

## R657. Natural Resources, Wildlife Resources.[]

### R657-28. Use of Division Lands.

#### R657-28-1. Purpose and Authority[-]

(1) Pursuant to [~~Utah Code Section 23-14-8 and Section 23-21-2.1~~]Title 23, Chapter 21 and Subsection 23-14-8(3), this rule defines: (a) [~~lawful uses and activities on~~]management objectives for division lands; [~~and~~]

~~[(b) the]~~

(b) unlawful uses and activities on division lands;

(c) application procedures and administration on division lands for [~~rights-of-way; grazing~~]special use permits; [~~agricultural leases~~]termed easements; leases; [~~special use~~]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 [~~land~~]property or is not detrimental to wildlife or wildlife habitat; [~~and~~]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 [~~the~~] persons or entities, if any, holding contractual, funding or proprietary interests in the subject property.

(4) [~~Nothing~~]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.

~~[(5) The division's habitat section is primarily responsible for the management responsibilities of division lands and waters, including the processing of all contracts, permits, and other agreements.]~~

#### R657-28-2. Definitions[-]

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

(2) In addition:

(a) [~~"Agricultural lease" means any lease given for purposes of cultivating crops of any kind.~~]

~~[(b) "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.~~

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

~~(d) "Compensatory Mitigation" means the replacement or substitution of resources or environments cumulatively impacted by a proposed action or cumulative proposed actions.]~~

~~[-(e)-]~~ (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 ~~waters~~ water owned by the division, or managed by the division under ~~written~~ contractual agreement. When lands or waters owned by other parties are managed by the division under ~~written~~ contractual agreement, and the terms of the agreement conflict with this ~~Rule~~ 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 ~~money~~ monetary payment, that is done on, affixed to, invested in, or beneficial to division ~~property~~ lands for the purpose of wildlife habitat maintenance or improvement, or other wildlife-related projects.

(h) "Lease" means ~~an~~ a legal agreement ~~that authorizes~~ authorizing the right to occupy or use ~~of~~ division ~~land~~ lands for a specified ~~term,~~ purpose and ~~for a specified fee or in-kind compensation, or a combination thereof~~ period of time.

~~(k) "Livestock Operator" means any individual or entity that owns or manages domestic livestock.]~~ (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~~ 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.

~~(e) "Right of way Lease" means a lease for an easement or right of way for a specific use of division land including, but not limited to, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails.]~~

~~[(p)]~~ 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.

~~[(e)]~~ n ~~[-]~~ “Seed Harvesting~~[-]~~” means the gathering of any seed on division property for any purpose.

~~[(f)]~~ 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, ~~[organized activity,-]~~ or time-certain physical access ~~[on]~~ 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.

~~[(s)]~~ g ~~[-]~~ “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:

~~[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 ~~[sensitive-]~~ 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.

~~[(1)]~~ 2 ~~[Except]~~ In addition, except as authorized by statute, rule, contractual agreement, grazing permit, termed easement, lease, or special use permit, ~~[certificates of registration, or public notice,-]~~ a person may not, on division ~~[land, may not]~~ lands:

(a) ~~[remove, extract, use, consume or destroy any improvement or cultural or historic resource;]~~

~~[(b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock, or other common mineral resource, or vegetation resource;]~~

~~[(c) allow livestock to graze, except as allowed by permit;]~~

~~[(d) remove any plant or portion thereof for purposes of commercial gain;]~~

~~[(e) enter, use, or occupy division land when posted against such entry, use, or occupancy;]~~

~~[(f) enter, use[, or] occupy division [land in group sizes greater than twenty five (25) people;]~~

~~[(g) enter, use, or occupy division land while engaged in an organized event;]~~

~~[(h) 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, [or] signs, trails, sheds/shacks or blinds;

~~[(i) prohibit, prevent, or obstruct public entry on division lands when such public entry is authorized by the division;]~~

~~[(j) attempt to manage or control division lands in a manner inconsistent with division management plans, rules, or policies;]~~

~~[(k) solicit, promote, negotiate, barter, sell or trade any product or service on, or obtained from, division lands for commercial gain;]~~

~~[(l)~~

(c) park a [~~motor~~]motorized vehicle or trailer or camp for more than [~~44~~]10 consecutive days, including parking in excess of 10 days within any 30 day period, unless the area is posted for a different duration;

~~[(m) light a fire without adequate provision to prevent spreading or leave a fire unattended;]~~

~~[(n) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;]~~[d] take possession of, occupy, or otherwise use division lands for residential purposes; or

[(e)e) use motorized vehicles[~~of any kind~~], 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[~~; or~~]

~~[(p) use division lands for any purpose that otherwise violates applicable land use restrictions imposed in statute, rule, or by the division.]~~

~~[(2) A person or entity which unlawfully uses division lands is liable for damages in the amount of:]~~

~~[(a) the value of the resource removed, destroyed, or extracted;]~~

~~[(b) the amount of damage committed;]~~

~~[(c) the value of any losses suffered as a result of interference with authorized activities; and]~~

~~[(d) the consideration which would have been charged by the division for use of the land during the period of trespass, whichever is greater.]~~

~~[(3) The division's law enforcement section shall be primarily responsible for the investigation of any unlawful use of, or activity on, division lands.]~~

~~[(4) The division's law enforcement section shall be primarily responsible for the~~

~~investigation of facts pertinent to filing for judicial remedy related to any unlawful use of, or activity on, division lands.]~~

~~[ (5) The provisions of this Section do not apply to division employees or division volunteers while in the performance of their duties.]~~

~~[ (6) Except as otherwise provided by statute, the criminal penalty for a violation of any provision of this Section is prescribed in Section 23-13-11].~~

#### **R657-28-5. Domestic Livestock Grazing**~~[-on Division Lands.]~~

(1) The division may ~~[use]~~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~~[on particular division properties].~~

(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~~[process in accordance with R657-28-20]~~ to achieve the division~~[']~~'s vegetation or ~~[wildlife]~~habitat management goals.

~~[(4)-]~~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 [a] division [~~property~~lands], the division [~~reserves the right to~~]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[~~in duration~~].

~~[(5) Grazing permits issued by the division shall include:]~~

~~[— (a) The name, and a map, of the subject property to be grazed;]~~

~~[— (b) A description of the desired vegetation community structure sought through the use of domestic livestock grazing;]~~

~~[— (c) Identification of the type of domestic livestock needed to achieve the desired vegetation community structure;]~~

~~[— (d) Identification of the key forage species for which utilization is to be measured;]~~

~~[— (e) A description of the timing and intensity of utilization sought on key forage species that will achieve the desired vegetation community structure;]~~

~~[— (f) The division's best estimate of the stocking density, period of grazing, and authorized forage harvesting stated in animal unit months that will achieve its vegetation management goals;]~~

~~[— (g) A statement that the division may unilaterally suspend the grazing period if utilization goals for key forage species are met or exceeded prior to the end of the grazing period stated in the permit; or if events such as drought or fire make suspension necessary in order to prevent harm to the vegetation or wildlife resources.]~~

~~[— (h) Identification of a reserved grass bank, if any, that the division may at its option~~

~~offer as emergency forage for a permittee if the period of grazing set forth in the permit is suspended by the division.]~~

~~[(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the permittee and the division.]~~

~~[(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land.]~~

~~[(k) A statement assuring public access to division property by the permittee.]~~

~~[(l) A statement that the permittee is solely responsible for fence maintenance and control of permittee's livestock during the period of the permit.]~~

~~[(6)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 ~~at its option~~ 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.~~

~~[(a) The division shall attempt to verbally notify the livestock operator and send written notification that utilization goals have been achieved and that domestic livestock grazing is suspended.]~~

~~[(b) The livestock operator shall remove its domestic animals within seven (7) days of the postmark date on the written notification of suspension.]~~

~~[(c) Animals remaining on division lands after the seven (7) day period will be considered in trespass.]~~

~~[(7)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.~~

~~[(8)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.~~

~~[(9) Compensation due from the permittee shall be pro-rated in cases where the division suspends the period of grazing or animal unit months set forth in the permit.]~~

~~[(10)]~~

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

~~**[R657-28-6. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Termination of Grazing Permit]**~~

~~\_\_\_\_\_ (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.~~

([4]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.

~~[-(a) If~~ 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 ~~[property]~~lands.

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

([2]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 ~~[satisfactory or]~~unsatisfactory.

### ~~[R657-28-7. Grazing of Domestic Livestock on Division Lands--]~~

~~\_\_\_\_\_ (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 -- Option to Renew.]~~

~~[-(1) Permits]~~permits shall be issued for a term no greater than one year.

([2]b) Permittees ~~[who receive a satisfactory review for]~~in good standing with the ~~[previous year]~~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~~[-; except the division may at its discretion:]~~

~~[-\_\_\_\_\_ (a) Alter the provisions of the permit contract describing key forage species, timing, intensity, location, and duration of domestic livestock grazing if the division determines that such alteration will better achieve its vegetation management goals;]~~

~~[-\_\_\_\_\_ (b) Identify a different in-kind compensation on division property that is reasonably comparable in value to the in-kind compensation of the original grazing permit.]~~

~~[-\_\_\_\_\_ (i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the permit to competitive bidding].~~

~~(c) Withdraw the subject property from domestic livestock grazing for any reason whatsoever.]~~

~~[-\_\_\_\_\_ (3) Should the terms of the original grazing permit be changed by the division, the permittee shall have the option to renew the permit.]~~

~~[-\_\_\_\_\_ (4) A permittee may hold a grazing permit [on a subject division property] for a maximum period of ten years through the exercising of an option to renew[-; except the division may put the permit out to competitive proposal solicitation at the conclusion of the fifth year;]~~

~~[-\_\_\_\_\_ (5) The permittee having the grazing permit for the preceding ten years on a subject division property is entitled to submit a proposal for grazing the same division property if the permittee has not been disqualified from consideration as a permittee on division lands]~~ at which point a new solicitation may be issued if the division determines continued livestock grazing is necessary to maintain or improve wildlife habitat.

([6]d) The division [~~reserves the right to~~may] issue grazing permits without options to renew, or with options to renew for a shorter aggregate term.

**[~~R657-28-8. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Legal Effect.~~]**

[~~— (1) Grazing permits transfer no right, title, or interest in any lands or resources held by the division, nor any exclusive right of possession, and grant only the authorized utilization of forage.~~]

[~~— (2) Permittees have no property rights in a~~

(8) The division may amend or alter the provisions of the grazing permit[.]

**[~~R657-28-9. Grazing of Domestic Livestock on Division Lands -- Grazing Permits -- Range Improvement Projects.~~]**

[~~— (1) No range improvement project, including, but not limited to, the building of fences or corrals; structures used to impound, divert, or convey water claimed solely under a division water right; prescribed burning; seeding; chaining; harrowing; irrigation; etc., shall be conducted on division lands~~] contract.

(9) Grazing permits are non-transferable without the [~~express~~]prior written consent of the division.

[~~— (2) Range improvements, including fences, corrals, water works, etc., constructed on division property by permittee and which are affixed to the property shall be property of the division.~~]

[~~— (3) Permittee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the permittee.~~]

[~~— (4) All permittees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.~~]

**[~~R657-28-10. Grazing of Domestic Livestock on Division Lands -- Trespass.~~]**

[~~— (1) Unauthorized livestock management activities on division land shall be considered trespass. These activities include, but are not limited to:~~]

[~~— (a) The use of forage at times and at places not authorized in a permit.~~]

[~~— (b) The placement of numbers of livestock on division land which, if left on the division land for the length of time allowed in the permit, would result in forage utilization in excess of that authorized by the permit.~~]

[~~— (c) Grazing,~~]

(10) Issuance of grazing permits does not convey or grant any property right of division lands to the permittees.

(11) Trailing and staging[~~, or trailing~~] livestock[ ~~on or~~] across or on division [~~land~~ without a valid permit or publicly-recorded right of entry.]lands:

[~~— (d) The dumping of garbage or any other material on the division land.~~]

[~~— (2) The permittee shall cooperate with the division in seeking judicial remedy against owners of trespass livestock on division lands for lost forage or other values.~~]

**[~~R657-28-11. Grazing of Domestic Livestock on Division Lands -- Trailing and Staging~~]**

### **~~Livestock Across or On Division Lands.~~**

~~(1)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.

~~(2)b~~ The authorization to trail livestock across division ~~land~~lands shall restrict and limit the route, the number and type of animals, and the time and duration~~;~~ (not to exceed two consecutive days).

~~(3)c~~ Staging of livestock on division lands is prohibited without the prior written consent of the division

### **~~R657-28-12. Grazing of Domestic Livestock on Division Lands -- Grassbanks.~~**

~~(1)12~~ The division may designate specific properties ~~[as grassbanks for purposes]~~~~(or portions~~ of~~;~~

~~[—(1) a property]~~ ~~[Trading forage for habitat conservation actions on private or public lands;]~~~~as a grassbank.~~

~~[—(b) Providing emergency forage for a division grazing permittee when goals of domestic livestock impacts to vegetation have been achieved prior to the expiration of a permit's grazing period; or]~~

~~[—(c) Any other purpose the division may identify.]~~

~~[—(2) Provisions required for a grazing permit under R657-28-5(5) shall be defined for grassbank properties prior to their forage reserves being used.]~~

~~[—(3) Nothing herein shall be construed to obligate the division to provide a grassbank or forage reserve when a grazing permittee is required by the division to suspend grazing prior to the expiration of the grazing period described in the permit, nor shall the division be required to utilize forage reserves under any other circumstance unless previously agreed to in writing by the division.]~~

### **~~R657-28-13. Wood Products -- General Restrictions~~**

#### **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.

~~(1)a~~ A ~~[person may not cut or remove any]~~wood product ~~[from division lands without obtaining the proper permit, tag, or contract and having the permit, tag, or contract in possession.]~~permit may specify:

~~(2)i~~ A~~[wood products collection contract or permit may be issued for a]~~ designated area ~~[and a specified]~~for collection;

(ii) The allowed period of time for~~;~~  
~~[(a) Removing trees]~~collection;

~~[(b) Harvesting Christmas trees; or]~~

~~[—(c) Collecting firewood, posts, or ornamentals.]~~

~~[(3) A person may not cut or remove wood products during any period of time, or on any area not specified on the permit.]~~

~~[(4) Permits are nontransferable and nonrefundable.]~~ iii) The species of trees that may be collected; and

~~[(5)iv)~~ Permittees must accompany wood products from the cutting site.

~~[(6) Permits are available at the Salt Lake and regional offices.]~~

~~[(7)b)~~ The division may set a maximum number of permits, per person or total permits, to harvest wood products on division lands.

#### **~~[R657-28-14. Wood Products -- Firewood Permits]~~**

(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.

~~[(4)a)~~ A person may purchase one permit per year to collect firewood on division lands.

~~[(2)b)~~ A firewood permit allows a person to collect up to 2 cords of wood under the following conditions:

~~[(a)i)~~ Firewood collection is limited to felled trees ~~[on chained areas, except in]~~ after tree removal projects or standing dead trees, unless otherwise designated ~~[live tree removal areas].~~

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

~~(3) [Firewood]Christmas trees, as defined in Section R657-28-2,~~ may be collected ~~[from May 1 through November 30 or as otherwise specified in the permit]~~ on division lands.

~~[(4) The fee for a firewood permit is that which is set by the Utah Legislature yearly.]~~

#### **~~[R657-28-15. Wood Products -- Christmas Tree Permits.]~~**

~~[(4)a)~~ A person may purchase one permit per year to cut a Christmas tree on division lands.

~~[(2)b)~~ A tag will be issued with each Christmas tree permit.

~~[(3)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.

(~~4~~e) The tag must be visibly attached to the tree before it is transported from the cutting site.

~~(5) The fee for a Christmas tree permit is that which is set by the Utah Legislature yearly.~~

~~(6)f)~~ The Christmas tree permit fee may be waived for any person who possesses a current Utah hunting or fishing license.

~~(7g)~~ Division lands are ~~[closed from December 1 through April 30 or as otherwise specified in the permit.]~~

~~[R657-28-16. Wood Products--]~~ not accessible for Christmas tree permit collection when division lands are closed. Closures may vary by property.

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

(1a) A person may purchase one permit per year to remove ornaments ~~[or]~~ 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.

~~(2b)~~ A person may harvest ~~[ornaments.]~~ up to ~~[an aggregate value of \$60 per permit.]~~

~~[(3) A person may harvest]~~ 25 posts ~~[up to an aggregate value of \$50.]~~ per permit.

~~[(4) The value of ornaments and posts are those values determined yearly by the Utah Legislature; compensation]~~

(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.

#### ~~[R657-28-17. Wood Products-- Contract Agreements.]~~

~~[(1) Contracts may be issued by the division for removing quantities of wood products in excess of those specified in this rule.]~~

~~[(2) Contracts shall be awarded through the competitive proposal solicitation process described in R657-28-20.]~~

~~[(3) Compensation may be either in-kind, monetary, or both.]~~

#### ~~[R657-28-18. Seed Harvesting]~~

(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.

(~~1~~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.

(~~2~~a) Seed harvesting permits may be issued under a [~~competitive bid process or a~~]first-come, first-served basis or a competitive bid process.

(~~a~~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.

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

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

~~(b) The division may issue seed harvesting permits on a first-come, first-served basis for locations the division determines may provide opportunities for seed harvesting if such determination is made after three weeks prior to the anticipated onset of harvest.]~~

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

(~~iii~~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 [~~properties~~]lands;

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

(C) [~~market information provided by a seed harvester's competitors; or~~]

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

(~~3~~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.

~~(a)~~

(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 [~~as compensation shall meet standards set forth in the Federal Seed Act (Title 7, Ch. 37), the~~]must be tagged in accordance with Utah State Seed [Act]Laws (Utah Code, Title 4, Chapter 16[;]), [and]Utah Seed [Law (]Act and Utah Administrative [Rule]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.

~~[(4) Permittees shall compensate the division in whole regardless of whether seeds are harvested, unless harvest was precluded by circumstances beyond the permittee's control.]~~

~~[-(5)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.~~

~~[(6) Methods of harvest that in the judgment of the division may kill or seriously injure source plants are expressly prohibited.]~~

~~[—(7) The permittee may post the specified division property as prohibited against unauthorized seed harvesting provided the posting prohibits harvesting of only those seed species which the permittee is granted exclusive right to harvest. Permittee must remove signs after harvest of seed.]~~

### **[R657-28-19. Agricultural Leases.]**

~~[—(1) The division may lease lands or water rights for purposes of cultivated crop production only when the division determines that such a lease would provide a net benefit for wildlife or would facilitate wildlife management activities that would provide a net benefit for wildlife.]~~

~~[—(2) Leases may be issued for a term no greater than one year, with an option to renew in accordance with Subsection (10).]~~

~~[—(3) Compensation received by the division for agricultural leases may be either a fixed rate per acre or in kind or a combination of both as specified by the division, providing that the value received is customary and reasonable.]~~

~~[—(4) The lessee is obligated to satisfy its compensation obligations regardless of whether the lessee uses the lease.]~~

~~[—(5) The division may require the lessee to acquire crop insurance if the division is to receive a share of the harvested crop.]~~

~~[—(6) At the time of initial lease payment, the lessee may be required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.]~~

~~[—(7) Agricultural leases may be issued by the division through a competitive proposal solicitation process set forth in R657-28-20.]~~

~~[—(8) Agricultural Leases issued by the division shall include:]~~

~~[—(a) The name, and a map, of the subject property to be leased;]~~

~~[—(b) A description of the vegetation management goals to be achieved, including type of crop to be grown and a description of crop residue, if any, to be left after harvest to benefit wildlife; or any other vegetation parameter desired for the subject lease property;]~~

~~[—(c) A description of the benefit expected for wildlife;]~~

~~[—(d) A description of the rights of the lessee and the division;]~~

~~[—(e) The type and amount of compensation to be delivered to the division, and the date compensation is due;]~~

~~[—(f) A provision for adjusting the base rental fee, if any, over the life of the lease to reflect changes in the market value of the lease;]~~

~~[—(g) A statement describing how reporting is to be made of the quantity of crop~~

~~harvested if a crop share is identified as in-kind compensation;]~~

~~[(h) A statement that the division may unilaterally terminate the lease if lessee breaches the terms of the lease contract;]~~

~~[(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the lessee and the division;]~~

~~[(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land;]~~

~~[(k) A statement assuring non-motorized public access to division property by the lessee;]~~

~~[(l) A statement that the lessee is solely responsible for fence maintenance of the leased property;]~~

~~[(m) A statement that the division is held harmless and indemnified for acts of God or any and all losses due to domestic livestock or public or wildlife use of the subject property during the period of the lease;]~~

~~[(n) A statement indemnifying the state from all actions of the lessee;]~~

~~[(o) Lessee's consent to suit or arbitration arising under terms of the lease or as a result of operations carried on under the lease;]~~

~~[(9) The division shall determine the degree to which a lessee has complied with the provisions of the lease, and shall report to the lessee whether compliance was satisfactory or unsatisfactory.]~~

~~[(10) Lessees who receive a satisfactory review for the previous year may have the option to renew the lease for the coming year provided the division determines the lease continues to provide a net benefit for wildlife or facilitates wildlife management activities that provide a net benefit for wildlife; except the division may at its discretion;]~~

~~[(a) Withdraw the subject property from lease if the division determines the lease has failed to benefit wildlife or facilitate wildlife management goals;]~~

~~[(b) Alter the non-compensatory provisions of the lease if the division determines that such alteration will better achieve its wildlife management goals;]~~

~~[(c) Identify a different in-kind compensation on division property that is reasonably comparable in value to the market-adjusted in-kind compensation of the original lease;]~~

~~[(i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the lease to competitive proposal solicitation.]~~

~~[(d) Should the terms of the original lease agreement be changed by the division, the lessee shall have the option to renew the lease.]~~

~~[(i) A lessee may hold a lease on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the lease out to competitive proposal solicitation at the conclusion of the fifth year;]~~

~~[(ii) The lessee having the lease for the preceding ten years on a subject division property is entitled to submit a competitive proposal on the same division property if the lessee has not been disqualified from consideration as a lessee on division lands.]~~

~~[(e) The division reserves the right to issue leases without options to renew, or with options to renew for a shorter aggregate term.]~~

~~[(11) No improvement, including the building of fences, corrals, and water structures used to impound, divert, or convey water claimed solely under a division water right; or management practice, including prescribed burning, seeding, chaining, harrowing, irrigation, etc.; shall be constructed or conducted on division lands without the express written consent of the division.]~~

~~[(12) All improvements, including fences, corrals, water structures, etc., constructed on division property by lessee and which are affixed to the property shall be property of the division.]~~

~~[(a) Lessee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the lessee.]~~

~~[(13) All lessees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.]~~

### **[R657-28-20. Competitive Proposal Solicitation Process.]**

~~[(1) Grazing permits, leases, or wood harvesting contracts may be issued by the division through a competitive proposal solicitation process to achieve the division's vegetation or wildlife management goals. The division may use the process described herein for the removal of other natural resources from division lands for commercial gain by any party.]~~

~~[(2) Proposals for grazing permits, leases, or wood harvesting contracts will be solicited through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit or lease is offered at least 30 days or more in advance of the deadline for proposal submittals. At least 30 days prior to the deadline for proposal submittals, notification will be sent to landowners adjoining the subject division property, and to livestock operators having federal permits to graze a federal allotment adjacent to division property.]~~

~~[(a) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the subject permit, lease, or wood harvesting contract. The division shall also identify the desired form of compensation, whether monetary, in-kind, or both.]~~

~~[(b) The division shall make available at an applicant's request additional information, including information describing the division's management objectives for the subject property to be achieved through a grazing permit, lease, or wood harvesting contract, that would assist an applicant in making a reasonably informed proposal.]~~

~~[(3) At the conclusion of the advertising process, the division shall review and select the preferred applicant using either of the following processes. The division shall have full discretion to select which process to use:]~~

~~[(a) The division shall allow all applicants at least 20 days from the date of mailing of notice to submit a sealed proposal. Applicants not submitting a proposal within the prescribed time period shall have their proposals rejected. Competing proposals are evaluated using the following criteria where applicable:]~~

~~[(i) Resources available to applicant that can be used to control livestock movement on the subject division property:]~~

~~[(ii) Applicant's ability to meet lease 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 a division property may be coordinated;]~~

~~[(viii) Proximity of applicant's property to division property;]~~

~~[(ix) Functionality of subject division property's 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 grazing permit, lease, or wood harvesting contract 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.]~~

~~[(b) The division may invite each qualified applicant to meet privately with the division and present its proposal for the subject property's grazing permit, lease, or wood harvesting contract. The division may request parties other than those responding to the initial solicitation to meet with the division. 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; or]~~

~~[(iv) Require the respondents to proceed through the process described in Subsection (3)(a).]~~

~~[(v) The division may select the preferred applicant based on criteria delineated in Subsection (3)(a)(i) through (xi), or may withdraw the property from consideration for grazing, leasing, or wood harvesting.]~~

~~[(4) Any party in default on a previous obligation to the division may be disqualified from obtaining a grazing permit, special use permit, lease, or wood harvesting contract from the division.]~~

#### **[R657-28-21. Applications to Appropriate Water on Division Lands.]**

~~[No party possessing a right-of-way lease, grazing permit, agricultural lease, non-agricultural lease, 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. All water structures, including impoundment, diversion 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.]~~

#### **[R657-28-22. Extraction of Sand, Gravel, Cinders, and Ornamental Rock on Division**

**Lands.]**

~~[(1) The division shall not]~~(j) 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~~[-except]~~ 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.

~~[(2)a]~~ The division shall receive fair market value for all sand, gravel, cinders, ornamental rock, or other common mineral resources removed from division property.

~~[(3) Following the completion of excavations, the division shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of, but not necessarily be limited to, sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical or as otherwise specified by the division, stabilization, closure, or removal of access roads as determined by the division, replacement of natural topsoils, revegetation using a seed mixture and rate of application as specified by the division, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.]~~b) Reclamation practice shall adhere to Section R647-3-109 unless otherwise specified by the division.

~~[(4)c]~~ Bonding in an amount equal to two-times the estimated cost of reclamation (as determined by the division) shall be required~~[-by the division]~~ prior to authorizing the sale, lease, excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands.

~~[(5)d]~~ Nothing herein shall be construed as ~~[supereeding]~~superseding the division~~[']~~'s legal obligations to obtain approval from ~~[the U.S. Fish and Wildlife Service or]~~ any~~[-other]~~ 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.

**R~~[657-28-23. Rights-of-Way Leases, Non-Agricultural Leases of Division Lands, Special Use Permits -- Application Procedures -- Required Information -- Conditional Approval.]~~657-28-7. Water**

~~[(1) To]~~

(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 [a right-of-way] and receive any necessary lease, termed easement, grazing permit, special use permit, contract or [non-agricultural lease] other form of authorization from the division [lands, a person

~~shall;~~before any trespass, conveyance structures, impoundments, or any land disturbance is initiated to perfect the right.

~~[(a) complete and submit an application provided by the division to the regional supervisor in the appropriate division regional office;]~~

~~[(b) pay a nonrefundable application fee;]~~

~~[(c) submit the application and application fee at least 120 days prior to the proposed construction or occupancy date; and]~~

~~[(d) include the following information with the application:]~~

~~[(i) A 7.5-minute topographic map or aerial photo showing the proposed project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.]~~

~~[(ii) Evidence of an ownership or leasehold interest in the mineral estate where development of that estate is the purpose for applicant's seeking a right-of-way lease.]~~

(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~~[, or lease]~~.

~~[(iii) A project plan that includes:]~~

~~[(A) project alternatives, including alternatives which do not affect the division;]~~

~~[(B) a description of the activity to occur, or infrastructure to be constructed, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. The description should be sufficiently detailed as to provide an accurate and complete representation of the proposed action;]~~

~~[(C) identification of adverse impacts to wildlife and wildlife habitat associated with the proposed use and how they will be avoided, minimized, or mitigated; and]~~

~~[(D) project alternatives that do not affect division land which were considered but rejected, and the specific reasons those alternatives were rejected]~~

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).

(2)(b) [Upon receiving]As part of the application[,], process, applications will include:

(i) A non-refundable application fee, [and the information required in Subsection (1)(d)]as defined in the fee schedule set forth by the Utah Legislature,

(ii) A completed division [director or the director's designee may either deny the application or grant a conditional approval within 60 days.]

~~[(3) If the application is denied, the director shall provide a written notice to the applicant.]~~

~~[(4) Before final approval is granted the division may require the applicant to provide the following additional information:]~~

~~[(a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline survey describing the proposed right-of-way lease and its width is adequate for a pipeline, road, power line, or similar use.]~~

~~[(b) An electronic file depicting the lease that is compatible with, and requires no editing for, accurate downloading into geographic systems information software used]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.

~~[(e) Evidence that the applicant has given the State Historic Preservation Officer a reasonable opportunity to review and comment on the proposed project as required by Utah Code Section 9-8-404.]~~

~~[(d) A biological assessment, including an analysis of the potential direct, indirect, and cumulative effects the proposed project may have on wildlife, wildlife habitat, and public recreational use opportunities.]~~

~~[(e) A survey of threatened, endangered and candidate plant and animal species, Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.]~~

~~[(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal, and local laws.]~~

~~[(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.]~~

~~[R657-28-24. Rights-of-Way Leases, Leases of Division Lands, Special Use Permits--Final Determination--Project Review--Contract Provisions.]~~

~~[----- (1) Within 60]~~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~~[receiving]~~ the application~~[fee]~~ and ~~[information required in Section R657-28-23, or 60 days of granting conditional approval, whichever is greater,]~~either approve or deny the request. The division ~~[director or]~~will consider the ~~[director's designee shall make a final determination to affirm or modify the conditional approval or deny]~~following in its review of the application~~[.]~~

~~[----- (2) The director or the director's designee shall deny an application if]:~~

~~[(a) the application does not include the information requested by the division;]~~  
~~[-(b)]~~i) the potential impact to wildlife, wildlife habitat, public recreation, or cultural ~~[or]~~and historic resources~~[is unacceptable];~~

~~[(e)]~~ii) the applicant~~[has not, in the opinion of the division, adequately considered]~~'s consideration for ways to avoid or minimize impacts ~~[or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts]~~to wildlife, wildlife habitat, or public recreation;

~~[(d)]~~iii) [there are, in the opinion of the division,]the applicant's ability to use alternative locations reasonably available on lands not owned by the division for the requested use~~[, including organized events that may harm];~~

(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 ~~[or]~~and wildlife habitat~~[, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails];~~~~[or]~~

~~[----- (e) if the applicant's project affects property in which a]~~

(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 [~~has~~]contractual or legal oversight rights[~~and the project is rejected by that party.~~];

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

[~~—(3)~~]

(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 [~~shall~~]will provide a written notice to the applicant.

~~(4) [A right-of-way lease or other form of lease may include provisions requiring the applicant to:]~~

~~[—(a) Restore all structures including fences, roads, and existing facilities, and regrade as nearly as practical to the pre-project grade and contour, and revegetate the impacted area to division specifications;]~~

~~[—(b) Adhere to the terms of the applicant's approved project plan prescribed in Subsection R657-28-23(1)(d)(iii); and]~~

~~[—(c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, re-vegetation, compensatory mitigation, and all other expenses]~~

associated with the project.]

~~[(5) A special use permit shall include any applicable provision prescribed in Subsection (4).]~~

~~[(6) A right-of-way lease or division land lease may be granted for a maximum of 30 years from the date of signing; however, the division explicitly reserves the right to grant leases for shorter periods.]~~

~~[(7) The termination date for a lease will be determined by the division after assessing the activity applied for and the needs of the lessee.]~~

~~[(8) A special use permit may only be granted for a maximum period of one year from the date of signing.]~~

**~~[R657-28-25. Right-of-Way Leases, Division Land Leases, Special Use Permits-- Compensation.]~~**

~~[(1) The division shall receive]~~The division will require compensation for ~~[all right-of-way]~~termed easements and leases[:]; ~~issued on~~ division ~~[land leases, and special use permits consistent with the following requirements:]~~

~~[(a)]~~lands. Compensation may ~~[be based on]~~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) the cost incurred to the division in evaluating and preparing the right-of-way lease, division land lease, or special use permit;]~~

~~[(ii) the cost incurred by the division in administering the right-of-way lease, division land lease, or special use permit;]~~

~~[(iii) the ]~~ii) appraised value of the [affected]property being utilized;

~~[(iv)]~~

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

(iii) the fair market value of the use[:].

~~[(v) fee schedule set forth by the Utah Legislature]~~

(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;

~~[(vi)]~~iii) impacts to wildlife and wildlife habitat;

~~[(vii)]~~iv) impacts to public access; and

~~[(viii)]~~v) impacts to public opportunities to engage in wildlife related activities.

~~[(b)]~~

(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[r]:

(i) land enhancements,

(ii) habitat maintenance or improvements, [~~land exchange, public access for wildlife related activities,~~]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.

~~[(2) Every right-of-way lease, division land lease, and special use permit shall be documented in writing and contain the following information:]~~

~~[(a) the names of the parties and other persons involved in the transaction;]~~

~~[(b) the signature of the parties and other persons involved in the transaction. The individual signing on behalf of the applicant must provide evidence he/she is authorized to sign on the applicant's behalf;]~~

~~[(c) a detailed description of the compensation, including compensatory mitigation;]~~

~~[(d) a detailed description of the location, terms, and conditions of the right-of-way lease, division land lease, or special use permit;]~~

~~[(e) a statement that the parties and signatories to the transaction enter therein voluntarily and mutually agree to its terms and conditions;]~~

~~[(f) the commencement and termination date of the right-of-way lease, division land lease, or special use permit.]~~

**~~[R657-28-26. Termination of Right-of-Way Leases, Division Land and Water Leases, Grazing Permits, and Special Use Permits.]~~**

~~[(1) Unless specified elsewhere in this Rule, the provisions of this section set forth the process for the termination of grazing permits, special use permits, and leases. If provisions of this section are in conflict with provisions in other sections of this Rule, those other sections shall govern.]~~

~~[(2) A person may request termination of their grazing permit or lease by submitting a written request to the division at least 60 days prior to the requested date of termination.]~~

~~[(3) A person may request termination of their special use permit by submitting a written request to the division at least 10 days prior to the beginning date of the special use permit.]~~

~~[(4) The division is under no obligation to grant a requested termination of a grazing permit, special use permit, or lease, and retains the right to pursue specific performance of any contract into which it has entered.]~~

~~[(5) The division may not grant a grazing permit, special use permit, or lease termination request until the required reclamation and any compensatory mitigation for impacts incurred by the project are completed.]~~

~~[(6) The division may unilaterally terminate any grazing permit, special use permit, or lease and require full reclamation of disturbed areas where the holder violates any of the conditions of the grazing permit, special use permit, or lease.]~~

~~[(7) Before terminating a grazing permit, special use permit, or lease the division shall:]~~

~~[(a) Give written notice of the intended division action to the holder of the permit or lease by certified mail;]~~

~~[(b) Document noncompliance; and]~~

~~[(c) Allow the holder of the lease or permit 30 days to remedy the violation and comply with the terms set therein.]~~

~~[(8) Any party breaching an agreement or contract with the division, or being in default on an obligation to the division, may be disqualified from securing a grazing permit, special use permit, or lease from the division or otherwise applying for the ability to remove any natural resource from division lands in the future. The division shall notify the party in writing of the party's disqualification.]~~

### **~~[R657-28-27. Renewal of Right-of-Way Leases and Non-Agricultural Division Land Leases.]~~**

~~[(1) A person may apply to renew a right-of-way lease or division land lease by:]~~

~~[(a) submitting a written request to the division;]~~

~~[(b) updating the original application; and]~~

~~[(c) paying a renewal fee.]~~

~~[(2) A renewal may be requested no earlier than 120 days and no later than 60 days prior to the expiration date of the right-of-way lease or division land lease.]~~

~~[(3) A renewal shall be granted under the division's laws, rules, and policies in effect at the time of renewal.]~~

~~[(4) A request for a change in the size or use of an area or for an additional area or use shall be applied for as a new right-of-way lease or division land lease.]~~

~~[(5) The division may deny renewal of a right-of-way lease or division land lease for any of the following reasons:]~~

~~[(a) Unacceptable impacts to wildlife, wildlife habitat, public recreation, or cultural or historic resources;]~~

~~[(b) Continuation of the right-of-way lease or division land lease is, in the opinion of the division, incompatible with the intended uses of the land;]~~

~~[(c) The person has not complied with terms and conditions of the lease contract; or]~~

~~[(d) The management goals for the area have changed to the extent that the right-of-way lease or division land lease is no longer compatible.]~~

~~[(6) The division shall provide a]~~

[(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~~[to the~~

~~applicant~~] stating the increase or decrease and the reason(s) for ~~[denial]~~the increase or decrease.

~~[(7) Nothing herein shall be construed as limiting the division in seeking agreement from the U.S. Fish and Wildlife Service, or any other party with a contractual or property interest in the division's property.]~~

~~**[R657-28-28. Sublease, Conveyance, or Assignment of Grazing Permits; Special Use Permits; Seed Harvesting Permits; Wood Products Harvesting Permits; Right-of-Way, Agricultural, and Division Land Leases; and Contracts for the Removal of Natural Resource.]**~~

~~[— (1) Leases, grazing permits, special use permits, seed harvesting permits, any form of wood products harvesting permit, or contracted rights to remove natural resources of any kind]~~[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.

[(2)a] A sublease~~[- conveyance,]~~ or assignment may be ~~[made]~~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.

~~[(3) A sublease, conveyance, or assignment may not be approved without reimbursement for the division's administrative costs associated with said sublease, conveyance, or assignment; and payment of:]~~

~~[— (a) the difference between what was originally paid for the permit, lease, or contract and what the division would charge for the permit, lease, or contract at the time the application for sublease, conveyance, or assignment is submitted; or]~~

~~[— (b) an alternate fee established by, and at the discretion of, the division.]~~

~~[-(4)-]~~[b] A sublease~~[- conveyance,]~~ or assignment shall take effect on the date of the ~~[approval]~~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.

~~[(5) A sublease, conveyance, or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the permit or lease contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party. A copy of the documents subleasing, conveying, or assigning the interest shall be given to the division.]~~

~~[— (6) A]~~[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[~~,-conveyance,~~] or assignment[~~-shall be executed according to~~].

(e) The division [procedures.]

~~[(7) A sublease, conveyance, or assignment is not effective until approval is given by]may terminate a termed easement or for failure to follow the division[~~-Any sublease, conveyance, or~~]s assignment [made without such approval is void.]~~

#### **[R657-28-29. Abandonment of Right-of-Way Leases.]**

~~[(1) If within 365 days of the date of execution of right-of-way lease a lessee fails to construct and install the infrastructure which necessitated lessee's acquisition of a right-of-way lease, or the lessee otherwise fails to use all or any portion of a right-of-way, that portion of the right-of-way so unused shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division. (2) If proof of lessee's use of all or a portion of a right-of-way lease cannot be provided for any contiguous three-year period, that portion of the right-of-way for which proof of use cannot be provided shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right-of-way shall be terminated with no compensation due from the division.]~~

~~[(2) In order to facilitate the determination of an abandonment of right-of-way leases, the lessee shall pay an administrative charge every three years during the term of the lease unless otherwise stated in the lease contract.]~~

#### **[R657-28-30. Bonding.]**

~~[(1) Prior to approval and issuance of a right-of-way lease, division land lease, or special use permit,]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 [may require]if the applicant [to post a surety bond in an amount determined by]is in good standing with the division[.]

~~[(2) Only bonds issued by insurers listed in U.S. Treasury Department Circular 570, or], other state agencies and with [a financial rating assigned by the A.M. Best Company Insurance Guide of A or higher with respect to property and casualty sureties, shall be accepted by the division.]~~

~~[(3) The division may use the surety bond to pay for reclamation, compensatory mitigation, payment of any money owed the division, or any other unpaid obligation of right-of-way lessee, division land lessee, or special use permit holder according to the terms and conditions set therein. Should the amount of bond fail to cover the cost of reclamation, mitigation, or other contractual obligations, the party shall remain liable for any additional costs over and above the bonded amount.]~~

~~[(4) The division may require a reasonable increase from time to time in the amount of the bond after providing right-of-way lessee, division land lessee, or special use permit holder 30 days written notice.]~~

~~[(5) The bond shall be in effect even if the lessee or permittee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.]~~

~~[(6) Following termination of a right-of-way lease, division land lease or special use permit; and satisfaction of the contractual obligations of the holder; the division shall release any unused bonds back to the lessee or permit holder within six months]~~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**

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