diameter.

(m) "Sand, Gravel, Cinders, and Ornamental Rock" means common varieties of sand, gravel, volcanic cinder, or ornamental rock separate and distinct from the mineral estate on division lands.

(n) "Seed Harvesting" means the gathering of any seed on division property for any purpose.

(o) "Special use permit" means a temporary authorization for a specific, non-depleting land use including but not limited to seismic or land surveys, research sites, or time-certain physical access to division lands. This contract vehicle is of a lesser order than a lease or termed easement, is generally associated with a temporary event of short duration, and does not convey any proprietary or other rights or the use to the holder other than those specifically granted in the permit authorization.

(p) "Termed easement" means a legal right to construct on, cross, access, or otherwise use division lands for a limited, specified period of time, including rights-of-way.

(q) "Wood product permit" means a temporary authorization for the harvesting of any tree, or portion of a tree, including Christmas trees, posts, ornamentals, and firewood.

R657-28-3. Management of Division Lands

- (1) The division manages division lands and water rights to:
 - (a) directly or indirectly protect and improve wildlife habitats and watersheds;
 - (b) increase fish and game populations to meet wildlife management plan objectives and expand fishing and hunting opportunities;

(c) conserve, protect, and recover wildlife species in need of conservation and their habitats; and

(d) provide wildlife-related recreational opportunities.

(2) It is not a primary objective for these properties to be managed for other non-wildlife uses.

(3) Division lands are managed in accordance with the Habitat Management Plan (HMP) requirements as outlined in Subsection 23-21-2(1).

R657-28-4. Unlawful Uses and Activities on Division Lands

(1) Unlawful uses and activities on division lands are listed in Section 23-21-7.

(2) In addition, except as authorized by statute, rule, contractual agreement, grazing permit, termed easement, lease, or special use permit, a person may not, on division lands:

(a) enter, use or occupy division lands when posted for a closure;

(b) use, occupy, destroy, move or construct any structure including fences, water control devices, powerlines, pipelines, roads, surveys and section markers, signs, trails, sheds/shacks or blinds;

(c) park a motorized vehicle or trailer or camp for more than 10 consecutive days, including parking in excess of 10 days within any 30 day period, unless the area is posted for a different duration;

(d) take possession of, occupy, or otherwise use division lands for residential purposes; or

(e) use motorized vehicles, as defined in Section R657-28-2, including but not limited to cars, trucks, motorhomes, off-highway vehicles (OHV), and class II and III electric bicycles, except as authorized by declaration, management plan, or posting.

R657-28-5. Domestic Livestock Grazing

(1) The division may issue a grazing permit for domestic livestock grazing to manage vegetation on division lands if the division determines domestic livestock prescribed grazing is necessary for the maintenance or improvement of wildlife habitat.

(2) Domestic livestock grazing on division lands shall occur only under the permission, provisions, and authority given in a grazing permit issued by the division.

(3) Grazing permits may be issued by the division through a proposal solicitation to achieve the division's vegetation or habitat management goals.

(a) Proposals for grazing permits may be solicited through publication on the division website and/or in one or more newspapers of general circulation in the county in which the grazing permit is offered. Notification may be sent to landowners adjoining the subject division lands, and to livestock operators having federal permits to graze a federal allotment adjacent to division lands.

(b) At the conclusion of the advertising process, the division shall review and select the preferred applicant using any of the following criteria. The division shall have full discretion to select which criteria to use.

(i) Resources available to applicant that can be used to control livestock movement on the subject division lands;

(ii) Applicant's ability to meet grazing permit or prescribed management objectives;

(iii) Benefits to wildlife and wildlife habitat that could be expected from applicant's proposal;

(iv) Applicant's demonstrated sound range and agricultural management practices on applicant's property or other property used by applicant;

(v) Applicant's knowledge of principles of range science, range management, or agriculture;

(vi) Applicant's prior history of satisfactory or unsatisfactory use of division lands;

(vii) Applicant's right to the use of adjoining or nearby properties with which management of division lands may be coordinated;

(viii) Proximity of applicant's property to division lands;

(ix) Functionality of subject division lands perimeter fences in controlling livestock movement on or off the subject property;

(x) The size of area upon which the applicant can achieve the division's wildlife or vegetation management goals, thereby reducing the division's administrative costs;

(xi) Amount or value of the compensation offered to the division, including the satisfaction of a minimum quantity or quality of compensation, whether monetary, in-kind, or both, if minimum standards are required by the division.

(c) The division shall have full authority to:

(i) Offer counter-proposals;

(ii) Negotiate with any or all of the applicants to create a proposal which best satisfies the vegetation or wildlife management objectives of the division;

(iii) Terminate the negotiation process entirely;

(iv) Require the respondents to meet privately with the division and present its proposal for the grazing permit application. The division may request parties other than those responding to the initial solicitation to meet with the division; or

(v) Offer the opportunity to current permittees re-applying for the same permit at the conclusion of the available 10 years of renewals to match any better offer received during the solicitation process. This right is to be exercised at the sole discretion of the agency and is intended to assist keeping exemplary grazers on the landscape when they have already demonstrated an exemplary grazing history.

(d) Any party in default on a previous obligation to the division may be disqualified from obtaining a grazing permit from the division.

(e) In the event an unanticipated prescribed grazing treatment is necessary for division lands, the division may enter into a contract with any livestock operator the division determines can provide the prescribed grazing treatment in a timely manner without soliciting competitive proposals; however, grazing permits issued under this

paragraph shall not contain an option to renew and the duration shall be limited to the current grazing season.

(f) Grazing permits may be issued to grazing permittees of adjacent public lands when division lands lack infrastructure such as fencing to manage grazing separately from bordering public lands, such as Bureau of Land Management, U.S. Forest Service, or State Institutional Trust Lands.

(4) The division may suspend domestic livestock grazing authorized under any grazing permit prior to expiration of the grazing permit's grazing period if the division determines the desired degree of utilization on the key forage species has been achieved.

(5) Compensation received by the division for grazing permits may be in-kind compensation or monetary, or a combination of both, as specified by the division.

(a) The permittee is obligated to satisfy its compensation obligations regardless of whether the permittee uses the grazing permit or whether the provisions of the grazing permit have been changed by the division.

(b) The division may require compensation to be paid prior to livestock being placed on division land each year.

(6) The division may terminate a grazing permit for non-compliance or for failure to abide by any terms and conditions in a signed permit.

(a) The division may unilaterally terminate a grazing permit at any time if the permittee has managed the permittee's livestock in a manner that breaches the provisions of the grazing permit. Additionally, if the livestock management of a permittee is sufficiently egregious as to defeat the vegetation management goals of a grazing permit, that livestock operator may be disqualified from applying in the future for grazing permits on division lands.

(b) The division shall notify in writing any livestock operator disqualified from obtaining grazing permits in the future.

(c) The division shall determine the degree to which a permittee has complied with the provisions of the grazing permit, and shall report to the permittee whether compliance was unsatisfactory.

(d) A permittee who is out of compliance with the division may have their permit terminated.

(7) Grazing permit duration and renewals:

(a) Grazing permits shall be issued for a term no greater than one year.

(b) Permittees in good standing with the division may have the option to renew the grazing permit for the coming year provided the division determines continued livestock grazing is necessary to maintain or improve wildlife habitat.

(c) A permittee may hold a grazing permit for a maximum period of ten years through the exercising of an option to renew at which point a new solicitation may be issued if the division determines continued livestock grazing is necessary to maintain or improve wildlife habitat.

(d) The division may issue grazing permits without options to renew, or with options to renew for a shorter aggregate term.

- (8) The division may amend or alter the provisions of the grazing permit contract.
- (9) Grazing permits are non-transferable without the prior written consent of the division.
- (10) Issuance of grazing permits does not convey or grant any property right of division lands to the permittees.
- (11) Trailing and staging livestock across or on division lands:
 - (a) Unless a party has a recorded right-of-way to trail livestock across division lands, prior written approval must be obtained from the division for trailing livestock across division lands.
 - (b) The authorization to trail livestock across division lands shall restrict and limit the route, the number and type of animals, and the time and duration (not to exceed two consecutive days).
 - (c) Staging of livestock on division lands is prohibited without the prior written consent of the division.
- (12) The division may designate specific properties (or portions of a property) as a grassbank.

R657-28-6. Saleable Products

- (1) Wood product permits, as defined in Section R657-28-2, may be issued by the division to applicants who wish to utilize division lands for the removal of trees and wood, when such actions will be beneficial to wildlife and the management of division lands.
 - (a) A wood product permit may specify:
 - (i) A designated area for collection;
 - (ii) The allowed period of time for collection;
 - (iii) The species of trees that may be collected; and
 - (iv) Permittees must accompany wood products from the cutting site.
 - (b) The division may set a maximum number of permits, per person or total permits, to harvest wood products on division lands.
 - (c) Wood product permits are non-transferable and non-refundable.
 - (d) The division may require compensation for wood product permits issued on division lands.
 - (i) The fee for firewood, Christmas tree, ornamental, and post permits is as defined in the fee schedule set forth by the Utah Legislature.
 - (ii) Compensation received by the division may be monetary, in-kind, or both.
 - (e) The division may terminate a wood product permit for non-compliance or for failure to abide by any terms and conditions in a signed wood product permit.
- (2) Firewood, as defined in Section R657-28-2, may be collected on division lands.
 - (a) A person may purchase one permit per year to collect firewood on division lands.
 - (b) A firewood permit allows a person to collect up to 2 cords of wood under the following conditions:

(i) Firewood collection is limited to felled trees after tree removal projects or standing dead trees, unless otherwise designated.

(ii) A living or dead tree containing a nesting cavity may not be felled or collected.

(3) Christmas trees, as defined in Section R657-28-2, may be collected on division lands.

(a) A person may purchase one permit per year to cut a Christmas tree on division lands.

(b) A tag will be issued with each Christmas tree permit.

(c) The division may designate which division lands are open to Christmas tree harvesting.

(d) Only pinyon pine, Rocky Mountain juniper, or Utah juniper, or other species designated by the division on a specific property may be cut and removed.

(e) The tag must be visibly attached to the tree before it is transported from the cutting site.

(f) The Christmas tree permit fee may be waived for any person who possesses a current Utah hunting or fishing license.

(g) Division lands are not accessible for Christmas tree permit collection when division lands are closed. Closures may vary by property.

(4) Ornaments, as defined in Section R657-28-2, may be collected on division lands.

(a) A person may purchase one permit per year to remove ornaments on division lands.

(b) A person may harvest up to six ornaments per permit.

(5) Posts, as defined in Section R657-28-2, may be collected on division lands.

(a) A person may purchase one permit per year to cut posts on division lands.

(b) A person may harvest up to 25 posts per permit.

(6) Wood product contracts may be issued by the division for removing quantities of wood products in excess of those specified in this rule.

(a) Wood product contracts may be issued under a first-come, first-served basis or a competitive bid process if multiple entities express interest in a particular wood resource.

(i) The division shall notify all parties by mail or email who have provided contact information and who have previously indicated their desire to be contacted regarding wood collection opportunities on division lands.

(ii) Negotiated compensation shall reflect a fair market value of the opportunity provided.

(b) Compensation received by the division may be monetary, in-kind, or both.

(c) The division must receive a copy of the applicant's Commercial General Liability insurance, which will be no less than one million dollars per person per occurrence and three million dollars aggregate, and must list Utah Division of Wildlife Resources as a co-insured party.

(7) The division may issue seed harvesting permits, as defined in Section R657-28-2, that grant a permittee exclusive rights to harvest all seeds for a specified species for a single growing season on the division property specified in the permit.

(a) Seed harvesting permits may be issued under a first-come, first-served basis or a competitive bid process.

(b) The division may solicit competitive bids for seed harvesting permits for locations the division determines may provide opportunities for seed harvesting if such determination is made at least three weeks in advance of the anticipated onset of harvest.

(c) The division shall notify all parties by mail or email who have provided contact information and who have previously indicated their desire to be contacted regarding seed harvesting opportunities on division lands.

(d) The bid award and seed harvesting permit shall be issued at least two weeks in advance of the anticipated onset of harvest.

(e) Negotiated compensation shall reflect a fair market value of the opportunity provided.

(i) In order to determine a fair market value of the seed harvesting opportunity, the division may rely upon, but not be limited to, one or more of the following:

(A) results of competitive bids for seed harvesting permits on other division lands;

(B) market information obtained from other landowners, the division's own seed requisitions, or other state agencies;

(C) market information provided by seed wholesalers or retailers; etc.

(ii) Compensation received by the division may be either a percentage of the final cleaned seeds harvested or other in-kind compensation, monetary compensation, or a combination thereof.

(f) The division must receive a copy of the applicant's Commercial General Liability insurance, which will be no less than one million dollars per person per occurrence and three million dollars aggregate, and must list Utah Division of Wildlife Resources as a co-insured party.

(g) All seed delivered to the division must be tagged in accordance with Utah State Seed Laws (Utah Code, Title 4, Chapter 16, Utah Seed Act and Utah Administrative Code R68-8). All seed shall comply with Utah State Noxious Weed Seeds and Weed Seed Restrictions. All seed shall also comply with the Federal Seed Act (7 U.S.C. §. 1551-1610 incl.) and shall also meet minimum germination and purity standards determined by the division.

(h) If the permittee breaches the provisions of the permit, the permit may be terminated and the permittee disqualified from bidding on future seed harvesting permits. The division shall notify the permittee in writing of any breach of the terms of the permit.

(i) Allowed methods of harvest may be specified in the permit.

(8) The division may sell, lease, or otherwise permit the excavation or extraction of any sand, gravel, cinders, ornamental rock, as defined in Section R657-28-2, or other common mineral resource on division lands by any private or public entity when the division determines that such sale, lease, excavation or extraction is consistent with the purposes for which the land was acquired and provides a net-benefit to wildlife.

(a) The division shall receive fair market value for all sand, gravel, cinders, ornamental rock, or other common mineral resources removed from division property.

(b) Reclamation practice shall adhere to Section R647-3-109 unless otherwise specified by the division.

(c) Bonding in an amount equal to two-times the estimated cost of reclamation (as determined by the division) shall be required prior to authorizing the sale, lease, excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands.

(d) Nothing herein shall be construed as superseding the division's legal obligations to obtain approval from any party possessing a legal interest in the property prior to authorizing the extraction or excavation of sand, gravel, cinders, ornamental rock, or other common mineral resource on division property.

R657-28-7. Water

(1) No party possessing a termed easement, lease, grazing permit, special use permit, contract or other form of authorization issued by the division to use division lands shall apply to appropriate water from the surface or subsurface of division lands without first obtaining written permission from the division, and the application is filed in the name of the State of Utah, Division of Wildlife Resources.

(2) Any other party that possesses a water right in which its point of diversion or place of use is located on division lands must apply for and receive any necessary lease, termed easement, grazing permit, special use permit, contract or other form of authorization from the division before any trespass, conveyance structures, impoundments, or any land disturbance is initiated to perfect the right.

(3) All water structures, including impoundments, diversions and conveyance structures or works, used to impound, divert or convey water claimed solely under a division water right shall be the property of the division (unless otherwise agreed upon through an agreement).

R657-28-8. Special Use Permits

(1) As defined in Section R657-28-2, the division may issue a special use permit to applicants who wish to utilize division lands for temporary, non-depleting activities.

(a) Special use permits will be required for research, seismic testing, surveys, organized events, commercial gain, or other special activity or use.

(b) The division may not issue a special use permit on division lands if the use would interfere with the authorized purpose for which the property was acquired.

(c) The division may issue exclusive or non-exclusive special use permits on division lands when the division deems it consistent with Title 23 of the Utah Code and division rules and policies.

(d) Special use permits may not exceed one year from the date of issuance.

(e) At the discretion of the division, special use permit requirements may be waived for volunteers or contractors hired at the request of the division to complete work that falls within the definition of a special use permit.

(2) Applicants who wish to obtain a special use permit on division lands will follow the division's application process.

(a) Applicants shall submit a complete application to the division at least 30 days before the proposed use start date.

(i) When an application is submitted less than 30 days before the proposed use start date, the application will be deemed untimely and the request shall state the grounds for its untimeliness. If the division determines that the untimeliness should be excused because of urgency, unexpected circumstances, or other reasons, the request may be processed and charged a late fee as defined in subsection 4(b).

(b) As part of the application process, applications will include:

(i) A non-refundable application fee, as defined in the fee schedule set forth by the Utah Legislature,

(ii) A completed division special use permit application with required signatures, and

(iii) A copy of the applicant's Commercial General Liability insurance, which will be no less than one million dollars per person per occurrence and three million dollars aggregate, and must list Utah Division of Wildlife Resources as a co-insured party.

(A) The division may waive or alter this requirement for state and local government agencies, public universities, etc. or as deemed appropriate by the division.

(3) The division's review process will begin once a complete application is received.

(a) The division will have 30 days to complete a review of the application and either approve or deny the request. The division will consider the following in its review of the application:

(i) the potential impact to wildlife, wildlife habitat, public recreation, or cultural and historic resources;

(ii) the applicant's consideration for ways to avoid or minimize impacts to wildlife, wildlife habitat, or public recreation;

(iii) the applicant's ability to use alternative locations reasonably available on lands not owned by the division for the requested use;

(iv) third party contractual or legal oversight rights;

(v) whether or not the applicant is in default on any previous obligation to the division;

(vi) whether or not the application is submitted less than 30 days before the proposed use start date; and

(vii) other criteria as may be necessary to evaluate the application.

(b) If the application is approved, the division will notify the applicant of required permit terms and conditions, and compensation requirements. If the application is denied, the division will provide a written notice to the applicant.

(4) The division may require compensation for special use permits issued on division lands.

(a) The compensation for a special use permit shall be identified prior to issuance of the special use permit and will be generally based upon, but not limited to the following factors:

(i) fee schedule set forth by the Utah Legislature;

(ii) the administrative cost incurred to the division in reviewing, preparing, and administering the special use permit;

(iii) the fair market value of the use;

- (iv) impacts to wildlife and wildlife habitat;
 - (v) impacts to public access; and
 - (vi) impacts to public opportunities to engage in wildlife related activities.
- (b) The division may charge a late fee up to \$100, per subsection 2(a)(i) when an applicant has not submitted an application within 30 days of the proposed start date of the activity.
- (c) In lieu of monetary compensation, the division may suggest and accept in-kind compensation in the form of, but not limited to:
- (i) land enhancements,
 - (ii) habitat maintenance or improvements,
 - (iii) data reports,
 - (iv) or other forms of compensation that are beneficial to wildlife management and the division's statutory responsibilities. The in-kind compensation must be greater than or equal to the monetary fees that would have been paid to the division.
- (d) In special circumstances, the division may waive compensation requirements for uses that directly promote or enhance the mission of the division.
- (5) Special use permits are non-transferable.
- (6) The division may terminate a special use permit for non-compliance or for failure to abide by any terms and conditions in a signed special use permit.

R657-28-9. Termed Easements and Leases

(1) As defined in Section R657-28-2, the division may issue a termed easement or lease to applicants who wish to obtain a legal right to use division lands.

(a) A termed easement or lease will be required for, but not limited to, power lines, pipelines, roadways, communication lines, and structures.

(b) The division may issue exclusive or non-exclusive termed easements or leases on division lands when the division finds it consistent with:

- (i) Title 23 of the Utah Code;
- (ii) division rules and policies;
- (iii) the relevant Habitat Management Plan; and
- (iv) any requirements imposed by funding sources used to acquire the property.

(c) Pursuant to Subsection 78B-2-216(2), no termed easement, lease, or other interest in division lands may be acquired by prescription, by adverse possession, nor by any other legal doctrine except as provided by statute.

(d) Termed easements and leases may not exceed thirty years from the date of issuance.

(e) The division may only issue non-termed easements and leases when required by law.

(2) Applicants who wish to obtain a termed easement or lease on division lands will follow the division's application process.

(a) Applicants shall submit a complete termed easement or lease application to the division at least 180 days before the proposed use start date. The filing of an application is deemed to constitute the applicant's offer to acquire a termed easement or lease under the conditions contained in the conveyance document and division rules.

(b) As part of the application process, applications will include:

(i) A non-refundable application fee, as defined in the fee schedule set forth by the Utah Legislature;

(ii) A completed termed easement or lease application with required signatures; and

(iii) All items listed under Step One of the application packet.

(3) The division's review process will begin once all items listed in subsection 2(b) are received.

(a) The division will have 60 days to complete a review of the application and either grant conditional approval or deny the request. The division will consider the following in its review of the application:

(i) the potential impact to wildlife, wildlife habitat, public recreation, or cultural and historic resources;

(ii) the applicant's consideration for ways to avoid or minimize impacts to wildlife, wildlife habitat, or public recreation;

(iii) the applicant's ability to use alternative locations reasonably available on lands not owned by the division for the requested use;

(iv) third party contractual or legal oversight rights;

(v) whether or not the applicant is in default on any previous obligation to the division;

(vi) other criteria as may be necessary to evaluate the application.

(b) If the application is granted conditional approval, the division will notify the applicant and provide a list of the required items listed under Step Two of the termed easement or lease application packet.

(i) The division may not issue a termed easement or lease without first obtaining required written permission from entities who have provided funding assistance when the property was acquired, or any other entity who may have legal rights or restrictions on the property. The division may require additional Step Two items to be carried out in order to fulfill these requirements.

(ii) The signed application is authorization for the division to bill the applicant for costs incurred towards the issuance of the termed easement or lease, including but not limited to: the administrative cost incurred to the division in reviewing, preparing, and administering the contract, NEPA requirements, appraisal and appraisal review, and land surveys. All costs incurred by the division will be reimbursed by the applicant within 30 days of being invoiced.

(iii) If the application is denied, the division will provide a written notice to the applicant.

(4) The division will require compensation for termed easements and leases issued on division lands. Compensation may include use fees, administrative costs, and mitigation costs and shall be identified prior to issuance of the termed easement or lease.

(a) The compensation for use fees will be generally based upon, but not limited to the following factors, determined by whichever is highest:

(i) appraised value of the property being utilized;

(ii) fee schedule set forth by the Utah Legislature; or

(iii) the fair market value of the use.

(b) The compensation for the administrative cost shall be identified based on the personnel time incurred to the division in reviewing, preparing, and administering the termed easement or lease;

(c) The division may require compensation for mitigation for impacts to or loss of wildlife, habitat, and/or public access, and will be generally based upon, but not limited to the following factors:

- (i) number of acres impacted;
- (ii) species impacted;
- (iii) impacts to wildlife and wildlife habitat;
- (iv) impacts to public access; and
- (v) impacts to public opportunities to engage in wildlife related activities.

(d) The division may not issue a termed easement or lease for less than \$500.00.

(e) In lieu of monetary compensation, the division may accept in-kind compensation in the form of, but not limited to:

- (i) land enhancements,
- (ii) habitat maintenance or improvements, and/or
- (iii) other forms of compensation that are beneficial to wildlife management and the division's statutory responsibilities. The in-kind compensation must be greater than or equal to the monetary fees that would have been paid to the division.

(5) Prior to the issuance of a termed easement or lease, or for good cause shown at any time during the term of the termed easement or lease, the division may require the applicant or permittee to post with the division a bond to assure compliance with all terms and conditions of the termed easement or lease.

(a) The bond amount will be equal to or greater than 125% of the estimated construction costs of the authorized improvements, less materials, assessed by a certified engineer.

(b) Bonds posted on termed easements or leases may be used for payment of all monies, rentals, royalties due to the division, reclamation costs, and for compliance with all other terms, conditions, and rules pertaining to the termed easement or lease.

(c) Bonds may be increased or decreased in reasonable amounts, at any time as the division may decide, provided the division provides written notice stating the increase or decrease and the reason(s) for the increase or decrease.

(d) Bonds may be accepted in any of the following forms at the discretion of the division:

- (i) Surety bond with an approved corporate surety registered in Utah.
- (ii) Other forms of surety may be acceptable to the division.

(6) A termed easement or lease may not be assigned, partially assigned, sub-permitted, leased, sub-leased, mortgaged, pledged or otherwise transferred, disposed, or encumbered in any fashion without the prior written consent of the division.

(a) A sublease or assignment may be granted only to a person, firm, association, or corporation qualified to do business in the state of Utah, and which is not in default under the laws of the state of Utah relative to qualification to do business within the state, and is not in default on any previous obligation to the division.

(b) A sublease or assignment shall take effect on the date of the issuance of the assignment. On the effective date of any assignment, the assignee is bound by the

terms of the lease to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

(c) Applicants who wish to obtain a sublease or assignment of an existing agreement on division lands will follow the division's application process.

(i) Applicants shall submit a complete application to the division at least 90 days before the proposed sublease or assignment takes effect.

(ii) As part of the application process, applications will include:

(A) A non-refundable application fee, as defined in the fee schedule set forth by the Utah Legislature,

(B) A completed application with required signatures, and

(C) All items listed under Step One of the application packet.

(d) The division will require compensation for sublease or assignment of a termed easement or lease. Compensation may include:

(i) the difference between what was originally paid for the termed easement or lease and what the division would charge for the termed easement or lease at the time the application for sublease or assignment is submitted; or

(ii) an alternate fee established by, and at the discretion of the division; and

(iii) the administrative cost incurred to the division in reviewing, preparing, and administering the sublease or assignment.

(e) The division may terminate a termed easement or for failure to follow the division's assignment process.

(7) The division may terminate any termed easement or lease, in whole or in part, for:

(a) non-use or abandonment if the permittee fails to begin construction within 365 days of issuance;

(b) non-use or abandonment if the permittee fails to utilize the termed easement or lease for three consecutive years.

(c) non-compliance or for failure to abide by any terms and conditions in a signed agreement, division administrative rules, or Utah Code.

(8) A termed easement or lease may be voluntarily terminated or canceled at the request of the permittee. In such cases, the division will not be responsible for reimbursement of any portion of the fees collected.

(9) A termed easement or lease may be renewed by the division if the applicant is in good standing with the division, other state agencies and with local and state laws and regulations, and when the division deems it consistent with Title 23 of the Utah Code and division rules and policies.

(a) A request for a renewal of an existing termed easement or lease with the same size and use may be issued by the division. The applicant shall submit an application and will be subject to current requirements for compensation, terms and conditions.

(b) A request for a modification in the size, use, or any other alteration to infrastructure use shall be applied for as a new termed easement or lease.

(c) The division may not renew a termed easement or lease without first obtaining written permission from entities who have provided funding assistance when the property was purchased, or any other entity who may have legal rights or

restrictions on the property. The division may require additional application items to be carried out in order to fulfill these requirements.

KEY: wildlife, right-of-way, leases, land use, wood

Date of Enactment or Last Substantive Amendment: August 7, 2007

Notice of Continuation: July 31, 2017

Authorizing, and Implemented or Interpreted Law: 23-13-8